

**IN THE CUSTOMS, EXCISE AND SERVICE TAX  
APPELLATE TRIBUNAL  
SOUTH ZONAL BENCH AT CHENNAI  
[COURT : Division Bench B1]**

**Application No.: ST/Misc[CT]/41616/2017  
Appeal No.: ST/00253/2012**

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[Arising out of Order-in-Original No. 07/2012 dated  
22.02.2012 passed by the Commissioner of Central Excise,  
Chennai-II Commissionerate]

**M/s. Professional International Courier (P) Ltd., : Appellant**  
1<sup>st</sup> Floor, No. 39/15, 3<sup>rd</sup> Main Road,  
CIT Nagar, Nandanam,  
Chennai – 600 035

**Versus**

**The Commissioner of G.S.T. & Central Excise, : Respondent**  
Chennai South Commissionerate  
(Formerly known as :  
'The Commissioner of Central Excise, Chennai')

Appearance:-

Shri. T. Ramesh, Advocate  
for the Appellant  
Shri. A. Cletus, ADC (AR)  
for the Respondent

**CORAM:**

**Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)**  
**Hon'ble Shri P. Dinesha, Member (Judicial)**

Date of Hearing: 13.12.2018

Final Order No. **43176 / 2018**

**Per P. Dinesha :**

This appeal has been filed by the assessee challenging the Order-in-Original No. 07/2012 dated 22.02.2012 passed by the Commissioner of Central Excise, Chennai-II Commissionerate. The dispute relates to the period from 01.05.2006 to 31.03.2009.

2.1 The assessee is engaged in providing Courier Agency Service and is registered with the Service Tax Department. During the course of audit of accounts, it was noticed by the Officers of the Internal Audit Section of the Service Tax Commissionerate, Chennai, that the assessee had provided Courier Agency Service for both inbound and outbound documents, goods or articles and had also provided services as co-loader i.e., forwarding of documents, goods or articles received from M/s. Professional Courier.

2.2 On verification of accounts, it was noticed that the assessee had not paid service tax on the charges collected by them in respect of services provided as a co-loader up to 22.08.2007. It appeared to the Revenue that the services provided by the assessee as a co-loader from 01.05.2006 were classifiable under the category 'Business Support Service' (BSS). It was further noticed that the assessee were receiving inbound couriers from Nepal, Sri Lanka and Singapore for which they had only discharged service tax liability in respect of couriers received from Sri Lanka and Singapore. However, on being pointed out, the assessee paid the requisite service tax in respect of couriers received from Nepal during the period from March 2005 to September 2008 on 22.06.2009 and 23.06.2009 along with interest.

2.3 Accordingly, a Show Cause Notice dated 07.04.2010 was issued to the appellants proposing to demand service tax of Rs. 52,86,510/- for the period from 01.05.2006 to 31.03.2009 under proviso to Section 73(1) of the Finance Act, 1994, service tax of Rs. 9,637/- for the period from March 2005 to September 2008 under proviso to Section 73(1) along with applicable interest and penalty. After due process of law the adjudicating authority vide impugned Order-in-Original dated 22.02.2012 confirmed the proposals made in the Show Cause Notice while appropriating the amount of Rs. 9,637/- with interest already paid by the assessee. Aggrieved by the above confirmation of demand, the assessee has come in appeal before this forum.

3. Today when the matter came up for hearing, Ld. Advocate Shri. T. Ramesh appeared on behalf of the assessee-appellant while Ld. ADC (AR) Shri. A. Cletus appeared on behalf of the Department-respondent.

4.1 During the course of hearing, Ld. Advocate for the appellant submitted that the issue involved in the case on hand related to the demand of service tax for the services provided as a co-loader under the Heading Business Support Service for the period from 01.05.2006 to 22.08.2007. He submitted that the issue involved is squarely

covered by the decision of CESTAT, Chennai in the case of *M/s. Concord Express Logistics India Pvt. Ltd. Vs. Commissioner of Service Tax, Chennai vide Final Order No. 42181/2018 dated 01.08.2018*, wherein the Tribunal while following the decision in the case of *United Business Xpress India P. Ltd. Vs. C.S.T., Delhi – 2017 (48) S.T.R. 270* has set aside the demand raised with respect to services as co-loader. He also relied upon the Circular No. 341/43/1996 dated 01.11.1996 wherein the Board has clarified that that Co-loader cannot be considered as rendering any courier service.

4.2 Ld. Advocate submitted that demand with regard to services as co-loader for the balance period post 22.08.2007 was not being contested on merits for which period, the assessee has already discharged service tax and the same is verifiable, if not paid, then the assessee would pay up the same with interest, if any.

5. *Per contra*, Ld. AR for the Revenue supported the findings of the adjudicating authority.

6. We have heard the rival contentions, perused the documents placed on record and have also gone through the Order of this Bench (*supra*) relied upon by the Ld. Advocate for the appellant.

7.1 The issue that arises for consideration is whether the assessee is liable to pay service tax for the services rendered as a co-loader for the period in dispute. We note that this issue has already been considered and laid to rest by the decision of this very Bench of the Tribunal in the case of *M/s. Concord Express Logistics India Pvt. Ltd.* (*supra*), wherein this Bench after considering the applicability of the Board Circular dated 01.11.1996 as well as the judgement in the case of *United Business Xpress India P. Ltd.*(*supra*) has set aside the demand of service tax with respect to co-loader. The relevant portion of the judgement is extracted below :

*“ 5.1 The first issue that arises for consideration is whether the appellant is liable to pay service tax as a co-loader. The Ld. Counsel has vehemently relied upon the Circular No. 341/43/1996 dt. 01.11.1996. The relevant portion of the Circular is reproduced as under :*

*“ 15. It has been pointed out that in some cases one courier agency, who undertakes to deliver the documents goods or articles received from customers, utilises the services of another company of in-transit movement of such documents, etc., from one point to another. These are, technically, called co-loaders. The co-loader undertakes to transport the documents, goods or articles on behalf of the courier agency and charges the courier agency for such services. A question has been raised whether under these circumstances the co-loaders are also liable to pay service tax.*

*16. In this context, it is clarified that co-loaders provide service to the courier agencies as such. They do not provide directly any service to the customer who gives the documents, goods or articles to the courier agency for their delivery to the consignee. What is chargeable to service tax is the service provided by courier agency to the customer. In this case, the courier agency being not a customer as such, the service provided by co-loader to the courier agency is not chargeable to service tax. It is significant to point out that the charges of the co-loaders to the courier agency for in-transit movement of goods, documents or articles are in any case ultimately recovered by the courier agency from the customer and these charges are included in the gross amount charged by*

*the courier agencies from customers on which the service tax is computed."*

5.2 *The said Circular was in force till the next Circular No. 96/7/2007 dt. 23.08.2007 was issued. Thus, the Department cannot contend that the clarification issued vide Circular dt. 23.08.2007 would be applicable to the disputed period. As per the 1996 Circular, it is categorically clarified by the Department that a co-loader is not chargeable to service tax. The Tribunal in the case of United Business Xpress India P. Ltd. (supra) has considered the very same issue and the applicability of both the Circulars. The issue was then held in favour of the assessee. We find no reason to take a different view. Thus, following the said decision as well as the facts of this issue, we are of the considered opinion that the demand raised in respect of co-loader cannot sustain and requires to be set aside, which we hereby do. "*

7.2 There being no change with regard to facts, the above ruling squarely applies to the case on hand. We therefore do not find any cogent reason to deviate from the same and hence following the above ratio we are of the considered opinion that the demand raised in respect of the services rendered as a co-loader cannot sustain and is required to be set aside, which we hereby do.

8. With regard to the demand for the period post 22.08.2007, however, we find that the Ld. Advocate has conceded the same. The same is therefore upheld with interest thereon. For this limited purpose, we deem it proper to remand the case to the file of the adjudicating authority who shall work out the demand for the period post 22.08.2007; and it is for the assessee thereafter to convince the adjudicating authority with regard to its claim of payment of tax. However, there being no suppression of facts on the

part of the appellant to evade payment of service tax, we set aside the penalty imposed on this count.

9. The Miscellaneous Application filed by the Department for change in cause title is allowed. The appeal is partly allowed and partly remanded on the above terms.

*(Operative part of the order was pronounced in open court)*

**(P Dinesha)**  
Member (Judicial)  
Sdd

**(Madhu Mohan Damodhar)**  
Member (Technical)