CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, BANGALORE

REGIONAL BENCH - COURT NO. 2

Service Tax Appeal No. 23864 of 2014

[Arising out of the Order-in-Original No. COC-EXCUS-000-COM-015, 016 & 017-14-15 dated 26.09.2014 passed by the Commissioner of Central Excise and Customs, Cochin]

M/s. Freightlinks International (India) Pvt. Ltd.,
Door No. 26/1802, D.B Khona Building,
Subramanian Road, Willingdon Island,
Kochi – 682 003, Kerala **.......Appellant**

VERSUS

Commissioner of Central Excise, Customs and Service Tax-Cochin
C.R Building, I.S Press Road, Ernakulam,
Cochin – 682 018, Kerala **....Respondent**

With

(ii) Service Tax Appeal No. 23865 of 2014 [M/s. Freightlinks International (India) Pvt. Ltd. Vs. Commissioner of Central Excise, Customs and Service Tax, Cochin]

[Arising out of the Order-in-Original No.COC-EXCUS-000-COM-015, 016 & 017-14-15 dated 26.09.2014 passed by the Commissioner of Central Excise and Customs, Cochin]

(iii) Service Tax Appeal No. 20197 of 2015 [Commissioner of Central Excise, Customs and Service Tax, Cochin Vs. M/s. Freightlinks International (India) Pvt. Ltd.]

[Arising out of the Order-in-Original No.COC-EXCUS-000-COM-015, 016 & 017-14-15 dated 26.09.2014 passed by the Commissioner of Central Excise and Customs, Cochin]

(iv) Service Tax Appeal No. 20198 of 2015 [Commissioner of Central Excise, Customs and Service Tax, Cochin Vs. M/s. Freightlinks International (India) Pvt. Ltd.]

[Arising out of the Order-in-Original No. COC-EXCUS-000-COM-015, 016 & 017-14-15 dated 26.09.2014 passed by the Commissioner of Central Excise and Customs, Cochin]

(v) Service Tax Appeal No. 20199 of 2015 [Commissioner of Central Excise, Customs and Service Tax, Cochin Vs. M/s. Freightlinks International (India) Pvt. Ltd.]

[Arising out of the Order-in-Original No.COC-EXCUS-000-COM-015, 016 & 017-14-15 dated 26.09.2014 passed by the Commissioner of Central Excise, Customs & Service Tax, Cochin]

Appearance:

Mr. P. Satheesan, Advocate, for Appellant

Mr. Neeraj Kumar, Authorized Representative for Respondent

Coram:

Hon'ble Mr. P.A. Augustian, Member (Judicial)

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

Final Order Nos. 21582 – 21586 / 2024

Date of Hearing:03.05.2024

Date of Decision: 29.10.2024

Per: Pullela Nageswara Rao

The issue in the present appeals is whether the Appellant is liable to pay service tax on income earned from Freight forwarding activity, pertaining to the ocean freight related to the ocean cargo and the margin earned on sale of space on the shipping lines to the exporters/ importers, under the service category of 'Steamer Agency' Services.

2. The brief facts are Appellant is engaged in rendering 'Steamer Agency' Services, 'Support Services of Business or Commerce', 'Business Auxiliary Services' and 'Goods Transportation Agency' Services. Appellant was registered for the above services and paying service tax.

3. The Department alleging that the income received by the Appellant from freight forwarding activities during the period from 2005-06 to 2010-11 (upto 09/2010) are classifiable under 'Steamer Agency' services, under section 65(100) read with Section 65(105)(i) of the Finance Act, 1994, service tax of Rs. 11,94,57,176/- was demanded. Further, for the period 10/2010 to 09/2011 a demand notice for Rs. 2,61,81,299/- was issued. The 2(two) show cause notices were taken up for adjudication and the demands were confirmed along with interest and imposed penalties under the provisions of the Finance

Act.1994, vide Orders-in-Original No.09&10/2013/ST dated 18.01.2013. Aggrieved by the orders the appellant filed appeals before the Tribunal. Thereafter, the issue was considered by this Tribunal and vide Final Order Nos. 25631 and 25632/2013 dated 23.07.2013, the matter was remanded for de-nova adjudication. During the above period, another Show Cause Notice No. 124/2013 dated 24.06.2013 was issued demanding service tax of Rs.3,58,54,315/- for the period from 10/2011 to 09/2012.

4. The adjudicating authority in the de-nova proceedings has taken up all the 3(three) show cause notices and has held that the activities of canvassing of cargo for the shipping line undertaken by the appellant, were classifiable under 'Steamer Agent' service as defined under Section 65(100) during the period prior to 01.07.2012 and as 'service' as per Section 65B(44) of the Finance Act, 1994, thereafter. The adjudicating authority further held that when the decision in the case of Bax Global India Ltd. Vs. Commr. of Service Tax, Bangalore-2008 (9) S.T.R.412 (Tri. Bang.) is applied to the facts of the case, the appellant's claim for exclusion to pay tax on actual 'ocean freight' paid by them to the shipping line would sustain. The adjudicating authority also relied on the following decisions/Circular;

a. Goodwin Logistics Vs. CCE, Vadodara -2010 (18) S.T.R. 348 (Tri.-Ahmd.)

b. DHL Leimur Logistics Pvt. Ltd. Vs. CCE, Bangalore -2010 (17) S.T.R. 266 (Tri.-Bang.)

c. Board's Instruction vide F.No. B43/1/97-TRU dated 16.06.1997

5. Further, the adjudicating authority held that the actual 'ocean freight' should be deducted from the amount of freight sales income received by the appellant; even if they are sub-agents of 'steamer

agents' as admitted by them, it does not alter the position regarding surplus amounts retained by them; the adjudicating authority having considered favorably their submissions to exclude them from the liability to pay service tax on 'ocean freight', held that the appellant did not satisfy the conditions laid down to be treated as pure agent in terms of the Service Tax (Determination of Value) Rules, 2006 and also the conditions stipulated in Export of Service Rules, 2005. Accordingly, the adjudicating authority held that in respect of the services rendered by them prior or after 18.04.2006, the margin earned in freight sales by the appellant as 'steamer agent' was liable to be taxed under the category of 'Steamer Agent' Services and that the actual ocean freight paid to the shipping line is not to be includable in the value of taxable service, since service of transportation of cargo in vessel through ocean was not a defined taxable service in terms of any of the sub-clauses of clauses of Section 65 of the Finance Act, 1994, as it existed during the relevant time.

6. Thus, a service tax of Rs. 1,42,38,312/- was confirmed vide Order-in-Original No. 15/2014 dated 26.09.2014, an amount of Rs. 26,02,854/- was confirmed vide Order-in-Original No. 16/2016 dated 26.09.2016 and an amount of Rs.44,51,183/- was confirmed vide Order-in-Original No. 17/2014 dated 26.09.2014 along with interest and imposed penalties under the provisions of Finance Act, 1994. Aggrieved by said orders, Appeal Nos. ST/23863, 238654, 23865/2014 were filed by the appellant before this Tribunal.

7. The Committee of Chief Commissioners reviewed the order of the Commissioner and found that it is not legal and proper insofar as it related to the decision to exclude the amounts paid to the shipping lines

from service tax liability after 18.04.2006 arising on account of additional consideration in the form of margins retained by the appellant in the process of booking and arranging space on behalf of shipping line and the customers for the purpose of freight forwarding, since the service rendered by the appellant has the characteristics of the bundled service and the essential character of the bundled service is canvassing and booking of cargo space on behalf of the shipping line and extending such shipping space for cargo to the customers in the import-export trade. The essential character of the service provided by the appellant is not transportation of cargo and therefore there is no legal basis to exclude the cost of such transportation from the gross amount charged and received by the appellant from the customers, who availed such bundled services from them. The department aggrieved by the impugned orders also filed 3(three) Appeals against the impugned orders vide Appeal Nos. ST/20197, 20198, 20199/2015.

8. Since the issues in these appeals are common they are being disposed by this order.

9. The learned Counsel for the Appellant during the hearing submitted that the issue is squarely covered by decisions in the following cases;

a) 2010 (18) STR 348 (Tri. - Ahmd) - Gudwin Logistics Vs. Commissioner of Central Excise, Vadodara,

(b) 2014 (35) S.T.R. 858 (Tri. Chennai) - Commissioner of Service Tax, Chennai. Vs. Agility Logistics Pvt. Ltd.

(c) 2014 (36) S.T.R. 1310 (Tri.-Chennai) - APL Logistics (India) Pvt. Ltd. Vs. Commissioner of C. Ex., Chennai-III.

(d) 2016 (45) S.T.R. 574 (A.A.R.) - Global Transportation Services Pvt. Ltd.

(e) 2016 (43) S.T.R. 215 (Tri. - Mumbai)-M/s Greenwich Meridian Logistics India Ltd. Vs. CST, Mumbai.

(f) 2017 (47) S.T.R. 129 (Tri. Mumbai)-Phoenix International Freight Services Pvt. Ltd.

(g) 2017 (6) G.S.T.L. 85 (Tri.-Mumbai)-DHL Logistics Private Limited Vs. Commissioner of C. Ex., Mumbai-II..

(h) 2017 (47) S.T.R. 309 (Tri. - Mumbai)-DHL Lemuir Logistics Pvt. Ltd. Vs. Commissioner of C.Ex., Thane -l.

(i) 2017 (4) G.S.T.L. 215 (Tri.-Del)-Commissioner of Service Tax, New Delhi Vs Karam Freight Movers.

(j) 2022 (63) G.S.T.L. 337 (Tri. Del)-Commissioner of Service Tax-II, Delhi. Vs. Tiger Logistics (India) Ltd.

(k) Final Order of Delhi Tribunal dated 01.05.2023 in M/s. Balmer Lawrie & Co. Ltd. Vs. Commissioner of Service Tax, New Delhi.

10. The learned counsel also relied on the Board Circular No. 197/7/2016-ST dated 12.08.2016, wherein it is clarified that freight forwarders, who act as a principal in providing service of transportation of goods will not be subject to service tax. All the transactions of the Appellant with the shipping lines are principal to principal basis and no commission is involved. The learned Counsel also submitted that they are not liable to be imposed with penalty as confirmed in the impugned order, since they have acted on a bona fide belief that they are not liable to pay service tax on the margin received on account of ocean freight.

11. The learned Counsel further submitted that the demands in the show cause notices have been issued under Section 73 of the Finance Act 1994. During the relevant period the period for serving the notice under section 73 (1) of Finance Act was one year, it was extended to 18 months w.e.f 28.05.2012 by Finance Act, 2012 and to 30 months w.e.f 14.05.2016. Therefore, the entire demand issued vide Show Cause Notice No.57/2011/ST dated 08.04.2011 is time barred except for

2010-11. Therefore, show cause notice invoking extended period of limitation is also unsustainable.

12. The learned Authorised Representative (AR) for the Revenue reiterated the finding in the impugned orders and also relied on the decision of the Tribunal in the matter of **M/s Marine Container Services (South) Pvt. Ltd. Vs. Commr. of C. Ex. & S.T, Tirunelveli- 2019 (22) GSTL 51 (Tri.-Chennai).**

13. Heard both sides and perused the records.

14. The issue regarding service tax on the booking of space in the ships of the shipping lines is squarely covered by the Tribunal in the matter of **M/s Tiger Logistics India Ltd. Vs. Commissioner of Service Tax-II, Delhi - 2022 (63) GSTL 337 (Tri.-Del),** where it is held that:-

> *"8. If a service is not rendered at all, no service tax can be levied regardless of the fact that an amount has been received. Similarly, if the service so rendered does not squarely fall within the definition of 'taxable service' under Section 65(105), no service tax can be levied. Even if it is doubtful whether the service is taxable or not, the benefit of doubt in respect of the charging section goes in favour of the assessee and against the revenue. The third important element is the consideration for the service. Any amount received must be for the service and it cannot be for some other purpose. For instance, if any amount is received towards any compensation, such amount cannot be taxed.*
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> *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."

15. In view of the above discussion and following the decision in the case of **M/s Tiger Logistics India, Ltd.,** (supra), the Appeal Nos. 23864/2014 and 23865/2014 filed the appellant are allowed.

16. As regards the Appeal Nos. 20197/2015, 20198/2015 and 20199/2015 filed by the Revenue against the exclusion of the ocean freight, we find that the issue is covered by the decisions of the Tribunal, and we find no reason to take a different view in the matter. Hence the appeals filed by the Revenue are dismissed.

(Order Pronounced in Open court on 29.10.2024)

(P.A. Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

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