CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. I

Service Tax Appeal No. 40865 of 2021

(Arising out of Order-in-Original No. 10/2021 (Commr.) dated 20.09.2021 passed by Commissioner of GST & Central Excise, No. 1, Williams Road, Cantonment, Tiruchirappalli – 620 001)

M/s. Bharat Heavy Electricals Ltd. (HPBP-SSTP) **...Appellant**
Thanjavur Road,
Tiruverumbur,
Trichy – 620 014.

Versus

Commissioner of GST and Central Excise **...Respondent**
Trichy Commissionerate,
No. 1, Williams Road,
Cantonment,
Trichy – 620 001.

APPEARANCE:

For the Appellant : Mr. G. Natarajan, Advocate
For the Respondent : Mr. Anoop Singh, Authorised Representative

CORAM:
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No. 40764 / 2025

DATE OF HEARING : 04.02.2025
DATE OF DECISION : 28.07.2025

Per Mr. VASA SESHAGIRI RAO

This Appeal No. ST/40865/2021 has been filed by M/s. Bharat Heavy Electricals Ltd. (HPBP-SSTP), Trichy (hereinafter referred to as the "Appellant") assailing the Order-in-Original No. 10/COMMR./ST/2021 dated 20.09.2021 passed by the Commissioner, CGST & Central Excise, Trichy

confirming the demand of service tax along with interest besides imposed penalty under the provisions of the Finance Act, 1994.

2. The issue in this Appeal is whether the demand of service tax has been rightly confirmed on Freight Income as shown in their financial records which was incurred by the Appellants but also reimbursed by its customers.

3. The Appellant is a Public Sector Undertaking engaged in the manufacture of Boilers, Valves *etc.,* and is also engaged in the erection and commissioning of power plants, Boilers *etc.,* and also rendering various services and paying service tax under forward charge for various taxable services like Erection, Commissioning and Installation service, Maintenance & Repair services, Works Contract services, etc. and are also registered under RCM and paying service tax as service receiver under reverse charge for some services like Goods Transport Agency Service. The recipient of the Transportation Service is Nabinagar Power Generating Company Pvt Ltd. (NPGCL) which is a Joint Venture between NTPC and Bihar State Electricity Board.

4.1 During the Audit of accounts of the appellant, and on scrutiny of the financial records, it was noticed that

the Appellant had not paid service tax on the income received on account of facilitation of freight. Information was called for from the appellant regarding the payment for freight. In response, the appellant informed that they have received an amount of Rs.87,82,58,742/- and Rs.23,86,84,057/- during the periods 2016-17 and 2017-18 (up to June, 2017) respectively and booked as freight income in the financial records and that no service tax is payable on the said amounts as they are not a "Goods Transportation Agency" and the activity of transportation of goods is undertaken by them through their contractors/vendors and due service tax has been discharged thereon.

4.2 The appellant has also submitted the Contract agreement CS-0370-102(r)-2SC-COA-05 dated 21.02.2013 entered between the appellant and the Nabinagar Power Generating Co Pvt. Ltd for the supply of goods and contract no CS-030-102(r)-2 TC -COA-06 dated 21.2.2023 for the supply of services. The details of the services are shown in the Table below: -

Sl. No.	Scope of Supply	Supply value (Rs.)
1	Local transportation including port clearance and Port charges and Inland insurance charges for plant and equipment, covered under First contract and Second contract	59,01,19,530

2	Local transportation charges including port clearance and port charges and Inland insurance charges for mandatory spares under First contract and second contract	3,15,28,231
3	Installation Services	363,33,78,505
	Total 1+2+3	425,50,26,272

4.3 The Department was of the view on going through the scope of work as mentioned in the contract that the appellant is required to perform the work of unloading at the site and to handle inter-site and intra-site transportation, erection, testing and commissioning, completion of trial operation and handing over including payment for insurance, on behalf of the clients for consideration. The services provided by them appears to be covered under the taxable service as per Section 65B(44) of the Act and leviable to service tax under Section 66B. The Show cause notice dated 26.04.2021 was issued proposing to demand service tax amounting to Rs.16,65,91,787/- under Proviso to Section73(1) of the Finance Act along with interest under Section 75 and to impose penalty under Section 76 and 78 of the Finance Act 1994. On adjudication, the demand has been confirmed by the impugned order. Hence the present appeal before this forum.

5. The Ld. Advocate Mr. G. Natarajan appeared for the Appellant and made the following submissions: -

i. That in order to transport such goods to the project site, the Appellant avails the services of Goods Transport Agencies and pay Service Tax under reverse charge mechanism.

ii. That the demand of Service Tax is confirmed vide the impugned order on the contract price towards transportation, collected by BHEL from their customers, on the ground that BHEL have rendered the service of "arranging transportation".

iii. That as per Section 66 D (p) of the Finance Act, 1994, services of transportation of goods, except by a GTA and courier agency are not leviable to Service Tax. The appellant is not a GTA, as per the definition of the term. Hence, the demand of Service Tax on the appellant is without the authority of law.

iv. It is their contractual responsibility to transport the goods to project sites, for which purpose they engage various GTAs. The customers do not have any privity of contract with the GTAs as the responsibility of transportation is that of the Appellant and they have arranged transportation and paid for transportation charges. Have these transport charges been paid

directly by the customers to the transport operators and the appellant would have received only service charges / commission, which is not the case here. The entire transportation cost is paid to the appellant. Further, the total amount collected by the appellant from their customers towards transportation charges as per the contract, is less than the total amount spent by them on transportation and hence the amount collected is nothing but reimbursement, less than actuals. Thus, the demand confirmed vide the impugned order is not at all sustainable.

v. That similar demands have been dropped in adjudication in respect of Ranipet Unit of the appellant and also in Kanpur Commissionerate in respect of Jhansi Unit.

vi. The entire demand has been raised by invoking the extended period of demand. The appellant wishes to submit that they are Navaratna PSU under the Government of India and the allegation of "suppression of facts, with an intention to evade payment of tax" cannot be levelled against them. The Commissioner has justified the invocation of extended period of demand merely by observing that the appellant had not

declared the collection of transportation charges in their ST returns and but for the verification carried out by the Department, that these facts would not have come to light. He submits that the burden of proof is on the department to justify this invocation of extended period of demand by adequate evidence and this burden has not at all been discharged by the department in this case. The fact that similar demands have been dropped by the Department, for appellant's another unit would go to prove that the appellant's conduct was purely *bonafide*.

vii. That being a Public Sector Undertaking the Appellant is one of the largest taxpayers in the Country. The appellant being a Government company, their Accounts are being audited by CAG office. Further, all the services received from the contractors are duly recorded in our books of accounts and receipts from the customers are duly recorded in their books of accounts. Therefore, the department's allegation is not supported by any evidence to prove that the appellant has wilfully suppressed the facts.

viii. Placing reliance on the following case laws, the Appellant has argued that the demand is time barred.

a. *Hindustan Insecticides Ltd Vs Commissioner of C.Ex. Delhi [2017 (6) GSTL 218(Tri-Del)]*
b. *Indian Oil Corporation Ltd Vs Commissioner of C.Ex Ahmedabad [2013 (291) ELT449(Tri-Ahmd)],*
c. *Commissioner of Central Excise, Indore V Nepa Ltd [2013 (298) ELT 225(Tri-Del)]*
d. *ONGC Vs Collector of Central Excise, Vadodara [1995 (79) ELT 117(Tri-Del)]*
e. *Rajasthan Renewable Energy Corp. LTD v Comm. of C.Ex. Jaipur I [2017 (51) STR 269 (Tri-Del)]*
f. *Rajasthan State warehouse Corp Vs Commr of Central Excise Jaipur [2011 (23) STR 385 (Tri-Del)].*

6.1 The Ld. Authorized Representative Mr. Anoop Singh has supported the findings of the impugned order dated 20.09.2021 and prayed for dismissing the Appeal filed being lacking in merit.

6.2 In his written submissions, he has elaborated that the activities rendered are local transportation port clearance charges, insurance for equipments and spares, *etc.,* and that negative list includes only services by way of transportation of goods except GTA services.

6.3 He has further contended that "services by way of transportation of goods by road except the services of a

GTA" should not be interpreted as "services in relation to transportation of goods by road except the services of a GTA"

Or

"Services directly and indirectly in relation to transportation of goods by road except the services of a GTA". The word 'in relation to' is a very broad expression and is a word of comprehensiveness which might have both a direct or indirect significance depending on the context. They are not the word of restrictive content relying on the decision in the case of *State of Karnataka v. Azad Coach Builders [2006 (3) SCC 338 SC]*

Or

"Services including service in relation to transportation of goods by road except the services of a GTA". However, if the word 'includes' is used in the definition it means that it is not exhaustive but inclusive relying on the case of *CCE v. Bakelite Hylam [(1998) 3 SCR 631 (SC)].*

Or

"Services such as transportation of goods by road except the services of a GTA". The exclusion clause uses the word 'such as'. The word 'such as' are used only to illustrate the scope. It is not restrictive. Such as means for 'example' as held in the cases of *CCE v. JK Cement Works [2009], TTK Pharma Ltd v. CCE [1993].*

6.4 He has further annexed a copy of the CESTAT New Delhi's decision in the case of *Dy. General Manager (Finance) Bharat Heavy Electricals Ltd. Versus Commissioner of Customs & Central Excise, Bhopal [2024 (11) TMI 1285 - CESTAT NEW DELHI].*

7. From the records, it is evident that the Appellant and the Respondent have filed early hearing petitions *vide* Service Tax Misc Applications No 40228 of 2024 and 40865 of 2024 respectively seeking out of turn hearing and taking note of their submissions which are allowed *vide* Miscellaneous Order Nos. 40180-40181/2023 dated 26.06.2024. During the EH the Appellant submitted that a similar demand raised by the Jurisdictional officers for BHEL Ranipet Unit was dropped by the Principal Commissioner *vide* Order-in-Original No. 29/2022 dated 30.06.202.

8. We have heard both sides and carefully perused the appeal records, as well as relied upon case laws. The issues that arise for determination in this appeal are: -

i. Whether the freight income shown in their financial records is to be subjected to service tax? and,

ii. Whether the invocation of extended period of limitation under Proviso to Section 73(1) Finance Act is justified in the facts of the case?

9.1 In order to appreciate the issue better, it is necessary to examine Section 66D of Finance Act, 1994 which specifies the Negative list of services i.e., the Services on which Service Tax is not leviable. Section 66D has been inserted in Finance Act, 1994 by Finance Act, 2012 and got notified to be effective from 1st July 2012. The negative list of services under service tax implies two things:(1) a list of services which will not be subjected to service tax; (2) other than the services mentioned in the negative list, all services will be taxable which fall within the definition of 'services.

9.2 As per Section 66D (p) (i) of Finance Act 1994, Services by way of transportation of goods -(i)by road except the services of -(A)a goods transportation agency; or (B) a courier agency is covered under the negative list of services.

9.3 However, with respect to the activity of arranging transportation of goods by the appellant themselves, we observe that the appellant admittedly is not a Goods Transport Agency. We also observe that with effect from 1st July, 2012 the concept of nomenclature of services has been done away and every activity has been made taxable except those which are mentioned in section 66D of

the Finance Act (Amendment Act of 2012). The period in question is post the said amendment.

9.4 Since admittedly, the appellant is neither the GTA, nor the Courier agency hence, the activity of transportation of goods by road by them is well covered under the aforesaid provision. The amount in question is an amount incurred towards facilitation of transportation and insurance. A mere perusal of section 66D (p) of the Finance Act 1994 itself is sufficient to hold that the service tax on the said amount has wrongly been demanded.

9.5 BHEL's internal order dated 04.02.2013 (Pages 129 to 132 of the Appeal paper Book) which gives details of the contract has been gone through and it is noticed that the Inland Transit Insurance for the main Equipment, Mandatory spares, unloading, in plant transportation, storage, erection, testing & Commissioning, PG Testing and handing over, contract closing, project management, insurance for storage, erection, testing and commissioning of main equipment are within the scope of Power Sector Eastern Region, another affiliate of the Appellant and having separate Service Registration. Further there are Inland transportation charges from works/sub-contractors works, port of importation, to Nabinagar STPP 3x660 MW power plant to Ranipet,

Hyderabad and Trichy for dispatch. The contract is divided into two parts and one is for supply of goods and the other is for the provision of services.

9.6.1 On perusal of the above contract agreement entered with Nabinagar Power Generating Co Pvt Ltd (NPGCL), it is seen that the Appellant have been awarded a contract that is bifurcated into i.e supply and service contract for supply of "Steam Generator Package" for of NPGCL (3*660MW). The first contract (Ex- Works Supply Contract) is for "Design, Engineering, Manufacturing, Shop fabrication, Assembly Inspection and Testing, Packing, Forwarding and Dispatch to site of all Plant & Equipment/Materials/Special Tools & Tackles and Mandatory spares for complete Steam Generator Package. and the Second contract is for providing all services i.e., Customs Clearance /Port clearance, Port handling & Port charges for Imported goods, if any, Transportation from Manufacturer's Works/Place of Dispatch to Site, Transit Insurance covers other than inland transit Insurance, Delivery at site, Receipt, Unloading, Handling, Storage, In-Plant Transportation, Taking delivery of Employer supplied equipment from site stores, Insurance, Installation, supervision, testing and commissioning of all equipment and materials and all other services leading to successful completion of facilities, conducting performance

guarantee tests and handling over to employer of the Equipment/Materials including Mandatory spares for SG Package

9.6.2 From the contract we find that M/s. BHEL as a whole is responsible for execution of both the contracts to achieve successful completion of the project and it is the responsibility of BHEL to transport the equipment to the project site. Any breach in any part of the First Contract shall be treated as a breach of the Second Contract, and vice versa. The scope of work as per the above referred contracts is for completion of the entire project. The Corporate office New Delhi would in turn allocate the responsibilities to different units of BHEL by issuing an Internal Order with specifications of work to be done by each unit and the contract price allocation is done in Delhi.

9.6.3 It can be seen that the Appellant has dispatched the goods to the client site as per the contract terms and collected the transport charges involved thereon. Along with the transportation, admittedly they have also performed i.e., unloading, handling, storage and insurance. Apart from that wherever and whenever it is required, they have done testing and installation. The transportation is the main activity undertaken by them and essentially it has a

character as transportation service along with other services. The audit has taken the Freight income for the years 2016-17 & 2017-18 (April - June 2017) from the Balance Sheet of the Appellant but failed to prove how this "freight income" can be included in the erection and installation service. *Per Contra,* M/s. BHEL, Trichy has proved in the internal work order placed in Appeal paper Book that the erection and commissioning was allotted to PSER, BHEL and accordingly the money was also allotted by their Headquarters, Delhi as per the internal work order. PSER, BHEL is a sister concern and having separate service Tax registration and not covered by the scope of this present Audit.

10. The Appellants have submitted that similar demands have been dropped on adjudication in respect of Jhansi & Ranipet Units of the appellant involving the same issue. The Commissioner of Central Goods, Service Tax and Central Excise Audit, Kanpur *vide* his Order-in-Original No. KNP-EXCUS-AUDIT-COM-010-20-21 dated 27.05.2020 has recorded his finding which reads as follows: -

> *"16.7 ……*
>
> *……*
>
> *Now I will discuss the third issue in the present case. In this issue it has to be decided whether Service Tax amounting to Rs.2,41,33,354/- is recoverable from them*

on the amount of the charges recovered by thern towards transportation of goods by road under Section 73(1) of Finance Act 1994; and whether interest on such amount under Section 75 of Finance Act 1994 is recoverable from them. I observe from Noticee's reply that the Noticee are arranging transport of the goods by road for various customers and such transportation charges are recovered by the Noticee from their customers through separate invoices. The expenses towards transport and insurance may be more or less equal to the expenses incurred by them towards payment of freight and insurance charges along with Service Tax thereon. I see that as per Section 66D Finance Act 1994 transport by road other than by goods transport agency or a courier agency is under Negative List. Since Noticee it is not a goods transport agency and do not issue consignment notes towards charge of the freight as such the service is not classifiable as a taxable service. Accordingly it is not lawful to demand the service tax from the Noticee as Goods Transport Agency since the demand of Service Tax is not maintainable at law there is no question of interest and penalty thereon."

Similarly, in respect of the Ranipet Unit, the Principal Commissioner of GST & Central Excise, Chennai Outer *vide* Order-in-Original No. 29/2022 dated 30.06.2022 dropped the demand in respect of freight income.

11.1 Further, Rule 4B of Service Tax Rules, 1994 mandates issue of consignment note by any goods transport agency which provides service in relation to transport of

goods by road in a goods carriage to the recipient of service. We have noted the appellant's contention that they have not issued any Consignment note and so cannot be termed as GTA but provided transport services on behalf of the recipient which was paid by the Appellant on RCM basis and later on got reimbursed as laid down in the LOA. There is a difference between the transportation charges paid and freight charges reimbursed. The reimbursement is on the expenditure incurred by them and said to be lower than what was incurred as discussed in the impugned order.

11.2 Further the Appellant has submitted that transportation is a bundled service and covered under erection and commissioning charges not liable to Service tax in the hands of the Appellant as it is allocated to PSER in the work order. Further service tax has been discharged on the transportation charges under RCM for which service tax credit is availed. As the Appellant is neither a GTA but engaged in making arrangements for the same as it is an ex-works contract and erection and Commissiong is allocated to their affiliated unit's scope which is independent for service Tax purpose. Further erection and commissioning charges are exempt from service tax when the value of the same is included for levy of excise duty.

12.1 Further, in this connection, we have perused the decisions rendered in respect of their sister units as per the details mentioned below: -

i. *Dy. General Manager (Finance) Bharat Heavy Electricals Ltd. Versus Commissioner of Customs & Central Excise, Bhopal [2024 (11) TMI 1285 - CESTAT NEW DELHI]*
ii. *M/s. BHEL. versus Commissioner of CGST, Dehradun (Uttarakhand) [2025 (5) TMI 648 - CESTAT NEW DELHI]*

In the case of *M/s. Bharat Heavy Electricals Ltd. Versus Commissioner of CGST, Dehradun (UTTARAKHAND) [2025 (5) TMI 648 - CESTAT NEW DELHI]* the issue has been decided in favor of the appellant which held that no service tax is leviable on the amount towards facilitation of freight and insurance which reads as: -

> *"4. Heard both the sides and perused the records of the case.*
> *5. The issue considered in the impugned order was whether the additional amounts received by the appellant towards transportation and consequent insurance booked by them under the head "Other Operational Income and Freight and Insurance Income" is in addition to the price of the goods and other Work Contract incidental to commissioning of the plant or not.*
> *6. Both sides agree that the issue has been decided in the case of the appellant in respect of their Bhopal Unit by Final Order No.57972 of 2024 dated 27.11.2024, where the issue has been decided in favour of the appellant that no service tax is levialbe on the amount towards facilitation of freight and insurance. The relevant para of the order is set out below:-*

> *"7. However, with respect to the activity of transportation of goods by the appellant themselves, we observe that the appellant admittedly is not a Goods Transport Agency. We also observe that with effect from 1st July, 2012 the concept of nomenclature of services has been done away and every activity has been made taxable except those which are mentioned in section 66D of the Finance Act (Amendment Act of 2012). The period in question is post said amendment. Hence in light of the above facts section 66D is perused. We observe that sub-clause (p) of Section 66 D records the services by way of transportation of goods by road except the services of : (i) A Goods Transport Agency (ii) A Courier Agency. Since admittedly the appellant is neither the GTA, nor the Courier agency hence, the activity of transportation of goods by road by them is well covered under the aforesaid provision. The amount in question is an amount towards facilitation of freight and insurance by the appellants themselves. The said perusal of section 66 D (p) in itself is sufficient to hold that the service tax on the said amount has wrongly been demanded. The order to that extent is therefore liable to be set aside."*
>
> *7. The facts and the issue in the present case are identical and, therefore, following the aforesaid final order, the impugned order needs to be set aside and is hereby quashed. The appeal is, accordingly, allowed."*

Applying the ratio of the above decisions to the facts of the appeal under consideration, we have no reason to differ but to respectful follow the same. As such, the demand of service tax on the issue of transportation charges / freight income shall fail to survive and the impugned Order-in-

Original No. 10/2021 (Commr.) dated 20.09.2021 passed by the Commissioner of GST & Central Excise confirming service tax on freight cannot sustain and so, ordered to be set aside. Ordered accordingly.

13.1 On the issue of invocation of extended period, we find that the grounds which were relied upon by the Adjudicating Authority are that the Appellant has failed to disclose the taxable income in the ST 3 Returns, non-payment of tax could be found out only on scrutiny of the financial statements and but for the Audit action, the fact of provision of Taxable services and non-payment of service would not have come to light.

13.2 We do not agree with the findings of the adjudicating authority. The Department has neither made any investigation nor recorded any statement from the Assessee to establish the allegation made in the notice and there is no averment in the notice that the invoices were deliberately prepared showing only Freight Charges. It is a settled matter that the demand cannot be raised merely on the basis of financial records. Further the Balance Sheet is a public document as M/s. BHEL is a public listed company and is bound by disclosures of their financial performance to the public.

13.3 In this connection, we refer to the decision in the case of *M/s. Bharat Electronics Limited Versus Commissioner of GST and Central Excise, Chennai [2023 (9) TMI 870 - CESTAT CHENNAI]* passed by Tribunal Chennai wherein the service tax demand for receiving the overhauling charges under repair and maintenance services was set aside on the grounds of limitation. In Para 17 of the order, it has been held that

> *"17. We agree with the contentions of the appellant that the issue was mired in litigation and interpretation of law; the undisputed fact is also that the appellant is a public sector undertaking and hence, there is no scope to allege suppression with an intention to evade tax. Therefore, we hold that the invoking of extended period of limitation is without any justification."*

Here we observe that the recipient and provider of service are Govt Entities/PSU and the dispute is with another arm of the Government on the issue of leviability of service tax. Further it is a pure interpretational issue and therefore the Suppression cannot be adduced against the Appellants. We agree with the contentions of the appellant that the issue was mired in litigation and interpretation of law; the undisputed fact is also that the appellant is a public sector undertaking and so are their recipients and hence, there is no scope to allege suppression with an intention to evade

tax. No *malafides* can be attributed to the Appellant on this score that too when they discharged service tax on GTA service. Further this issue was already raised in the various units of the sister concerns during Audit and notices were issued and some were dropped during Adjudication and some in Appellate Forums covering various tax periods. Therefore, it cannot be said that the information is not in the knowledge of the Department and therefore the fact that the issue would not have come to light but for the Audit intervention is not correct.

13.4 We find that when that entire demand of tax is based on the figures / facts available in the financial records, it cannot be said that the Appellant has not made appropriate disclosures. In the case of *Hindalco Industries Ltd. Vs. Commissioner of C.EX., Allahabad* reported at *[2003 (161) E.L.T. 346 (Tri. - Del.)],* the Tribunal has held that suppression of the fact cannot be alleged when the demand is raised on the basis of information appearing in Balance sheet. Therefore, we hold that the invocation of extended period of limitation is not tenable.

14. The ingredients for invocation of extended period of limitation under Section 73(1) of the Act and imposition of penalty under Section 78 of the Act are identical. We find

that once the extended period of limitation cannot be invoked in the facts of the present case, there is no question of imposition of any penalty under Section 78 of the Act and so, it is ordered to be set aside as the issue is decided on the basis of merit and also on the limitation in favor of the appellant.

15. In view of the foregoing facts borne out from the records and the discussions and findings stated above, we find that the Appeal succeeds on the grounds of merits as well as on its plea against invocation of extended period of limitation. The demand made in the impugned Order-in-Original being untenable, the demand of consequential interest and the penalty imposed also do not sustain. Hence the impugned Order-in-Original No. 10/2021 (Commr.) dated 20.09.2021 passed by the Commissioner of GST & Central Excise is set aside.

16. Thus, the appeal is allowed with consequential relief, if any, in law.

(Order pronounced in open court on 28.07.2025)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

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