Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

Service Tax Appeal No. 10267 of 2019- DB

(Arising out of OIA-AHM-EXCUS-001-APP-075-2018-19 dated 12/11/2018 passed by Commissioner (Appeals) Central Excise, Customs and Service Tax-AHMEDABAD-I)

Vane Shipping .... **Appellant**
43, Satellite Apartment,
Near Jodhpur Cross Roads,
Satellite, Ahmedabad, Gujarat

VERSUS

Commissioner of C.E.-Ahmedabad-I ......**Respondent**
C. Ex Bhavan,
Nr Panjrapole & Polytechnic, Ambavadi,
Ahmedabad, Gujarat- 380015

APPEARANCE:
Shri Vikas Mehta, Consultant for the Appellant
Shri H P Shrimali, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA
HON'BLE MEMBER (TECHNICAL), MR. SATENDRA VIKRAM SINGH

Final Order No. 10265/2025

DATE OF HEARING: 01.04.2025
DATE OF DECISION: 01.04.2025

SOMESH ARORA

The instant case relates to demand of Service Tax of Rs. 2,47,156/- from the Appellant alongwith interest and penalty. The case originated out of observation by the audit officers who found that the appellant had charged Ocean/Air Freight for the import/export consignments to their clients. As they were neither a shipping line nor an airline providing the service of transport of goods by Sea/Air, charging of such freight was not found proper in their invoices. The department alleged that this additional value was includible in the value of taxable services provided by them and service tax was required to be paid by them. The department issued show cause notice dated 06.01.2017 demanding service tax on such income for the period from 2012-13 to 2014-15. The demand was confirmed on them vide order dated 25.04.2018. They were also not successful in their appeal filed before the

Commissioner (Appeals), Ahmedabad who vide impugned order dated 12.11.2018 affirmed the order of the lower authority and rejected their appeal. Hence, the present appeal.

2. In the instant case, the short issue involved is whether selling of space for Cargo in an Air craft and a Ship which has been done on Principal-to-Principal basis, for both profit (as well as for losses for not selling the booked space to anyone) is business or provision of service?

3. The appellant placed reliance on the decision of Tigar Logistics (India) Ltd Vs. Commissioner of Service Tax, Delhi as report in 2022(63) GSTL 337 (Tribunal-Delhi), in which *inter alia*, the question whether Service Tax is payable or not, on buying space on ships from the shipping line and selling it to customers was dealt with. It was pointed out in the case that whole transaction amounted to doing trading and not providing a service. The relevant para 4 and para 9 of the decision is as follows: -

> ***"4.*** *The submissions of the appellant with respect to the above are as follows:*
>
> ***Service tax on mark-up/differential of ocean freight***
>
> *(a) The appellant is a multi-modal goods transporter under the Multi-modal Goods Transport Act, 1993 and is registered with the Directorate General of Shipping. It provides (i) Customs clearance service; (ii) Transportation service; and (iii) Freight forwarding service.*
>
> *(b) It books cargo space on ships with the shipping lines and in turn, sells it to its customers. The Shipping line issues a Master Bill of Lading in its name and in turn, it issues House Bills of Lading to its customers.*
>
> *(c) The appellant pays the Shipping line for the entire space booked and the customers pay the appellant for the space which they purchase from the appellant.*
>
> *(d) The total amount paid to the Shipping line can be less than what the appellant receives from selling the space or more than that. The price at which it sells space to its customers depends on market conditions. Thus, there could be loss if the appellant is unable to sell the total space it purchased from the shipping line or has to sell at a lower price or profit in a contrary condition.*

(e) The demand of Service tax is on the differential between the purchase and sale price (or the mark-up) of the ocean freight under the category of Business Support Service (BSS) up to 30-6-2012 and under Section 66B read with Section 66D from 1-7-2012.

(f) The demand in the SCN was of Rs. 2,17,22,185/- which was reduced to Rs. 1,93,79,692/- allowing cum-tax benefit.

(g) No service tax is leviable on this amount as it is only a case of trading the space on ships and the profit gained therefrom.

(h) The issue stands decided by various benches of Tribunal in the cases of Satkar Logistics [2021-TIOL-543-CESTAT-DEL], Nilja Shipping Pvt. Ltd. [2020-TIOL-461-CESTAT-MAD], Surya Shipping [2019-TIOL-249-CESTAT-AHM], ITC Freight Services [2021-TIOL-445-CESTAT-BANG], etc.

9. *As far as the differential in ocean freight is concerned, the appellant buys space on ships from the Shipping Line and the Shipping Line issues a Master Bill of Lading in favour of the appellant. In turn, it sells the space to its customers and issues a House Bill of Lading to each of them. The first leg is the contract between the Shipping line and the appellant. The second leg is the contract between the appellant and its customers. Evidently, anyone who trades in any merchandise or service buys low and sells high and the margin is his profit. To earn this profit, he also takes the risk of being unable to sell. In the appellant's case, if the space on the ships which it bought cannot be sold to its customers fully, or due to market conditions, or is compelled to sell at lower than purchase price, the appellant incurs loss. In a contrary situation, it gains profits. This activity is a business in itself on account of the appellant and cannot be called a service at all. Neither can the profit earned from such business be termed consideration for service. Respectfully following Satkar Logistics, Nilja Shipping Pvt. Ltd., Surya Shipping and ITC Freight Services, we hold that the appellant is not liable to pay service tax."*

4. It is also seen that the decision based on various other cases of this Tribunal including the case of Suray Shipping as reported in 2019 (12) 249 (CESTAT-Ahmedabad).

5. In view of foregoing, we find the issue is no more res-integra. Therefore, party is entitled to the benefit as in the instant case, the underlying transactions cannot be considered as provision of service under business

support service but as a Trading of space. In view of forgoing, we allow the appeal with consequential relief.

6. Appeal is allowed.

(Dictated and pronounced in the open court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Raksha