

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI**

ST/385 & 386/2010

(Arising out of Order-in-Appeal No. 69/2010 (MST) & 70/2010 (MST) dated 26.3.2010 passed by the Commissioner of Central Excise (Appeals), Chennai)

M/s. Indo Lloyd Freight Systems Pvt. Ltd. Appellant

Vs.

Commissioner of Service Tax, Chennai Respondent

Appearance

Ms. S. Nandita Das, Advocate for the Appellant
Shri K. Veerabhadra Reddy, JC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **24.04.2018**

Final Order Nos. **41298-41299 / 2018**

Per Bench

The appellants are Custom House Agent and are registered for such services with the department. On the basis of intelligence that they were receiving incentives from various airline / shipping liners @ 2% of the basic freight, in the name of brokerage, and is not discharging service tax on such amount received. The officers of preventive unit visited the premises and recovered documents and recorded statements. Pursuant to this, show cause notices were issued for the period 2004 – 2005

and 2005 – 2006 under the category of 'Customs House Agent Service' demanding service tax along with interest and also proposing to impose penalty. After due process of law, the original authority confirmed the proposals in the show cause notice. In appeal, Commissioner (Appeals) upheld the same. Hence appellants have filed these appeals.

2. On behalf of the appellant, learned counsel Ms. S.Nandita Das explained the activity carried out by the appellant on which the department has now sought to demand service tax under the category of 'Customs House Agent Service'. She submitted that appellant is in the business of import, export, forwarding and consolidation in relation to goods exported / imported by air and sea and other incidental process and registered under the category of custom house agent for the purpose of service and is discharging service tax under this category. Using their relations with the customer, they also book space for cargo with shipping lines for which they are paid only an incentive which is 2% of the basic freight. She argued that there is no service provider and service recipient relationship between the appellant (CHA) and the shipping liner. Merely because the appellant arranges spaces with shipping liner, it cannot be construed that the appellant has acted as a customs house agent. Appellant has discharged service tax on the commission received as custom house agent and the brokerage or incentive received from the shipping liner cannot be considered as a

commission since the appellant does not communicate with the shipping liner as a steamer agent. She submitted that steamer agent is exclusively appointed by the shipping liner for the services to be rendered and is also paid commission. The learned counsel relied upon the Board Circular dated 25.4.2003 which clarified that the secondary service providers are not taxable. He relied upon the following judgments:-

- (a) Lee & Muir Head Pvt. Ltd. Vs. Commissioner of Service Tax, Bangalore – 2009 (14) STR 348 (Tri. Bang.)
- (b) St. John Freight Systems Ltd. – Order-in-Appeal No. 275/2010 dated 20.7.2010
- (c) Interocean Shipping Company Vs. Commissioner of Service Tax, Delhi – 2012-TIOL-1824-CESTAT-DEL
- (d) Leader Engg. Works Vs. Commissioner of Central Excise, Chandigarh – 2006 (197) ELT 469 (SC)
- (e) Kartar Rolling Mills Vs. Commissioner of Central Excise, New Delhi – 2006 (197) ELT 151 (SC)
- (f) Boving Fouress Ltd. Vs. Commissioner of Central Excise, Chennai – 2006 (202) ELT 389 (SC)
- (g) Robinson Air Services Vs. Commissioner of Central Excise, Chennai – II – Final Order No. 53632/2016 dated 16.9.2016

3. Learned AR Shri K. Veerabhadra Reddy reiterated the findings in the impugned order. He explained that there are merchant vessels as well as bulk cargo vessels. In the case of bulk cargo vessels, they require customers for filling up the space. In case of small exporters, the shipping liners would not be able to arrange or contact with such exporters and the

shipping liners arrange various agents including steamer agents to canvass the business for transportation of cargo. As per the definition of steamer agent, in the Finance Act, any person who is engaged in such activity would be rendering the service of steamer agent so that the activity undertaken by the appellants would be covered by the definition of steamer agent service, even though they are registered under the category of custom house agent service.

4. We have heard the submissions made by both sides.

5. The issue has been sufficiently discussed in the case of Lee & Muir Head Pvt. Ltd. (supra) wherein the Tribunal in a similar situation as observed as under:-

"8.4 As regards brokerage commission of 2% paid for booking of the export cargo, it is seen that the agents of shipping lines normally book the export cargo. The appellants actually get brokerage or commission for getting orders for the export of cargo. For this, they are getting commission of 1.75% to 2%. Even if this activity is considered as 'Business Auxiliary Services' as they promote the taxable services of other person, it is seen that there is a Notification No. 13/2003 dated 20-6-2003 which gives exemption under 'Business Auxiliary Services' for services rendered as commission agent. Moreover, Board's Circular dated 25-4-2003 clarifies that the secondary service providers are not taxable. In fact the appellants are secondary service providers for the shipping lines, so they would not be covered in view of the Board's circular. Therefore, we are of the view that the brokerage commission of 2% paid for booking of export cargo cannot be taxed under the category of 'Business Auxiliary Services'."

6. It is also brought to our notice that the same adjudicating authority vide Order-in-Original No. 37/2009 (STV) dated

19.6.2009 in the case of St. Johns Freight Systems Ltd. had confirmed the demand of service tax under the category of 'steamer agent service' and vide Order-in-Appeal No. 275/2010 dated 20.7.2010, the Commissioner (Appeals) set aside the demand. The department has not filed any appeal against such order and the order has attained finality. It is also seen that the activity of the appellant as a custom house agent is to provide services to importers/exporters and the disputed activity was only a facility arranged by them to their clients. The appellant has no obligation to arrange transport of cargo through a particular shipping liner. Therefore, the amount received cannot fall within the category of 'commission' so as to be subjected to levy of service tax. Following the decision in the case of Lee & Muir Head Pvt. Ltd. (supra), we hold that the demand is unsustainable. The impugned orders are set aside and the appeals are allowed with consequential relief, if any.

(Operative portion of the order was
pronounced in open court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S.)
Member (Judicial)

Rex