

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE  
TRIBUNAL  
BANGALORE**

REGIONAL BENCH - COURT NO. 1

**Service Tax Appeal No. 475 of 2011**

(Arising out of Order-in-Appeal No.167/2009 dated 24.12.2009  
passed by the Commissioner of Customs & Central Excise (Appeals),  
Bangalore.)

**M/s. A.S. Transport**

No.827/6, 1st Floor,  
Ramamurthynagara Main Road,  
Near Channasandra Railway Bridge,  
Banaswadi Post,  
Bangalore – 560 016.

Appellant(s)

*VERSUS*

**The Commissioner of Customs  
& Central Excise (Appeals)**

SP Complex,  
Lalbagh Road,  
Bangalore – 560 027.

Respondent(s)

**APPEARANCE:**

Shri R. Daiveekan, Advocate for the Appellant

Shri Rajesh Shastry, Superintendent Authorised Representative for the  
Respondent

**CORAM:**

**HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)**  
**HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)**

**Final Order No. 20954 / 2025**

DATE OF HEARING: 07.03.2025

DATE OF DECISION: 07.07.2025

**PER : R. BHAGYA DEVI**

This appeal is filed by the appellant M/s. A S Transport,  
Bangalore against the impugned Order-in-Appeal No. 167/2009  
dated 24.12.2009 passed by the Commissioner of Central Excise  
(Appeals-II), Bangalore.

2. Briefly the facts of the case are that the appellant undertakes the work of unloading, hand shunting, painting, marking for identification for their clients Steel Authority of India Ltd. (SAIL). Since, Cargo handling services was being performed by the appellant and no service tax was paid, show-cause notice was issued and the same was confirmed by invoking suppression and various penalties were imposed. Aggrieved by this order, the appellant is in appeal before us.

3. The Learned Counsel on behalf of the appellant submitted that they were carrying on only handling of iron and steel materials at M/s. Steel Authority of India (SAIL) based on the material handling contract and were under the impression that these activities do not attract service tax. However, at the time of appeal before the Commissioner (Appeals), they had pre-deposited Rs. 4,00,000/- on 08.06.2009 and the balance service tax amount of Rs.2,17,873/- was paid on 21.02.2012. It is submitted that since the entire tax amount has been paid and the issue involved is interpretation of law, therefore, the question of suppression does not arise. Moreover, the original authority has imposed penalty of Rs.12,35,000/- which is double the tax liability under Section 78, which is not justifiable. It is submitted that since the show-cause notice was issued only on 26.08.2004 and the period involved is 16.08.2002 to 31.01.2004 the major portion of the tax amount is beyond the period of limitation.

4. The learned Authorised Representative (AR) for the Revenue reiterated the findings of the Commissioner (Appeals) in the impugned order.

5. Heard both sides. The issue to be decided in the present appeal is whether the activities carried out by the appellant such as unloading, hand shunting, painting, marking for identification for their SAIL fall under the category of 'Cargo Handling Service', which is defined as:

**'Cargo Handling Service'** is defined under Section 65(23) of the Finance Act, 1994 is defined as 'loading, unloading, packing or unpacking of cargo and includes-

- (a) Cargo handling services provided for freight in special containers or for non-containerized freight, services provided by a container freight terminal or any other freight terminal, for all modes of transport, and cargo handling service incidental to freight; and
- (b) service of packing together with transportation of cargo or goods, with or without one or more of other services like loading, unloading, unpacking, but does not include, handling of export cargo or passenger baggage or mere transportation of goods;

Therefore, the activities undertaken by the appellant which are nothing but cargo handling services, they were liable to pay service tax. However, considering the fact that these activities undertaken by the appellant for Steel Authority of India Ltd. (SAIL), the *bona fide* belief of the appellant that they were not liable to pay tax cannot be brushed aside. Also, from the impugned order, there is nothing on record to show that the appellant had intentionally evaded tax, therefore, the question of invoking suppression against the appellant does not arise. In view of the above, the demand of service tax is limited to the normal period and accordingly, we set aside the penalties imposed on the appellant under Section 76 and 78. The issue stands remanded to the original authority for redetermining the service tax amount along with interest for the normal period.

Appeal is allowed by way of remand.

(Order pronounced in Open Court on 07.07.2025.)

**(P.A. AUGUSTIAN)**  
**MEMBER (JUDICIAL)**

**(R. BHAGYA DEVI)**  
**MEMBER (TECHNICAL)**