CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

(E-HEARING)

REGIONAL BENCH - COURT NO.II

Service Tax Appeal No.60261 of 2013

(Arising out of Order-In-Original No.- 03-COMMR-M-II-2013-14, dated - 30/07/2013 passed by Commissioner, Customs, Central Excise & Service Tax, Meerut-II)

Global Cargo Forwarders, **.....Appellant**
(142-150, 1st Floor, Super Bazar, Station Road
Moradabad, U.P 244001)

VERSUS

Commissioner, Central Excise & Service Tax, Meerut-II
....Respondent
(Opposite CCS University, Meerut, Uttar Pradesh-244001)

APPEARANCE:

Shri Prachit Mahajan, Advocate &
Shri Mohit Kalra, Advocate for the Appellant
Shri A. K. Choudhary, Authorised Representative for the Respondent

CORAM: **HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER NO.70736/2025

DATE OF HEARING : 17.07.2025
DATE OF DECISION : 17.07.2025

SANJIV SRIVASTAVA:

This appeal is directed against the Order-In-Original No. 03-COMMR-M-II-2013-14, dated -30/07/2013 passed by Commissioner, Customs, Central Excise & Service Tax, Meerut-II. By the impugned order following has been held:-

ORDER

"The Order in Original 230/MBD/OIO/ST/07 dated 12.04.2007 passed by the Dy. Commissioner, Central Excise, Moradabad with reference to the proceedings initiated vide both the SCNs dated 12.04.2006 & 20.04.2006 is upheld and the Revision Application dated 24.02.2009 filed by the party is rejected."

2.1 The Appellant is a Customs House Agent and was providing services of Customs House Agent to their customers. They are registered with the Department for provision of the above services. They are also booking cargo space at random depending upon the best of the rates offered, best time table offered and the quickest route offered as per direction and the choice of the customers.

2.2 During the course of scrutiny of records of the Appellant for the period from 16.06.1997 to 28.02.2005 it was observed that they were receiving brokerage from shipping line for providing services for promotion and marketing and not paying Service Tax on brokerage so received. The services of promotion for marketing as per Revenue were covered under the category of 'Business Auxiliary Service' as per Section 65(19) of the Finance Act, 1994 on which Service Tax is leviable w.e.f. 01.07.2003.

2.3 During the period from 01.07.2003 to February 2005, the Appellant received Rs.49,97,528/- as brokerage charges from shipping lines on which Service Tax works out to Rs.4,26,187/-. The Appellant received brokerage charges as indicated in the table below on which Service Tax was not paid:-

Period	**Brokerage received**	**Service Tax Due**
01.07.2003 to February 2005	Rs.49,97,528/-	Rs.4,26,187/-
01.03.2005 to November 2005	Rs.12,72,862/-	Rs.1,29,832/-

2.4 Two Show Cause Notices dated 12.04.2006 and 20.04.2006 were issued to the Appellant asking them to show cause as to why:-

> *"Service Tax amounting to Rs. 4,26,187/- (Rs. 4,23,789/- Service Tax +Rs. 2398/-Ed. cess) should not be demanded and recovered from them under the provisions of Section 73(1) of the Finance Act, 1994, by invoking the extended period of limitation on account of suppression of facts.*
>
> *Interest at appropriate rate on the above outstanding amount of service tax, should not be demanded and recovered from them under the provisions of Section 75 of the Act ibid.*
>
> *Penalty under the provisions of Section 76 and 78 should not be imposed upon them for contravention of the afore-mentioned provisions of law."*

Show Cause Notice dated 20.04.2026

> *"Service Tax amounting to Rs. 1,29,832/- (Rs. 1,27,286/- Service Tax +Rs. 2546/-Ed. cess) only as per details given above, should not be demanded and recovered from them under the provisions of section 73(1) of the Finance Act, 1994, by invoking the extended period of limitation on account of suppression of facts.*
>
> *Interest at appropriate rate on the above outstanding amount of service tax, should not be demanded and recovered from them under the provisions of Section 75 of the Act ibid.*
>
> *Penalty under the provisions of Section 76 and 78 should not be imposed upon them for contravention of the afore-mentioned provisions of law."*

2.5 Both the show cause notices were adjudicated by Deputy Commissioner holding as follow:-

> *"Adjudicating Authority confirmed the demand of Rs 3,88,697/-on account of Service Tax (Since deposited by the party along with interest)) for the period from July 2003 to Feb 2005 against the demand of Rs 4,26,187/- made in the Show Cause Notice and refrained from imposing any penalty upon the party as proposed in the Show Cause Notice bearing C.No V(30) 89/STAX/MBD/06/2391 dated 12.4.06. As regards the show cause notice C.No V(30) 89/STAX/MBD/06/2676 dated 20.4.06,*

on the same issue for the period from March, 2005 to November, 2005, Adjudicating Authority confirmed the demand of Rs 1,19,759/- (since deposited by the party along with interest) and refrained from imposing any penalty against the noticee as proposed in the Show Cause Notice bearing C.No V (30) 89/STAX/MBD/06/2676 dated 20.4.06. The amount of service tax for the periods under consideration and the interest thereon already deposited by the party, was ordered to be appropriated to the government account."

2.6 The Appellant filed a revision application before the Commissioner, Central Excise, Meerut-II. They also filed Writ Petition No.1273/2009 before the Hon'ble Allahabad High Court. The Hon'ble High Court passed Order dated 10.04.2013 in the aforesaid Writ petition of the Appellant and directed the Commissioner of Central Excise Meerut-II to decide the application dated 24.2.2009 filed under Section 84 of the Act, against the order dated 12.04.2007 within a period of 2 months from the date of production of certified copy of the order.

2.7 Complying with the order of the Hon'ble High Court the impugned order has been passed by the Commissioner.

2.8 Aggrieved Appellant have filed the present appeal.

3.1 We have heard Shri Prachit Mahajan, Advocate & Shri Mohit Kalra, Advocate appearing for the Appellant and Shri A. K. Choudhary, Departmental Representative for the Revenue.

3.2 Arguing for the Appellant learned counsel submits that the issue involved in the present case is no longer *res integra* and has been decided in the case of Bluemoon Logistics (P) Ltd. V/s Commissioner of Central Excise, Noida reported as (2025) 29 Centax 4 (Tri.All.) . Reliance is also placed on the following decisions:-

I. Bluemoon Logistics (P) Ltd. [(2025) 29 Centax 5 (S.C.)]

II. DHL Logistics Private Limited [2017 (6) G.S.T.L. 85]
III. Flyjac Logistics Pvt. Ltd. [(2024) 22 Centax 415]
IV. Sindhu Cargo Services Ltd. [2019 (24) G.S.T.L. 664 (Tri. - Bang.)]

3.3 Learned Departmental Representative reiterates the findings recorded in the impugned order.

4.1 We have considered the impugned order along with the submissions made in the appeal and during the course of arguments.

4.2 The impugned order records the findings as follows:-

"The Hon'ble High Court has directed to decide the Revision application dated 24.2.2009 against OIO dated 12.04.2007 passed by the Dy. Commissioner, C. Excise, Moradabad. The party deposited the service tax on "brokerage" received from shipping lines and they pleaded the same during hearing before the Dy. Commissioner in the case of both SCNs dated 12.04.2006 & 20.04.2006. The party accepted the allegations in SCNs and deposited service tax on brokerage received from shipping lines along with interest. The party also vehemently argued for seeking relief from under Section 80 of the Finance Act, 1994 and pleaded before the Dy. Commissioner not to impose penalty under Section 76 & 78 of the Finance Act, 1994. The Dy. Commissioner accepted the party's request and refrained from imposing any penalty.

The party after 22 months from the date of Order-In-Original, filed a revision application stating therein that in their case, the clarification issued under letter F.No.B43/1/97-TRU dated 06/06/1997 are most appropriate. The party further stated that as per para 2.1 to para 2.8 of the said letter which put emphasis that amount towards "agency commission" only is liable to be taxed and *according to para 2.5 of the referred letter even if amount of "agency commission cannot be determined separately then the service tax is to be calculated on 15% of gross amount. But on the contrary the impugned order in original lacks ratio decidendi and the only reliance has taken on instructions issued by the Hon'ble Director General of Service Tax in the matter entirely to the Air Cargo Agents.*

Here it is mentioned that Circular issued under F. No. B43/1/97-TRU dated 06/06/1997 has since been rescinded vide circular No. 93/4/2007 ST dated 10.05.2007. Further the para quoted by the party is pertaining to valuation of the service.

Here it is emphasized that the party is engaged in two kinds of activities, namely (i) they are proving services to exporters /Importers under Customs House Agents services and received payments from the exporter/importer and (ii) They are receiving certain amount as brokerage from shipping line for services provided to shipping line in relation to canvassing of import/export cargo [Para 30 of Writ Petition refers). So it is clear that they are receiving the brokerage from shipping line for certain activity as mentioned by them in the writ petition. Moreover this activity is classifiable under BAS as per definition under Section 65 (19) of the Finance Act, 1994.

The party's contention regarding composite service, does not arise here because the activity relating to shipping line is different from those relating to exporter/importer. The case laws referred to are not applicable in the present case. The party's view that there is no agreement with the shipping line in respect of brokerage received from them, have also no relevance as far as service tax payments are concerned because the charging section of service tax is under Section 68 of the Finance Act, 1994 and the payment of service tax is as per Rule 6 of the Service Tax Rules, 1994. In Rule 6 of the Service Tax Rules, there is no *mention regarding agreement and the only condition is that the service tax is payable on the value of taxable services received during the month by 5th of next month. The party has themselves admitted that they had received brokerage from shipping line & also submitted month wise details of such brokerage received, so there remains no doubt or dispute regarding the receipt of value of taxable services, so the party is obligated statutorily to pay service tax as per Rule 6 of the S.T. Rules, 1994.*

Secondly, the party's view that they are not issuing Invoices /Bills to shipping lines and they receive amount from the shipping lines as per the mercy of shipping line also has no effect on payment of service tax in as much as the service tax is payable when certain amount or consideration is received from the shipping lines. The party have shown in their books of accounts and also provided month wise details during adjudication proceedings by the Dy. Commissioner. Further as per Rule 4 A of the Service Tax Rules, 1994 [Notification 11/2004 ST refers), it is mandatory on the part of the party to issue Bills/ Invoices within 14 days from the date of receipt of payment towards the services. Here it is emphasized that they have not followed the provisions of Rule 4 A of the Service Tax Rules, 1994 as far as amount received from shipping lines.

The amount received from the shipping lines as brokerage for canvassing of import/export cargo is covered under the Business Aux. Services (BAS) as per definition under Section 65 (19) of the Finance Act, 1994. The Shipping lines are making payments to the party for the activity of incidental or auxiliary service to the activities specified in sub clause (i) to (vi) under section 65 (19) of the Act. The containers/ cargo of shipping line are used by the exporter/ importer and the party is acting in between the two and therefore helping the shipping lines to get more & more customers to use their cargo/ lines for export/ import of the *goods. In this context, the Departmental clarifications issued vide Boards Circular 59/8/2003 dated 20.06.2003 is relevant.'*

In Para 2.3.1 of the said Circular, it is clarified that "while it is not possible to give exhaustive list of business auxiliary services, the following are illustrations of services that are covered under this category viz.

(i) Evaluation of prospective customers

(ii) Processing of purchase orders

(iii) Customers management

(iv) Information and tackling of delivery schedules

(v) Accounting and processing of transactions

(vi) Operational assistance for the marketing

(vii) Formulation of customer service and pricing policies

(viii) Managing distribution & logistics

(ix) The services provided in relation to getting a customer

(x) Verification of prospective customer

(xi) Processing of purchase order etc.

As the exporters/ importers are in direct contact with their CHA and therefore the CHA assists the shipping lines to get their customers i, e. exporters/ importers & retain them for using their containers/cargo for export & import and this is the precise reason why the CHA is helping the shipping lines in promotion & marketing of their services and by doing so, they are covered under BAS

The CHA work is different from BAS and while any person can be a CHA and also he can provide a number of different services including BAS. There is no bar on CHA for providing services other than CHA services. In the present case, the party is receiving brokerage from shipping lines for rendition of services falling under Business Auxiliary Services.

The party has admitted in their reply to the SCN date they are booking the cargo space at random depending upon the best of the rates offered, best time table offered and the *quickest route offered as per the direction and choice of the customers.*

As per Sec 65(19) of the Finance Act, Business Auxiliary Services means any services in relation to:

i. Promotion or marketing or sales of goods produced or provided by or belonging to the client, or

ii. Promotion or marketing of services provided by the client, or

iii. Any customer care sevices provided on behalf of the client, or

iv. Any incidental or auxiliary support service.

Business Auxiliary Services thus include the services provided in relation to not only promotion, marketing of services provided by the client or on behalf of the client, but any incidental or auxiliary support services, that include, inter alia, evaluation of prospective customers and public relation services.

From the above illustrative list of services under Board's Circular 59/8/2003 date 20-06-2003, it can be seen that the party in this case is providing services in relation to evaluation of prospective customers, customers management, operational assistance for the marketing, the services provided in relation to getting customer, verification of prospective customer, etc. and for providing these services, they are receiving "Brokerage Charges".

In the case of EXEL India Pvt Ltd. 2007(5) STR(Trib-Chennai), the appellant was doing business with airlines as air cargo agents and services consisted of acquisition of cargo space from the airlines against payment of consideration. Such services were classifiable under BAS as per decision of DGST on High Court's direction. The Tribunal accepted the order of the Department. The said facts and findings are squarely applicable to this case also.

In the case of Transianka Air Travel Pvt Ltd. 2007(7) STR 476 (Tri-Chennai), the appellant was receiving Overriding Commission from the airlines for domestic and ternational passenger traffic sales to promote and market the airlines, passenger traffic in India. It was classified under BAS by the Department and was upheld by the Tribunal.

Further as regards classification under Section 65 A of the Finance Act, 1994 the services of the party are classifiable under Section 65 (105) (h) for CHA & for BAS under Section 65 (105) (zzb) of the Finance Act, 1994. So there is no classification dispute as the activities relating to promotion or marketing of shipping lines and incidental or auxiliary support services mentioned above, will fall under BAS & not under CHA. The customs clearance for import and export of goods is classifiable under CHA services. Therefore classification will be as per Section 65A (1) and not as per 65 A (2) of the Act, there being no dispute about such services falling under BAS and not under CHA.

The classification of a service depends upon the nature of the service provided by the service provider. If an agent or CHA, provides different kinds of services, each of the services is required to be classified and registered separately.

It has been held by Tribunal in the case of Super Poly Fabriks Ltd 2006(4) STR 595(Tri-Del) that taxable services are to be determined in terms of sub-clauses under clause 105 of Section 65 of the Finance Act, 1994. Resort to sub-section 2(b) to be made only when taxable service becomes classifiable under two or more sub-clauses.

In the impugned case, the party claims that they are CHA only and brokerage charges are not covered under BAS, but under CHA services and that if it is considered as a composite service, then essential characteristics of CHA service should be considered for classification. Such a contention is not legally tenable, because the services of *brokerage clearly falls under BAS, as discussed in the foregoing paras and it is never the case of the party that the services provided are classifiable under two or more different heads of taxable services.*

The contention of the party that in case brokerage is covered under ambit of service tax, then it should fall under CHA and they are paying tax for clearing charges received from exporters/shippers is also not legally tenable. As per the Finance Act, 1994-CHA services means any services provided in relation to the entry or departure of conveyances or the import or export of goods. The services of brokerage are not covered within the ambit of CHA services. It falls under BAS.

The party has often referred to para 2.4 of the Board's Circular F.No. B 43/1/97-TRU dated 06-06-2007 in their defence reply to hold the view that amount of brokerage received by CHA from the shipping line is not considered to be the part of value of the taxable services of CHA. This contention is misplaced and fallacious. Firstly, Revenue Department wants to classify brokerage services under BAS and not under CHA. Secondly, the said clarification of the Circular was with respect to CHA services only and it speaks about computation of the taxable value- the gross service charges, by whatever head/nomenclature, billed by the CHA to the client. The charges may be shown as agency commission charges, agency and attendance charges, agency charges and other similar descriptions and the service tax will be computed only with reference to such charges. Thus, it does not say that brokerage charges are such charges received by a CHA. The Revenue, in fact, classifies brokerage under BAS. So. this clarification relevant for CHA will not apply to BAS

Further, it is settled law and held by the Apex Court, that measure of taxation cannot affect the nature of taxation. In fact, para 2.4 of this circular is how to compute taxable *value of CHA service for assessment of tax and thus it is a measure of taxation. It cannot decide and determine whether such brokerage will fall under CHA or otherwise the nature of taxation. As discussed in the foregoing paras, a service is classified according to its nature and character.*

Moreover, the said Circular dated 06-06-1997 has been rescinded with effect from 10-05-2007 by Circular No. 93/4/2007-ST date 10-05-2007 and this clarification of circular dated 06-06-1997 has no relevance thereafter and particularly the period of this Order

Further, the party's reliance on advice of a private consultant on the issue of leviability of service tax or otherwise on brokerage charges has no legal footing and moreover is not in consistence with the law prevailing.

Further it is a fact that the party is receiving the amounts for both the services ie CHA and BAS separately one from the exporters and other from shipping lines. The amount received from shipping lines has no relation with the amount received from exporters/importers.

The FAQs quoted in defence reply of the party is not relevant as in the present case, the amounts received from shipping lines towards canvassing of import/export cargo have been classified under Section 65 (105) (zzb) and not under Section 65 (105)(h). The services tax on brokerage received by the party has been demanded in SCNs under BAS.

Further the party have submitted in revision application darted 24.02.2009 that the clarifications issued under F. No. B43/1/97-TRU dated 06/06/1997 are most appropriate in their case. It is pertinent to mention that this Circular is for clarification regarding imposition of service tax on services rendered by the Customs House Agents & Steamer Agents. Each Para of this circular are addressed below:

Para 2.1- definition of CHA

Para 2.2-rate of service tax on CHA

Para 2.3- Misc. services relating to export/ import but not pertaining to services provided and remunerations received from shipping lines

Para 2.4- exclusion/inclusion in the gross service charges but not pertaining to services provided and remunerations received from shipping lines

Para 2.5-15% of the lump sum amount in respect of turnkey imports and exports. but not pertaining to services provided and remunerations received from shipping lines.

Para 2.6- sub contract by CHA pertaining to branches of CHA but not pertaining to services provided and remunerations received from shipping lines.

Para 2.7-branches of CHA and manner of payment, but not pertaining to services provided and remunerations received from shipping lines

Para 2.8- bills raised by CHA not paid by clients but not pertaining to services provided and remunerations received from shipping lines.

So from above para wise discussions, it is clear that party's sole basis for filing the revision application was clarifications issued under F. No. B43/1/97-TRU dated 06/06/1997 which is nowhere related to issue involved i. e. service tax on brokerage received by the party under BAS in the SCNs issued & Adjudication Order passed

4.3 We find that the issue in the present case is no longer *res integra* and has been decided by the coordinate bench of the Tribunal in the case of Bluemoon Logistics (P) Ltd. [Final Order No 70111-70112/2024 dated 05.03.2024 in Service Tax Appeal No.58884 & 59192 of 2013] holding as follows:-

"8. The Appellant-assessee is inter alia engaged in facilitating clearance of export/import cargo at various ports /ICDs/CFS for which they book space in ocean going vessels

for their customers/ exporters, coordination, with shipping lines for terminal handling of containerized cargo and coordinating with CHAs for customs clearances of documents etc. These services are in the nature of Clearing & Forwarding Services for their customers who mostly are exporters. Appellant assessee arranges to collect the export cargo stuffed in containers from the premises of the exporters in India, arrange customs clearance and thereafter makes shipment of export cargo in containers through shipping lines/airlines, get unloading of the cargo at foreign port and finally arranges to deliver the export goods at the godown of the foreign party in the destination country. Accordingly, the Appellant assessee approaches various shipping lines/airlines and books cargo space on such ships/planes (as per requirement of the client) on agreed price, and in turn, the Appellant assessee is approached by the clients (importers/exporters) for transportation of their goods. The amount paid towards freight by Appellant assessee to the shipping lines/ airlines could be less than what the Appellant assessee receives from selling of space to clients or more than that or similar also. Thus, there could be profit or loss or no-profit no-loss to the Appellant in buying & selling of cargo space. Further, the Appellant makes certain payments on behalf of its clients which are in the nature of terminal handling services, documentation service, Bill of Lading service, unloading of cargo service at the foreign port and delivery of such cargo at the godown of the foreign party, and the same are reimbursed by the clients without any mark-up. Since the payment made by the client towards the said charges are in the nature of reimbursements, same was non-taxable, however, the Appellant assessee paid tax on the same. The Appellant assessee was duly registered with the Service Tax department w.e.f. 30.11.2006 vide Service Tax Registration No.AACCB9266EST001 under the category of Business Auxiliary Service in the name of their office located at

Noida, as they did not have any regular branch/offices in cities where they had appointed representatives operating from their residence to obtain orders from potential customers/exporters. Thereafter, in July 2009, Appellant obtained Centralized Registration for their office located in Kolkata vide Registration No.AACCB9266EST002 under the category of Clearing & Forwarding Agency' and 'Transportation of Containers by Rail along with the list of various offices/ representatives' premises maintained by the Appellant in different cities in terms of Rule 4(3) of the Service Tax Rules, 1994 in July, 2009.

9. We find that the issue in dispute is no longer res integra. Mere purchase and sale of booking cargo space is not a 'Service' and the surplus income/receipts earned is not consideration towards rendition of any "BSS" to their client and hence not liable to service tax.

10. Thus, in view of the above, neither the transaction is amenable to Service Tax under the category of 'Business Auxiliary Service[1]' nor under 'Business Support Service' and thus, the demand of service tax confirmed vide the impugned Order is not sustainable and is liable to be set aside. Further, in the case of Console Shipping Services India Pvt. Ltd. v. Commissioner of Service Tax, Delhi-II, 2023 (5) TMI-CESTAT New Delhi, the Tribunal held that the income/receipts under the head of airline commission and airline incentive was not taxable under BAS as the Appellant assessee was not buying and selling space on the airline on behalf of their client but on their own account as the they were directly buying themselves and thereafter selling the same to the exporters. Therefore, the said activity cannot be considered as BAS since the statute requires at least three parties to be involved in the transaction namely the service provider, service recipient and the client which was not the case involved. Hence, Service Tax was not payable.

[1] BAS

Reference is also made to Circular No.197/7/2016 dated 12.8.2016 though issued subsequently in the context of Service Tax on Freight forwarders on transportation of goods from India relating to post negative list under Rule 10 of the "Place of Provision of Services Rules 2012", which provides that the place of provision of the service of transportation of goods by air/sea is the destination of the goods, i.e. from a place in India to a place outside India, would be a place outside the taxable territory and hence not liable to service tax. Only the amount which is received as an intermediary, was taxable. In the present case, the Department held that the Appellant assessee is not an intermediary (acting on principal to principal basis). It is submitted that the Appellant assessee relies on the said Circular dated 12.8.2016 to contend that it has fulfilled the condition envisaged in Para 2.2 of the said Circular and in such situation, when acting as a principal, the Appellant would not be liable to pay service tax when the destination of the goods is from a place in India to a place outside India in terms of Para 3 of the said Circular. The conditions as fulfilled by Appellant in the instance case are demonstrated in the table below:-

SI. No.	***Condition***	***Satisfaction by the Appellant assessee***
1.	*The freight forwarder separately negotiates the terms of freight with the airline/carrier/ocean liner as well as with the exporter.*	*The assessee books the space with shipping lines in its own name and shipping line raise invoice on assessee. Further, separate invoice is raised on the clients wherein different amount is charged (Annexure-C, page 57-58), and this only resulted in mark-up. Thus, first condition is satisfied.*
2.	*The invoice is raised by the freight forwarder on the exchequer.*	*Invoices are being raised on exporters (Annexure-C, page 57-58)*
3.	*The freight forwarder is undertaking all the legal responsibility for*	*All risk of transportation is borne by the assessee. Further, there may be a*

	transportation of the goods and undertakes all the attendant risks.	*situation where cargo space is sold at lesser price, thus, loss risk is borne by the assessee.*

11. In addition to the above submissions, it is submitted that the activity of trading space is not notified by the Government as a 'service' under Section 65(105) of the Finance Act, 1994. As regards, the transportation of goods by air service provided by the airlines from one country to another country or within the country were made taxable under Section 65(105)(zzn) of the Finance Act, 1994 w.e.f. 10.9.2004. However, the Appellant assessee is not an aircraft operator and as such they are not covered within the ambit of charging provision of Section 65(105)(zzn) of the Finance Act, 1994. Reliance is placed on the decision of the Tribunal in Agility Logistics (P) Ltd. v. Commissioner of Service Tax, 2013 (39) STT 277 (Tri. - Chennai). Appellant assessee was also providing terminal handling services, documentation service, Bill of Lading service, unloading of cargo services, etc. and duly discharging the applicable tax thereon even when the said charges are not required to be added to the taxable value for the purposes of payment of tax. In absence of any dispute on payment of service tax by the Appellant assessee, Cenvat credit cannot be denied on invoices which are merely issued in the name of its branch offices/premises registered or unregistered. Proviso to Section 73(1) of the Finance Act is not invokable, accordingly substantial portion of the demand being beyond the normal period of one year in respect of SCN dated 23.4.2012 issued for the period from October 2006 to March 2011, is barred by limitation and deserves to be set aside. Further, it is submitted that the Appellant assessee was under the bona fide belief that it was not liable to pay service tax in the alleged manner. It is imperative to state that the Appellant assessee had discharged their tax liability towards terminal handling services, documentation service, Bill of Lading service, etc., even when they were not *required to do so under the existing law during the relevant period. This further establishes bona fide intent of the Appellant assessee.*

12. Similarly in the case of Greenwich Meridian Logistics India Pvt. Ltd. vs. Commissioner of Service Tax, 2016-TIOL-869-CESTAT-Mum, the Tribunal observed as under:-

> *"10. The original authority has proceeded on the assumption that there is only one payment and, that too, for freight charged by the shipping line. He has rejected the possibility of trading in space or slots on vessels by holding that trading in space or slots is a figment and freight is all that is transacted. This is a patent misconstruing of the usage of that expression. Freight, though used colloquially to describe all manner of carriage, is the nomenclature assigned to the consideration for space provided on a vessel for a particular voyage. Freight is charged by the entity that is in possession of space on a vessel from an entity that requires the space for carriage of cargo.*
>
> *11. Slots may be contracted for by the shipper or its agent with the shipping line through the steamer agent. Implicit is a uni-directional flow of consideration because the space belongs to the shipping line. Steamer agent or agent of shipper may earn commission in such a transaction. Leaving that situation aside, the contention of the appellant is that it is a 'multi-modal transport operator' which entails a statutorily assigned role in cross-border logistics. According to Section 2 of the Multi-modal Transportation of Goods Act, 1993.*
>
> *(m) "multimodal transport operator" means any person who –*
>
> *(i) concludes a multimodal transport contract on his own behalf or through another person acting on his behalf;*
>
> *(ii) acts as principal, and not as an agent either of the consignor, or consignee or of the carrier participating in the multimodal transportation, and who assumes responsibility for the performance of the said contract; and*
>
> *(iii) is registered under sub-section (3) of section 4; and*
>
> *(a) "carrier" means a person who performs or undertakes to perform for a hire, the carriage or part*

> *thereof, of goods by road, rail, inland waterways, sea or air;*
>
> *12. The Appellant takes responsibility for safety of goods and issues a document of title which is a multi-modal bill of lading and commits to delivery at the consignee's end. To ensure such safe delivery, appellant contracts with carriers, by land, sea or air, without diluting its contractual responsibility to the consignor. Such contracting does not involve a transaction between the shipper and the carrier and the shipper is not privy to the minutiae of such contract for carriage. The appellant often, even in the absence of shippers, contract for space or slots in vessels in anticipation of demand and as a distinct business activity. Such a contract forecloses the allotment of such space by the shipping line or steamer agent with the risk of non-usage of the procured space devolving on the appellant. By no stretch is this assumption of risk within the scope of agency function. Ergo, it is nothing but a principal-to-principal transaction and the freight charges are consideration for space procured from shipping line. Correspondingly, allotment of procured space to shippers at negotiated rates within the total consideration in a multimodal transportation contract with a consignor is another distinct principal-to-principal transaction. We, therefore, find that freight is paid to the shipping line and freight is collected from client-shippers in two independent transactions.*
>
> *13. The notional surplus earned thereby arises from purchase and sale of space and not by acting for a client who has space or slot on a vessel. Section 65 (19) of Finance Act, 1994 will not address these independent principal-to-principal transactions of the appellant and, with the space so purchased being allocable only by the appellant, the shipping line fails in description as client whose services are promoted or marketed."*

13. In view of such facts and circumstances, the Appellant assessee cannot be alleged to have suppressed facts with mala fide intention. Once the demand is not sustainable on merits as elaborated above, for the same reasons the imposition of penalties upon the Appellant assessee under Section 77 and Section 78 of the Finance Act, 1994 are liable to be set aside. Furthermore, considering that the demand itself has no foundation, the *benefit of Section 80 of the Finance Act permitting waiver of penalty is extendable and no interest is recoverable under Section 75 of the Finance Act when it has been established that demand is not sustainable.”*

This decision has be affirmed by the Hon’ble Supreme Court as reported at [(2025) 29 Centax 5 (S.C.)]

4.4 In view of the above, we do not find any merits in the impugned order.

5.1 Appeal is allowed.

(Operative part of the order is pronounced in open court)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

Sd/-
(ANGAD PRASAD)
MEMBER (JUDICIAL)

Nihal