

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

REGIONAL BENCH - COURT NO. 1

**Service Tax Appeal No. 778 of 2010**

(Arising out of Order-in-Original No.8/2010-LTU dt. 11.02.2010 passed by  
Commissioner of Service Tax (LTU), Bangalore)

**M/s. DTDC Courier & Cargo Ltd.,**

DTDC House,

No.3, Victoria Road,

Bangalore – 560047.

..... **Appellant(s)**

**VERSUS**

**Commissioner of Central Excise and Service Tax (LTU),**

JSS Towers, 100ft Ring Road,

Banashankari 3<sup>rd</sup> Stage,

Bangalore – 560085

..... **Respondent(s)**

**WITH**

- i. **Service Tax Appeal No.27073 of 2013 (Commissioner of Central Excise and Service Tax (LTU), Bangalore Vs. DTDC Courter & Cargo Limited)**  
(Arising out of Order-in-Appeal No.96 & 97/2013 dt. 01/04/2013 passed by Commissioner (Appeals), Bangalore)
- ii. **Service Tax Appeal No.27072 of 2013 (Commissioner of Central Excise and Service Tax (LTU), Bangalore Vs. DTDC Courter & Cargo Limited)**  
(Arising out of Order-in-Appeal No.96 & 97/2013 dt. 01/04/2013 passed by Commissioner (Appeals), Bangalore)
- iii. **Service Tax Appeal No.21710 of 2014 (DTDC Courter & Cargo Limited Vs. Commissioner of Central Excise and Service Tax (LTU), Bangalore)**  
(Arising out of Order-in-Original No.209/2013-ST dt. 03/11/2013 passed by Commissioner of Service Tax (LTU), Bangalore)
- iv. **Service Tax Appeal No.21081 of 2015 (DTDC Courter & Cargo Limited Vs. Commissioner of Central Excise and Service Tax (LTU), Bangalore)**  
(Arising out of Order-in-Original No.7/2014-15-ST dt. 30/01/2015 passed by Commissioner of Service Tax (LTU), Bangalore)

**Appearance:**

Mr. N. Anand, Advocate for the Appellant

Mr. Dyamappa Airani, Authorised Representative for the Revenue.

**Coram:**

**Hon'ble Dr. D.M. Misra, Member (Judicial)**

**Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)**

**Final Order No. 21418 - 21422 / 2023**

Date of Hearing: 21.08.2023

Date of Decision: 20.12.2023

**Per: Dr. D. M. Misra**

These appeals are filed by M/s. DTDC Courier & Cargo Ltd., appellant as well as the Revenue against respective orders passed by the Commissioner of Central Excise and Service Tax/ Commissioner of Central Excise & Service Tax (Appeals), which are tabulated below;

| Appeal No.    | Period                       | Impugned Order No./date            | Service tax confirmed                             | Penalty                        |
|---------------|------------------------------|------------------------------------|---------------------------------------------------|--------------------------------|
| ST/778/2010   | 01/07/2006 to 08/10/2009     | OIO No.8/2010 dt. 11/02/2010       | Rs.3,23,70,783/-                                  | Rs.3,23,70,783/-               |
| ST/27073/2013 | October 2009 to March 2010   | OIA No.96 & 97/2013 dt. 01/04/2013 | Appellant's appeal allowed and OIO was set aside. |                                |
| ST/27072/2013 | April 2010 to March 2011     | -do-                               | Appellant's appeal allowed and OIO was set aside  |                                |
| ST/21710/2014 | April 2011 to March 2012     | OIO No.209/2013-ST dt. 03/11/2013  | Rs.60,95,216/-                                    | Under Section 76               |
| ST/21081/2015 | April 2012 to September 2013 | OIO No.7/2014-15 dt. 30/01/2015    | Rs.1,54,79,984/-                                  | u/s 76 and Rs.10,000 u/s 77(2) |

2.1. Briefly stated the facts of the case common in all these appeals are that the appellants are registered with the Department for payment of service tax under the category of "Courier service". Based on information / intelligence, it is alleged that the appellant was not discharging service

tax in respect of taxable services received from joint-venture companies situated abroad in terms of Rule 2(i)(d)(iv) of the Service Tax Rules read with Section 66A of the Finance Act, 1994. Consequently, investigation was initiated and copies of relevant agreements etc., were collected from the appellant. On the basis of agreements and other evidences, it is alleged that though the appellant had received taxable services under the category of "Business Support Services" as defined under clause (zzzq) of Clause 105 of Section 65 of the Finance Act, 1994, during the relevant period from overseas joint-venture companies, which fall under the residuary clause (iii) of Rule 3 of Taxation of Services (Provided from Outside India and Received in India) Rules, 2006; but failed to discharge service tax on the same on reverse charge mechanism. Consequently, demand notice was issued to them for recovery of service tax not paid along with interest and penalty. On adjudication, the demands have been confirmed with interest and penalty mentioned as above, hence the appeal is filed before this Tribunal.

2.2. Further, for the period from October 2009 to March 2010 (Appeal No.ST/27073/2013) and from April 2010 to March 2011 (Appeal No.ST/27072/2013), though the adjudicating authority confirmed the demands, on appeal, the learned Commissioner (Appeals) set aside the adjudication order and allowed the appeals of the appellant; hence the Revenue is in appeal.

3. The learned advocate for the appellant submitted as follows:-

- i. The appellants are engaged in providing domestic and international courier service. In case of domestic delivery service both consignor or consignee are situated in India, whereas in case of international delivery services, the consignor is in India, who sends goods /

documents to a consignee situated outside India, which is required to be delivered at the said place outside India. In such a case, the appellant is required to perform its service to deliver the consignment to consignees outside India after picking up the same from domestic origin. The present appeal relates to international courier service.

- ii. In effecting international courier service, in order to enable in-transit movement to overseas destination after dispatch from India for its delivery to their consignees outside India, the appellant have entered into contracts with their group companies i.e. DTDC Express Inc., New York; DTDC Courier and Cargo LLC., Dubai; DTDC Courier and Cargo (UK) Limited, England and Wales and other two companies.
- iii. The appellant when they receive international courier parcel from the consignor in India collects consideration for delivery at overseas destination; service tax thereon has been paid by the appellant under the category of "Courier Service" on the full consideration amount. Since the appellant had paid the entire amount of service tax under the bona fide belief that service tax is not required to be paid for deliveries made at overseas destination by their group companies outside India being not liable to service tax, they have not paid service tax on the said transaction. It is their contention that since the amount paid to co-loader foreign companies, for the services delivered outside India, from the total consideration received; therefore, no separate service tax be leviable on the amount paid to overseas service providers / co-loaders as the

amount paid to said foreign companies had already suffered service tax in India.

- iv. The present orders are contrary to Board Circular F.No.341/43/96 TRU dt. 31/10/1996, wherein it is clarified that once the service tax paid by the courier agency for in-transit movement of the documents from one point to another through co-loaders, the onward transit services of the same consignment provided by such co-loaders are not chargeable to service tax.
- v. The foreign companies are courier companies and thus the services rendered by the foreign companies are classifiable under "Courier Agency" service vide Section 65(33) read with Section 65(105) (f) of the Finance Act, 1994 and not under "support service of business or commerce". The said activity is fully rendered/performed and utilised outside India and by virtue of Rule 3(ii) of Taxation of Services (Provided from Outside India and Received in India) Rules, 2006, the services rendered by the foreign companies cannot be said to be performed in India and taxable accordingly under Section 66A of the Finance Act.
- vi. The services rendered by the foreign companies are performance-based activities and not recipient based service which is clear from the provisions of Rule 4(a) of the Place of Provision of Service Rules, 2012 w.e.f. 01.07.2012. Therefore, for the period prior to 01.07.2012, the same criteria is applicable and hence services of foreign companies would fall under Rule 3(ii) and not under Rule 3(iii) of the 2006 Rules.
- vii. The learned Commissioner has wrongly considered that the services provided by the foreign companies as recipient based and

under 'support service of business or commerce'. In support of their argument, the appellant referred to the judgment of the Tribunal in the case of **First Flight Couriers Ltd. Vs. CST [2016(44) STR 474 (Tri. Mum.)]** and **Concord Express Logistics India Pvt. Ltd. Vs. CST [2018-TIOL-2710-CESTAT-MAD]** and **TNT India Limited Vs. Commissioner LTU** [Final Order No.20189/2020 dt. 17/02/2020]. They have also submitted that the jurisdictional Service Tax authority in Bangalore have consistently decided the issue in favour of the appellant by dropping the demand of service tax under Section 66A under the similar circumstances, wherein the show-cause notice proposed to classify the services rendered by foreign service providers under "Business Support Services". In support they have referred to the orders passed by the concerned Commissionerates.

- viii. Further, they have submitted that the said orders have not been appealed by the Department. Hence, the Department is precluded from arguing contrary to the said orders. In support, they have placed reliance in the case of **Marsons Fan Industries Vs. CCE [2008(225) ELT 334 (SC)]**; **Boving Fouress Ltd. Vs. CCE [2006(202) ELT 389 (SC)]** and **Jayaswals Neco Ltd. Vs. CCE [2006(195) ELT 142 (SC)]**.
- ix. Further, they have submitted that the services provided by the foreign companies cannot be classified under "Support Service of Business or Commerce" or under the category of "Business Auxiliary Service" but classifiable under courier service.
- x. Further they have submitted that the demands are barred by limitation as the Revenue itself decided the issue in the appellant's

own case setting aside the demands. The entire issue relates to bona fide interpretation of statutory provisions and being revenue neutral, since the tax payable under reverse charge mechanism is admissible as cenvat credit to the appellant; hence allegation of suppression, mis-statement etc. cannot be sustained. In support, he referred to the following judgments:

***a. DTDC Worldwide Express Ltd. Vs. CCE [2019-TIOL-255-CESTAT-HYD]***

***b. United Business Express India Pvt. Ltd. Vs. CST [2017(48) STR 270 (Tri. Del.)]***

***c. Fedex Express Services India Pvt. Ltd. Vs. CCE [2017-TIOL-700-CESTAT-DEL]***

4. *Per contra*, learned Authorised Representative (AR) appearing for the Revenue reiterated the findings of the learned Commissioner. Further, reiterating the grounds of appeal filed by the Revenue, the learned AR argued that the findings of the learned Commissioner (Appeals) are contrary to the provisions; hence not sustainable.

5. Heard both sides and perused records.

6. The short question involved in the present appeals for determination is: Whether the amount paid by the appellant to the overseas joint-venture companies in delivering the consignments of consignors in India to consignees situated outside India is leviable to service tax under "Business Support Service" for the period 07/2006 to 09/2013.

7. Undisputed facts are that the appellant are engaged in rendering courier service; accordingly registered with the Service Tax Department. They are providing both domestic and international courier services. For international courier service, the amount collected from the customers in

India for delivery of the parcels at various international destinations, they paid service tax on the whole of the amounts so collected under the taxable category of "Courier Agency Service".

8. The Revenue has proposed to recover service tax on the amount paid by the appellant for delivery of the couriers / parcels at various international destinations to the joint-venture companies, stationed at different places outside India, who deliver the couriers / parcels at international destinations. The Revenue's contention is that the said service of delivering the courier by the joint-venture companies at international destination abroad fall under the category of "Business Support Service" to the appellant; hence the appellant is required to discharge service tax under reverse charge mechanism in terms of Rule 2(i)(d)(iv) of the Service Tax Rules, 1994 read with Section 66A of the Finance Act, 1994.

9. The principal argument of the appellant is that the joint-venture companies also render the service, which is in the nature of 'Courier Agency Service' and they are to be considered as 'co-loaders'; accordingly, the amount paid by them to the co-loaders, which already suffered service tax, cannot be levied to service tax under 'Business Support Service'. Further they have submitted that the issue is no more res integra and covered by the judgment of the Tribunal in a series of cases. In support they have referred the judgment of the Tribunal in the case of ***First Flight Couriers Ltd. Vs. CST [2016(44) STR 474 (Tri. Mum.)]*** and ***Concord Express Logistics India Pvt. Ltd. Vs. CST [2018-TIOL-2710-CESTAT-MAD]*** and ***TNT India Limited Vs. Commissioner LTU*** [Final Order No.20189/2020 dt. 17/02/2020 passed by CESTAT, Bangalore]. Further they have submitted that in subsequent



proceedings, the adjudicating authority taking note of the judgments passed by the Tribunal in various cases held that the services received by the appellant from the joint-venture companies, is in the nature of a service provided by co-loader; hence do not fall under the taxable category of Business Support Service. Consequently, the proceedings have been dropped against the appellant. In support, they referred to Order-in-Original No. BLR-LTUNT-000-ADC-14/2017 dated 21.03.2017, Order-in-Original No.BLR-LTUNT-000-ADC/12/2017 dated 13.03.2017.

10. We find that the issue has been considered by this Tribunal in a series of cases referred to by the learned advocate for the appellant and this Tribunal has consistently held that the service received by the appellant from the overseas companies in delivery of the couriers/ parcels of the customers of India at various international destinations fall under "Courier Agency Service", and the services so rendered is in the nature of co-loaders service; accordingly held to be outside the purview of Business Support Service. Also, it is held that since the service is performance based service and provided outside India; hence not taxable. In view of the consistent stand of different Benches of the Tribunal including Bangalore Bench in the case of TNT India Limited (supra), we do not find any reason not to follow the said judgment. Besides, we find following the said principle, demand notices for different periods issued to the appellants for different periods have been set aside by the Department and no appeals have been filed by the Revenue accepting the said principle of law.

11. In the result, the impugned orders against which appeals filed by the appellant are set aside and their appeals are allowed with

consequential relief, if any, as per law. The impugned orders challenged by the Revenue are upheld and Revenue's appeals are rejected.

12. The Appeals are disposed as above.

(Pronounced in open court on 20.12.2023)

**(D.M. Misra)**  
**Member (Judicial)**

**(Pullela Nageswara Rao)**  
**Member (Technical)**

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