

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,  
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

**SERVICE TAX Appeal No. 12453 of 2014-DB**

[Arising out of Order-in-Original/Appeal No SUR-EXCUS-001-COM-126-13-14 dated 15.04.2014 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

**Shripad Concrete Pvt. Limited**

1st Floor, Ashoka Pavallion,  
Opp. Kapadia Heath Club, New Civil Road,  
SURAT, GUJARAT

**.... Appellant**

*VERSUS*

**Commissioner of Central Excise & ST, Surat-i .... Respondent**

New Building, Opp. Gandhi Baug, Chowk Bazar,  
Surat, Gujarat-395001

**WITH**

**SERVICE TAX Appeal No. 10986 of 2018-DB**

[Arising out of Order-in-Original/Appeal No CCESA-SRT-APPEALS-PS-505-2017-18 dated 15.01.2018 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

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**APPEARANCE :**

Shri Jigar Shah and Shri Amber Kumrawat, Advocates for the Appellant  
Shri Rajesh Nathan, Assistant Commissioner, (AR) for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)  
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)**

DATE OF HEARING : 04.07.2023

DATE OF DECISION : 11.08.2023

**FINAL ORDER NO. 11679-11681/2023**

**RAMESH NAIR :**

The issue involved in the present case is that whether the demand of service tax under the category of supply of tangible goods for use has been rightly confirmed in the facts of the present case or whether the appellant has undertaken work of transportation of concrete for its customers.

2. The brief facts of the case are that the appellant are inter-alia engaged in providing services under the category of "Transportation of Goods Service", "Commercial or Industrial Construction Service", others. The appellant have provided services of services of transportation of Ready-mix Concrete (RMC) to Ultratech Cement Limited (RMC Division) by Transit Mixture Vehicles (hereinafter referred to as 'vehicles') from batching plant of Ultratech Cement Limited, Udhna & Magdalla, Surat to the construction sites. The work orders issued by Ultratech for the aforesaid works states that the work assigned to the appellants is of transportation of RMC, wherein it is the responsibility of the appellants to transport and deliver RMC as per given schedule.

2.1 The case of the department is that the appellant by providing vehicles to Ultratech Cement Limited for transportation of goods has provided the service of supply of tangible goods for use on the ground that right of possession and effective control of the vehicle remains with the appellant. Therefore, the activity is liable to service tax under supply of tangible goods for use.

3. Shri Jigar Shah, learned Counsel along with Shri Amber Kumrawat appearing on behalf of the appellant at the outset submits that there are various contracts for supply of identical service to M/s. Ultratech Cement Limited for transportation of RMC from their plant to the construction sites of the customer under a contract between the transporter and M/s. Ultratech Cement Limited. In an identical case of *Gunesh Logistics vs. CCE & ST – 2019 (9) TMI 1419*, while dealing with a similar issue involved in the present case, activity of transportation of RMC undertaken for the same service recipient will attract service tax under the category of 'Supply of Tangible Good for Use' or under the category of 'Goods Transport Agency service' held that demand is not sustainable, therefore the issue is no more *res-integra*. He further submits that contract for RMC cannot be a contract for supply of vehicles to Ultratech Cement Limited. The canons to interpretation of contracts should be followed for deciphering the true nature of the transactions. He submits that contract involved in the present case clearly shows that there is no supply of vehicles but it is only transportation of RMC for Ultratech Cement Limited. He placed reliance on the following judgments:-

(a) State of Gujarat (Commissioner of Sales Tax. Ahmedabad) vs. M/s Variety Body Builders - (1976) 3 SCC 500.

(b) Commissioner of Sales Tax vs. Walchandnagar Industries - (1985) 58 STC 89 (Bom.)

(c) Modi Company vs. Union of India. - AIR 1969 SC 9

3.1 Without prejudice to above submissions, he submits that in any case the activity undertaken by the appellant by way of transportation of RMC by exclusively deploying the vehicles, cannot be subject to service tax in view of the decision of the Hon'ble Andhra Pradesh High Court in the case of GS

Lamba & Sons vs. State of Andhra Pradesh – 2015 (324) ELT 316. He also referred to clarification issued by the Ministry of Finance vide Circular No. 334/1/2008-TRU dated 29.02.2008. As per the said Circular it was clarified that whether the transaction involved transfer of possession and control, is a question of facts and is to be decided based on the terms of the contract and other material facts. This can be ascertained from the fact whether the VAT is payable or paid therefore, in view of the Circular also demand is not sustainable. He further submits that classification of service for transportation of RMC under the category of supply of tangible goods service is unsustainable as there is supply of vehicle by the owner in the present case M/s. Ultratech Cement Limited is only entitled for service arising out of the vehicles by the appellant. M/s. Ultratech Cement Limited is concerned only with the result performed by the appellant. He placed reliance on the following decisions:-

- (a) Bharat Sanchar Nigam Limited vs. UOI – (2006) 145 STC 91
- (b) Lakshmi Audio Visual Inc. vs. Assistant Commissioner of Commercial Taxes – (2001) 124 STC 246
- (c) Rastriya Ispat Nigam Limited vs. Commercial Tax Officer, Andhra Pradesh – (2002) 126 STC 114

3.2 learned Counsel alternatively submits that activity of supply of RMC to M/s. Ultratech Cement Limited is properly classifiable under Goods Transport Agency service. The appellant being Goods Transport Agency service provider, is not liable to service tax as service tax liability is of service recipient, in the present case, M/s. Ultratech Cement Limited. He also submits that entire exercise is Revenue neutral as the service recipient shall be allowed to take credit of service tax if any paid by the appellant

therefore, for this reason also, the demand is not sustainable. He placed on the following decisions:-

- (a) Amco Batteries Limited vs. CCE - 2003 (153) ELT 7 (SC)
- (b) CCE vs. Narayan Polyplast Limited - 2005 (179) ELT 20 (SC)
- (c) CCE vs. Narmada Chematur Pharma - 2005 (179) ELT 276 (SC)
- (d) CCE vs. Textile Corporation - 2008 (231) ELT 195 (SC)
- (e) CCE vs. Jamshedpur Beverages - 2007 (214) ELT 321 (SC)
- (f) CCE vs. Coca Cola India (Pvt.) Limited. - 2007 (213) ELT 490 (SC)
- (g) International Auto Limited vs. CCE - 2005 (183) ELT 239 (SC)
- (h) Bharat Wagon & Engg. Co. Limited vs. Commissioner of C. Ex., Patna, (146) ELT 118 (Tri-Kolkata).
- (i) Goenka Woollen Mills Limited. vs. Commissioner of C Ex. Shillong, 2001 (135) ELT 873 (Tri-Kolkata).
- (j) Bhilwara Spinners Limited v. Commissioner of Central Excise, Jaipur, 2001 (129) ELT 458 (Tri-Del.).

3.3 He also submits that computation of demand is incorrect as the value has not considered the cum-duty price and the service which is otherwise permissible as per Section 4(4)(d)(ii) of Central Excise Act, 1944. In this regard he placed reliance on the Larger Bench decision of the Tribunal in the case of Sri Chakra Tyres – 1999 (108) ELT 361 (Tri.) which was affirmed by the Hon'ble Supreme Court reported in 2002 (142) ELT A279 (SC). Without prejudice he also submits that demand in the present matter for the extended period of limitation under proviso to section 73(1) of the Finance Act, 1994 is invoked. He submits that demand for the extended period is not invocable as there is no suppression of fact with intent to evade payment of service tax. Therefore, the entire demand is barred by limitation. He also submits that the appellant are registered under the Companies Act and maintaining regular books of accounts. They were under the bonafide belief that they are not liable to pay service tax for the reasons

stated hereinabove. Moreover, the appellants are filing ST-3 returns regularly since 2005 and even M/s. Ultratech Cement Limited has also filed ST-3 return which clearly shows that service tax liability under the Goods Transport Agency service.

3.4 He submits that in view of above the show cause notice is merely made bald allegation of suppression whereas it was not brought any positive evidence for suppression of any fact. The appellants have furnished all information required as and when sought for by the department. The issue involved in the present case is one of interpretation of law therefore, entertaining bonafide belief by the appellants cannot be taken as suppression of facts. Therefore, the entire demand is hit by limitation. He placed reliance on the following decisions:-

(a) NRC Limited vs. CCE – 2007 (5) STR 308

(b) Secretary, Town Hall Committee vs. Commissioner – 2007 (8) STR 170

(c) Binlas Suplux Limited vs. CCE – 2007 (7) STR 561

(d) Continental Foundation vs. CCE – 2007 (216) ELT 177 (SC)

4. Shri Rajesh Nathan, learned Assistant Commissioner, (AR) appearing on behalf the Revenue reiterates the findings of the impugned order.

5. We have carefully considered the submissions made by both the sides and perused the record. We find that department has sought to classify the service of the appellants under the Supply of Tangible Goods for Use service. The claim of the appellants is that they are not provider of vehicles on rental basis whereas they have provided service of transportation of goods i.e. RMC to M/s. Ultratech Cement Limited for transportation of their goods from M/s.

Ultratech Cement Limited to the sites of their customers. To understand the actual activity of the appellant, it is necessary to go through some important clauses of the contract between the appellant and M/s. Ultratech Cement Limited which are as follows:-

**"Work order for transportation of RMC in Vehicle from our Surat 11 Ready Mix Plants at Surat**

With reference to your offer and our subsequent discussion, we are pleased to hereby award you contract for transportation of RMC from our plants at Surat on the terms and conditions as given below :

1. (a) You shall transport the RMC to the desired destination in your vehicle in accordance with prudent industrial practices

(b) You may also be required to transport slurry or water from our plant to the desired destination

2. For this purpose you will deploy fleet of 6M3 Capacity of Vehicles mounted on suitable chassis in numbers adequate to transport 2980 M3 of Ready Mix Concrete every month

.....

6. It shall be your responsibility to ensure transportation and delivery of material within time given as per schedule

.....

8. Since a part of your compensation under this agreement is based on actual kilometers travelled by the vehicles during transportation of our RMC you shall maintain logbook provided to you on daily and the same should be shown to our Production-in-charge and his initial would be taken on daily basis. The distance travelled for transportation of the material shall be on the shortest route basis irrespective of actual route taken by you.

.....

11. **Transportation Charges** : The transportation charges payable to you shall be as below:

A) Rs. 150/- per CuM for quantity of RMC transported during calendar month. TM should not be old more than 7 years.

B) Rs.33.94/- per km for distance travelled during the month of transportation of our RMC

12 **Minimum quantity** : We assure to provide a minimum load of 745CuM per month per Vehicle. In case the actual transportation quantity is less than 745CuM. we shall pay for the differential quantity @ Rs. 120/- per CuM.

13. We assure to provide a minimum quantity of 745 CuM per month per vehicle. In case the actual transportation is less than 745 CuM, we shall pay for minimum quantity of 745 CuM

14. The above charges shall include all costs including diesel and lubricants. No other costs shall be payable to you. However, octroi toll charges for transportation shall be payable extra on actual subject to submission of receipt.

17. **Escalation:**

The rates per Km at Rs.33.94 mentioned in clause 11(e) are on the basis of diesel prices of Rs.56.88 per Litre In case of any variation in rates of diesel the transportation charges payable shall be increased by Rs.0.58 per Km for each Rs. 1.00 of increase in diesel rates

.....

23. **Operation and Maintenance**

You will carry out all operation and maintenance activities at your cost. You will maintain all vehicles used for providing the service under this agreement in good working condition with periodical servicing and repair.

24 **Deployment to other plants:** Your contract of transportation extends to all Ready Mix plants in the city of Surat.

25. **Non-exclusivity**

This contract with you in a non-exclusive contract and company reserves the right to appoint other/additional transporters of our RMC in the city of Surat. Similarly you also can take up transportation of other clients of yours

26. **Statutory permission**

You will have to obtain all the statutory permission from the concerned authority for movement of vehicles in city limit area. For that purpose we will provide you all the necessary documentations. All charges related to permission obtaining will be borne by you.

.....

29. The vehicle shall be maintained in good working condition and kept safety compliant, ie. all headlights. Tail lights, indicators, brake etc. shall be regularly checked and kept in good condition.

.....

36. **Receipts of Goods**

You will issue consignment notes for all loads customers after the goods are delivered. You will provide us the copies of consignment notes and of customer acknowledgement and also submit reports to us in the formats supplied by us at the required intervals.

From the plain reading of the above terms and condition of the contract, it is absolutely clear that M/s. Ultratech Cement Limited is concerned only about the transportation of RMC from their plant to their customer's site and the charges for such transportation is also on the basis of quantity of the goods and per kilometer basis. It is also observed from the clauses of the contract that entire operation and maintenance activity is the responsibility of the appellant only. The contract also prescribes that essential consignment

notes of loads and obtain proper receipt from the customers after goods are delivered. It is also the fact that all the transporters to charge M/s. Ultratech Cement Limited as recipient of service for discharging service tax of such transportation. On the basis of these facts, it is absolutely clear that the appellant are providing service of transportation of goods whereas the demand is raised under the category of service of Supply of Tangible Goods for Use. We have no hesitation to opine that as per facts of the present case, the activity cannot be classified under the supply of Tangible Goods for Use service therefore, the demand cannot be sustained. Moreover, this issue has been considered by this Tribunal wherein the facts were absolutely identical for the reason that the transportation service was for M/s. Ultratech Cement Limited and in the same terms and conditions. In the case of Gunesh Logistics (supra), this Tribunal passed the following order:-

**“2.** The appellant claims that it is engaged in transportation of Ready Mix Concrete [RMC] in vehicles in terms of the contracts executed by Grasim Industries Ltd. and Ultratech Cement Ltd. in its favour. The agreements require the appellant to transport RMC from the premises of its customer to the designated places in vehicles having a rotating drum [Transit mixer] (popularly known as transit mixer) so that the concrete does not set in. The appellant claims that the consignment notes for each trip of transportation are issued by the appellant and periodical Bills are raised for transportation charges. As per the Work Orders, the transportation charges are payable partly based on the quantity of RMC transported and partly on the basis of distance travelled. The recipient of the service has been discharging Service Tax liability on a reverse charge basis as the service which the appellant claims to have been providing is “goods transport agency [GTA]”.

.....

**12.** In order to appreciate the submissions it would be appropriate to refer to the work orders. The first order is dated 1 April, 2008 and is for a period of three years. The second work order is dated 1 April, 2011 and is valid for the period commencing 1 April, 2011 upto 30 September, 2012. The third work order is dated 1 March, 2013 and is valid up to 31 May, 2013. The relevant terms of the first work order dated 1 April, 2008 are reproduced below :-

*“1. You shall load material (Ready Mix Concrete) in your Vehicles, transport the same to the required destinations unload the material at customer sites, return and take another load on similar basis in a clean vehicle in accordance with prudent industrial practices.*

*2. For this purpose you will deploy fleet of 6 M3 Capacity of vehicles mounted on suitable chassis in numbers adequate to transport 9000 M3 of Ready Mix Concrete every month.*

*3. The services shall commence within 15 days from the date of acceptance of this work order.*

*11. Transportation Charges: The transportation charges payable to you shall be as below :*

(a) Rs. 140/- per cum for quantity of Ready Mix Concrete transported during a calendar month; and

(b) Rs. 20.34 per km for distance travelled during the month in the transportation of our Ready Mix Concrete.

*12. Minimum quantity : we assure to provide a minimum load of 745 cum per month per vehicle. In case the actual transportation is less than 745 cum we shall pay for minimum quantity of 745 cum.*

15. Escalation :

The rates per km at Rs. 20.34 mentioned in clause 11(b) are on the basis of diesel prices of Rs. 34.13 per litre. In case of any variation in rates of diesel the transportation charges payable shall be increased by Rs. 0.58 per km for each Re. 1.00 of increase in diesel rates.

*22. You will carry out all operation and maintenance activities at your cost. You will maintain all vehicles used for providing the services under this agreement in good working condition with periodical servicing and repair.*

26. Unloading Time :

The Ready Mix Concrete is a product which has a low setting time and in case if material is not unloaded within 4 hours of loading time, then vehicle driver should inform the Company Representative and follow his instructions regarding diversion/unloading of the material, so that setting of the material is avoided. In case of setting of the material is bowl unit for the above reasons, the cost of removing the material will be borne by the company. But in case delay is on account of transit time due to fault of driver then cost of removing the material from bowl will be borne by you.

32. Your drivers and cleaners/helpers shall take all precautions to ensure that the material loaded in the Bowl is delivered at the customers' sites in good condition. In case of any loss due to improper conduct by your people the loss shall be recovered from your bills at the rate of Rs. 3000.00 per cum.

36. Receipts of Goods :

You will issue consignment notes for all loads and obtain proper *receipts from the customers after the goods are delivered*. You shall provide us the copies of consignment notes and of customer acknowledgements and also submit reports to us in the formats supplied by us at the required intervals."

(emphasis supplied)

**13.** The basic terms remain the same for the second and third work orders, except for a change in the transportation charges and the medium quantity.

**14.** Having reproduced the essential terms of the work orders, it will now be appropriate to refer to the relevant provisions in regard to the pre-negative and the post-negative list.

**Pre-Negative List**

**15.** Section 65(50b) of the Act defines a 'goods transport agency' as follows :-

"65(50b) 'goods transport agency' means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called;"

**16.** The corresponding taxable service under Section 65(105)(zzp) is as follows :-

'taxable service' means any service provided or to be provided- to any person, by a goods transport agency, in relation to transport of goods by road in a goods carriage;"

**17.** On the other hand, the taxable entry for supply of taxable goods is contained in Section 65(105)(zzzzj) and is as follows :-

"65(105)(zzzzj) to any person, by any other person in relation to supply of tangible goods including machinery, equipment and appliances for use, without transferring right of possession and effective control of such machinery, equipment and appliances;"

**Post-Negative List**

**18.** Section 66B provides that there shall be levied a tax to be referred to as service tax on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such a manner as may be prescribed. The 'negative list' is provided for in Section 66D of the Act. Section 65B(44) of the Act as inserted w.e.f. 1 July, 2012 defines 'service' to mean any activity carried out by any person for another for consideration and includes a declared service but would not include certain services specified in clauses (a), (b) and (c). Declared services have been enumerated in Section 66E of the Act. Sub-clause (f) of Section 66E, which is relevant for the purposes of the controversy involved in this appeal, is as follows :-

"(f) transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods;"

**19.** The appellant claims to be transporting RMC in vehicles under the contract awarded by the customers, particularly Grasim Industries Ltd. and Ultratech Cement Ltd. This transportation of RMC takes place in transit mixers from the premises of the customers on the basis of work orders issued. A perusal of the work order dated 1 April, 2008 issued to the appellant by Grasim Industries Ltd. indicates that the appellant was required to load RMC in the vehicles of the appellant and transport the same to the required destinations where it was required to be unloaded. The transportation charges payable to the appellant were in two parts. The appellant was to receive Rs. 140/- per cum for the quantity of RMC transported during the month. Under the second part, the appellant was to receive Rs. 20.34 per km for distance travelled in the transportation of RMC.

**20.** It is clear that under the work order, the appellant was required to load RMC in the vehicles belonging to the appellant and thereafter transport the RMC to the required destination and unload it. The work order does not speak of hiring the vehicles of the appellant. In fact the appellant was required to keep all its vehicles used for providing the service under the agreement in good working condition with periodical service and repair. The Commissioner has, however concluded from a perusal of the work order that the recipient of service i.e. M/s. Grasim Industries Ltd. and M/s.

Ultratech Cement Ltd. needed a large number of vehicles for transportation of RMC from their plant to the premises of the customer and they have entered into an agreement for deployment of 6M3 capacity vehicles which can be used by the recipient and serve as per their requirement. The Commissioner, therefore, observed that the appellant had given on hire vehicles to the service recipient for use in the transportation of RMC from its plant to the premises of the customer though the right to possession and effective control over the vehicles remained with the appellant and it had to deploy manpower to operate and control the vehicles.

**21.** This conclusion drawn by the Commissioner is a patently wrong understanding of the conditions of the work order. The appellant did not give on hire the vehicles. Even the subject matter of the “work order is for transportation of Ready Mix Concrete in vehicle/vehicles from our Jaipur 1TD Ready Mix Plant at Jaipur”. The contract that has been awarded is also for transportation of Ready Mix Concrete from the plant of the appellant on the terms and conditions mentioned in the work order. Condition No. 1 of the work order is that the appellant shall load RMC in the vehicle and transport the same to the required destination and unload it at the customer's site. Merely because the work order requires the appellant to deploy a fleet of 6M3 capacity vehicles for transport of 9000 M3 of RMC every month does not mean that the appellant has given vehicles on hire. The work order only requires the appellant to ensure that it has available a fleet of vehicles adequate enough to transport a particular quantity of RMC every month. Even the transportation charges are under two heads. The first is payment of a certain amount for the quantity of RMC transported during a calendar month and a certain amount per km for the distance travelled for transportation of RMC during the month.

**22.** It is for this reason that the appellant had contended that the activity of transportation of RMC by road falls under the taxable service GTA. However, this contention of the appellant has not been accepted by the Commissioner for the reason that clause 12 of the work order deals with a minimum quantity of RMC to be transported per month per vehicle. According to the Commissioner, it cannot be said to be a case of transportation of goods by road by a goods transport agency “because in the case of transport of goods by road the service recipient books a vehicle for transportation of goods and pays freight for such booking for the transportation of goods”. The Commissioner failed to appreciate that under the work order, the appellant was required to transport RMC for which purpose the appellant was required to load RMC in the vehicles of the appellant and transport the same to the required destination and unload it. The requirement under the work order that the appellant should have a fleet of vehicles, adequate enough to transport 9000 M3 RMC every month would not mean that the appellant had given the vehicle on hire. The Commissioner was required to examine all the conditions of the work order but the finding is based on an assumption that vehicle was hired for transportation of RMC.

**23.** The Commissioner also fell into an error in assuming that if a minimum load of 745 cum per month per vehicle is not loaded, then too the appellant would be entitled to payment on this minimum quantity to conclude that in this manner payment would also be made for goods that have not been transported and no consignment note would have been issued for the same.

**24.** Under Rule 4B of the Service Tax Rules, 1994 a consignment note is a document issued by a GTA reflecting the name of the cosigner and consignee, registration number of the goods carried in which the goods are transported, details of the goods transported, details of the place of origin and the destination and the person liable for paying the service tax. The consignment notes issued to by the appellant which are contained from the pages 112 to 130 of the appeal paper book contain all the

particulars as mentioned in Rule 4B and the issuance of the consignment note has not been disputed in the show cause notice.

**25.** It would be seen from that pre-negative list period prior to 1 July, 2012 that the following two conditions have to be satisfied for a service to fall within the purview of GTA service :-

- (i) There should be transportation of goods by road; and
- (ii) Issuance of consignment note by GTA for the post-negative list period from 1 July, 2012 to 31 March, 2013.

**26.** The following conditions have to be satisfied pre-negative list for a service to qualify as a GTA service :

- (i) There should be an activity in relation to transport of goods by road;
- (ii) Issuance of consignment note by the GTA;
- (iii) Activity is performed by a GTA for another; and
- (iv) Activity is performed for consideration.

**27.** It cannot be doubted that the first condition with regard to both pre-negative list and the post-negative list is satisfied since RMC has been transported by the appellant using transit mixers of the appellant by road. The second condition relating to issuance of consignment note by GTA in the pre-negative list period and the post-negative list period is also satisfied as the appellant had issued the consignment notes. The third condition in the post-negative list period is that the activity should be performed by the GTA for another. It cannot be doubted that the appellant has undertaken the transportation of RMC for the mine owners. The fourth condition of the post-negative period is that the activity should be performed for a consideration. It cannot also be doubted that the appellant is receiving consideration from the service recipient as is clear from the invoices raised by the appellant to the service recipient.

**28.** Thus, the appellant has been rendering GTA service by transporting RMC from one place to another as per the directions of the service recipient. The finding to the contrary recorded in the impugned order by the Commissioner that the appellant was not performing GTA service but was performing STG service cannot be sustained.

**29.** It is, therefore, not necessary to examine the other contentions raised by the Learned Counsel for the appellant. The impugned order dated 15 January, 2016 is accordingly, set aside and the appeal is allowed.”

6. From the above decision of the principal Bench of this Tribunal, it can be seen that the facts such as transportation of RMC by similar vehicles for M/s. Ultratech Cement Limited for transportation from M/s. Ultratech Cement Limited plant to the customer's site of M/s. Ultratech Cement Limited, it was held that appellant in that case are rendering GTA service by transportation RMC from one place to another as per the direction of the service recipient. Therefore, the same is not classifiable under supply of Tangible Goods for Use service.

7. Considering the above decision which is directly on the issue coupled with the facts clearly coming out from the contract, we are of the view that

the appellant's service is correctly classifiable under Goods Transport Agency service for which service recipient M/s. Ultratech Cement Limited have discharged the service tax as required under Rule 2(d) of Service Tax Rules, 1994 under reverse charge basis. Therefore, the demand under the category of Supply of Tangible Goods service shall not sustain. Accordingly, the impugned orders are set-aside and the appeals are allowed.

*(Pronounced in the open court on 11.08.2023)*

**(Ramesh Nair)**  
**Member (Judicial)**

**(C L Mahar)**  
**Member (Technical)**

KL