CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 23863 of 2014

(Arising out of Order-in-Original No. COC-EXCUS-000-COM-015-14-15 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,
Subramaniam Road,
Wellingdon Island,
Kochi – 682 003.
Kerala.

Appellant(s)

VERSUS

The Commissioner of Central Excise, Customs and Service Tax
Central Revenue Building,
I.S. Press Road,
Kochi – 682 018.
Kerala

Respondent(s)

APPEARANCE:

Shri P. Satheesan, Advocate for the Appellant

Shri M.A. Jithendra, Asst. Com., Authorised Representative for the Respondent

CORAM:

HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20133 / 2025

DATE OF HEARING: 05.02.2025
DATE OF DECISION: 05.02.2025

PER : P.A. AUGUSTIAN

The issue in the present appeal 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 Service'.

2. The brief facts are that the Appellant is engaged 'in rendering 'Steamer Agency Service', 'Support Services of Business or Commerce', 'Business Auxiliary Service' and 'Goods Transportation Agency Service' and 'Goods Transportation Agency Service'. 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 2005-2006 to 2010-11 (up to September 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.1,42,38,312/- was demanded. Further, for the period from 10/2010 to 09/2011, a demand notice for Rs.2,61,81,299/- was issued. The 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 order, 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 novo* 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. The adjudicating authority in the *de novo* proceedings confirmed the demands along with interest and penalties. Aggrieved by the said order, present appeal is filed.

4. When the appeal came up for hearing, the learned counsel for the appellant submits that the issue is no more *res integra* since this Tribunal has considered the issue in detail in Service Tax Appeal No.23864-23865/2014 and ST/20197-20199/2015

and allowed the appeals vide Final Order No.21582 – 21586/2024 dated 29.10.2024.

5. Learned Authorised Representative for the Revenue reiterated the findings in the impugned order.

6. Heard both sides and perused the records. We find that while allowing the Service Tax Appeal Nos.23864-23865/2014 and ST/20197-20199/2015, this Tribunal vide Final Order No.21582 – 21586/2024 dated 29.10.2024 has taken the following decision:

> "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 case 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:
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> > ***'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.'"*

7. Following the ratio of the above decision, we set aside the impugned order and allow the appeal.

(Dictated and pronounced in Open Court)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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