

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

**ST/291 - 293/2010**

(Arising out of Order-in-Original Nos. 82-84/2009 dated 23.12.2009 passed by the Commissioner of Service Tax, Chennai).

M/s. PI Shipping & Logistics Ltd. : Appellant

Vs.

CCE & ST, Chennai : Respondent

**Appearance**

Shri N. Viswanathan, Advocate  
for the appellant

Shri S. Govindarajan, AC (AR)  
for the Respondent.

**CORAM:**

**Hon'ble Shri V. Padmanabhan, Member (Technical)**  
**Hon'ble Shri P. Dinesha, Member (Judicial)**

Date of Hearing/Decision: **31.05.2018**

FINAL ORDER No. **41690-41692/2018**

**Per: V. Padmanabhan**

The present appeal challenges the Order-in-Original Nos. 82-84/2009 dated 23.12.2009. In the said OIO, the demands raised vide three SCNs dated 23.03.2009 24.07.2009 and 19.10.2009. These three SCNs cover the period October 2003 to March, 2009. The appellants are engaged in providing support to

international steamer agents. They are covered within the definition of "Steamer Agents Services" for which they have taken registration and are paying service tax. During the course of audit, Revenue found that there was a huge difference between the total receipts and the amounts on which service tax was paid. The differences were mainly found as follows for the period April 2006 to September 2007:-

| Sl.No. | Particulars              | Amt in Rs.  |
|--------|--------------------------|-------------|
| 1      | Services provided abroad | 2,00,45,536 |
| 2      | Freight elements         | 57,05,644   |
| 3      | Discount                 | 21,90,851   |
| 4      | Transport                | 57,17,712   |
| 5      | Others                   | 45,15,884   |
|        | Total                    | 3,81,75,627 |

2. Similar differences were noticed by the Revenue for the entire period of dispute which were not offered for payment of service tax. Revenue was of the view that the amounts are liable to payment of service tax under the category of BAS falling under Section 65 (19) of the Finance Act, 1994.

3.1 The appellant claimed that in respect of amounts at Sl.No.1 above, such amounts pertain to the services provided abroad for which the foreign service providers had raised their bill which in turn was passed on to the customers and the amount recovered for onward transmission to them. It is their view that such amounts will not be liable to service tax in India as much as the taxable service has been provided abroad.

3.2. With reference to the item at Sl.No.2 above, it is the claim of the appellant that such amounts correspond to freight collected by them from the Indian customers and remitted to the steamer lines operating from abroad. Since these charges are in the nature of ocean freight, the same cannot be liable for payment of service tax in India.

3.3. The item at Sl.No. 3 refer to the discounts which are extended to the appellant by foreign shipping lines for booking of space in their shipping lines. Such discounts are mostly retained by the appellant and it is claimed that no service tax is payable on such discounts since the same are not for rendering of any service in India.

3.4. In respect of the item at Sl.No.5, different types of activities which are involved for clearance of goods from the port and transporting the same to the customer's premises. Such amounts were recovered from the customers and paid to the respective service providers without any mark up. Such amounts were also claimed to be not liable to service tax.

4. The above arguments of the appellant did not find favour with the adjudicating authority. After due process of verification, the entire demand of service tax covered by the three SCNs as above was confirmed totally amounting to Rs. 65,29,558/- for the period October 2003 to September 2007 and Rs.1,05,67,260/- for the period October 2007 to March 2009. In

addition, demand of interest under Section 75 of the Act and various penalties were also imposed under Sections 76, 78 and also under Service Tax Rules, 1994. Aggrieved by the impugned order, the present appeals have been filed which are disposed of by this common order.

5. In this background, we heard the Ld. Advocate, Shri N. Viswanthan for the appellants and the Ld. AR, Shri S. Govindarajan, AC, for the Revenue.

6. The Ld. Advocate's arguments are summarized below:-

- i) He submitted that the adjudicating authority has confirmed the demand under the category of BAS. But neither the SCN nor the impugned order has clearly crystalized under which sub-section of 65 (19) the various services allegedly rendered by the appellant will be covered. He places reliance on the decision of the Hon'ble Supreme Court in the case of *UOI Vs. Intercontinental Consultants and Technocrats Pvt. Ltd.* - 2018 (10) GSTL 401 (S.C.). He submitted that the Apex Court has categorically held that the Revenue is not justified in including any reimbursable charges received by the service provider in the consideration for charging of service tax in terms of Section 67. Relying on the above Apex Court decision, the Ld. Advocate submitted that the amounts received by the appellant by way of reimbursement for various services used by the appellant

for facilitation on behalf of the customers, cannot be levied to service tax in terms of the above decision. In respect of the services provided abroad for which the amounts have been collected from the customers, levy of service tax is not justified.

- ii) He also submitted that in respect of ocean freight element and discounts extended to the appellant by the shipping lines, in the payment of freight elements, no service tax can be levied as has been held in the case of the Commissioner of Central Excise Vs. Diamond Shipping Agencies Pvt. Ltd., in Final Order No. 43161/2017 dated 18.12.2017. Finally he submitted that the impugned order may be set aside.

7. The Ld. AR justified the impugned order. He sought to distinguish the case of the decision of the Tribunal in the case of Diamond Shipping. He submitted that the said decision was rendered in the category of CHA services whereas the impugned order deals with steamer agents services.

8. We have heard both sides and perused the records.

9.1 The main thrust of the arguments advanced by the appellant is that most of the amounts received by the appellant for which no service tax has been paid are in the nature of reimbursements by the customers to cover the expenses incurred by the appellant for activities carried out on behalf of the

customers such as obtaining the services abroad, clearance of goods from port and transporting the same to the customer's premises, CFS charges, CHA charges, Fumigation charges etc. In this connection, they have relied on the recent decision of the Apex Court in the case of *Intercontinental Consultants and Technocrats Pvt. Ltd.* (supra). We have carefully considered the Apex Court decision as above in which the Apex Court has observed as under:-

“24. In this hue, the expression ‘such’ occurring in Section 67 of the Act assumes importance. In other words, valuation of taxable services for charging service tax, the authorities are to find what is the gross amount charged for providing ‘such’ taxable services. As a fortiori, any other amount which is calculated not for providing such taxable service cannot a part of that valuation as that amount is not calculated for providing such ‘taxable service’. That according to us is the plain meaning which is to be attached to Section 67 (unamended, i.e., prior to May 1, 2006) or after its amendment, with effect from, May 1, 2006. Once this interpretation is to be given to Section 67, it hardly needs to be emphasised that Rule 5 of the Rules went much beyond the mandate of Section 67. We, therefore, find that High Court was right in interpreting Sections 66 and 67 to say that in the valuation of taxable service, the value of taxable service shall be the gross amount charged by the service provider ‘for such service’ and the valuation of tax service cannot be anything more or less than the consideration paid as *quid pro qua* for rendering such a service.

25. This position did not change even in the amended Section 67 which was inserted on May 1, 2006. Sub-section (4) of Section 67 empowers the rule making authority to lay down the manner in which value of taxable service is to be determined. However,

Section 67(4) is expressly made subject to the provisions of sub-section (1). Mandate of sub-section (1) of Section 67 is manifest, as noted above, viz., the service tax is to be paid only on the services actually provided by the service provider.”

As observed by the Apex Court above, service tax is to be paid only on the services actually provided by the service provider. As seen above, amounts reimbursed to the appellant for various miscellaneous services in India as well as abroad which were contracted by the appellant on behalf of the customers cannot be levied to service tax. Consequently by following the decision of the Apex Court we set aside all such demands which will come under Sl.no. 1 & 5 of the table at para-1 above.

9.2 The issue in the table at Sl.no. 2 & 3 relate to the amounts recovered by the appellant from the customers towards ocean freight payable to the foreign shipping lines. A part of it also comes with discounts obtained by the appellant in the payment of such ocean freight. The contention of the appellant is that transportation by sea cannot be subjected to service tax as these activities are carried out beyond the territorial waters. We find force in the arguments advanced by the Id. Advocate and set aside the levy of service tax on the freight elements. In respect of the discounts enjoyed by the appellant in payment of freight charges, we find that the issue has been decided by the Tribunal in favour of the appellant in the case of Diamond Shipping Agencies Pvt. Ltd., (supra), in which the Tribunal observed as under:-

“6.2 On the second issue crane hire charges are paid by the appellant on actual basis and reimbursed from the shipping lines. There is no element of services to the shipping lines as there is no payment over and above the reimbursable charges, which can be attributed to any taxable service. Regarding tax liability of the appellant under BAS, we note that the Tribunal in the case of Bhuvaneshwari Agencies Pvt. Ltd. Vs. CCE, Bangalore - 2007 (08) STR 167 (Tri.-Bang.), held that the activity of rendering services of arranging shipment of export cargo and negotiating the same with shipping lines on behalf of the clients will not fall under tax liability. The Tribunal held that there is no promotion or marketing services in such an arrangement. The respondent is getting certain amount out of freight collected by the shipping lines. We note there is no service on behalf of third person in such arrangement.

By following the above decision, we set aside the demand of service tax made on the portion of freight and discounts.

10. In view of the above discussions, we find no merit in the impugned order which is set aside and the appeals are allowed.

(Order dictated and pronounced in the open Court)

(P. DINESHA)  
MEMBER (JUDICIAL)

(V. PADMANABHAN)  
MEMBER (TECHNICAL)

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