

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

REGIONAL BENCH - COURT NO. 2

Service Tax Appeal No. 21906 of 2014

(Arising out of Order-in-Appeal No. 211/2014 dated 12.03.2014 passed by the Commissioner of Central Excise, Appeals - II, Bangalore.)

M/s. Fly Jac Logistics Pvt. Ltd.

Connection Point, Next to MSIL Complex,
Airport Exit Road,
Bangalore - 560 017.

.....Appellant(s)

Versus

**Commissioner of Central Excise
and Service Tax,**

Bangalore - I.

.....Respondent(s)

WITH

Service Tax Appeal No. 20926 of 2016

(Arising out of Order-in-Appeal No. COC-EXCUS-000-APP-275-15-16 dated 21.03.2016 passed by the Commissioner of Central Excise, Customs and Service Tax (Appeals - I), Cochin.)

M/s. Flyjac Logistics Private Limited

Shakthi HB-51, 2nd Cross Road,
Street A, Panampilly Nagar P.O.,
Ernakulam,
Kerala - 682 036.

.....Appellant(s)

Versus

**Commissioner of Central Excise, Customs
and Service Tax,**

Office of the Commissioner of Central Excise,
Customs and Service Tax,
C. R. Building, I. S. Press Road,
Cochin - 682 018.

.....Respondent(s)

Appearance:

Ms. R. Radhika Shriranjini, Advocate for the Appellant.

Mr. M. Sreekanth, Asst. Commissionerate (AR) for the Respondent.

CORAM:

HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)

HON'BLE SMT. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order Nos. 22096 - 22097 /2025

Date of Hearing: 25.11.2025

Date of Decision: 25.11.2025

PER: P.A. AUGUSTIAN

The issue in Appeal No.ST/20926/2016 is for the period from April 2009 to March 2010 regarding demand of service tax on the differential freight charges, reimbursement of expenses and also demand against Business Auxiliary Service. Appeal No. ST/21906/2014 is for the period from April 2010 to March 2011 regarding service tax demand on cargo handling service.

2. Appellant is engaged in consolidation of import and export consignment and made arrangement with freight forwarders outside country for arrangements to import consignment into India. Appellant also engaged booking of cargo space for export. Appellant collects certain amounts as freight currency adjustment fee, collecting delivery order ...etc. On post audit, it is observed that Appellant failed to pay service tax under the category of cargo handling service on the margin on freight caused due to the difference between the freight charges collected from the customer in India and freight actually paid to counter parts in foreign countries. Further the Appellant is also entitled for incentives of the Airlines and steamer lines and the same is demanded under business auxiliary service. Accordingly show cause notice No.48/2010 dated 19.10.2010 was issued in Appeal No. ST/20926/2016. Service tax was demanded based on various accounts based on the books of accounts holding that the Appellant is liable to pay service tax on gross billing done by them. As per the Order-in-Original dated 09.05.2011, service tax was confirmed category of cargo handling service (CHS), DTA service and Business Auxiliary Service. Aggrieved by said order, an appeal was filed before the Commissioner (Appeals) and Commissioner (Appeals) as per the impugned order dated 23.12.2015 dropped the demand pertains to under CHS. As regarding demand under DTA, it was paid by the Appellant as it is a negligible amount. As regarding the remaining, Appellant filed present appeal. Similarly for the period from April, 2010 to March, 2011, show cause notice was issued on 03.08.2011 proposing service tax under the

category of CHS and Adjudication authority as per the order dated 27.04.2012 confirmed the demand. Aggrieved by said order, an appeal was filed before the Commissioner (Appeals) and Commissioner (Appeals) as per the Order-in-Appeal No. 211/2014 dated 12.03.2014 confirmed the demand. Aggrieved by said order, Appeal No. ST/21906/2014 is filed.

3. When the Appeal came up for hearing, Learned Counsel submits that in respect of import, as and when importer approached the Appellant, Appellant quote rate for the activity. Appellant has counterpart in the country of origin for arranging shipment of goods. When the goods are landed on the pre-paid basis, the freight would be recovered from the importer and paid to the perspective liners. Though the Appellant makes profit from purchase and sale of cargo space, such income has no connection whatever with CHS activities. The Margin represented trading profit and the same is not a consideration for taxable service. Learned Counsel further submits that the differential freight is not consideration for service rendered by the Appellant to the client as held in the matter of **M/s Greenwich Meridian Logistics (I) Pvt Ltd vs CST, Mumbai (2016 (43) STR 215 (Tri.Mumbai)**. The Learned Counsel further submits that the Tribunal in Appellant's own case vide Final Order No. 40241/2018 dated 30.01.2018 set aside the demand on same activity. Learned Counsel further submits that this Tribunal in Appellant's own case vide Final order No. 20650/2024 dated 23.07.2024 and 21361-21362/2025 dated 02.09.2025 held that Appellant is not liable to pay service tax on freight margin. As regarding inclusion of reimbursement in the taxable value, Learned Counsel submits that it is settled as per the judgment of Hon'ble Supreme Court in the matter of **Union of India Vs. M/s Intercontinental Consultant & Technocrats Pvt. Ltd. (2018 (10) GSTL 401 (SC)** where it is categorically held that Rule 5 of the Service Tax (Determination of Value) Rules, 2005 is ultra-virus of Section 67 of the Finance Act, 1994 and therefore any expenditure incurred by the service provider such as travel, hotels, stay, transportation..etc in the course of providing service cannot be includable in the value of services as per Section 67 of the Act.

4. Learned Authorized Representative (AR) for the revenue reiterated the finding in the impugned order.

5. Heard both sides. We finds that though the Appellant makes profit from purchase and sale of cargo space, such income has no connection whatsoever with CHS activities. The issue is squarely covered by the decisions relied by the Appellant including the demand in Appellant's own case vide Final order No. 20650/2024 dated 23.07.2024 and 21361-21362/2025 dated 02.09.2025. Thus, impugned orders confirming the demand and the penalty imposed as per the impugned order are unsustainable.

6. Accordingly, appeals are allowed with consequential relief if any in accordance with law.

(Operative portion of the order was pronounced in open court
on conclusion of hearing.)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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