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

ST/00697,00698/2012

[arising out of Order-in-Appeal No.54 – 55/2012, dated 28.09.2012 passed by the Commissioner of Central Excise (Appeals), Madurai]

M/s. MARINE CONTAINER SERVICES (SOUTH) PVT. LTD. — APPELLANT

Versus

COMMISSIONER OF CENTRAL EXCISE, TIRUNELVELI — RESPONDENT

Appearance:

For the Appellant	Shri G. Thangaraj, Cons.
For the Respondent	Shri B. Balamurugan, AC (AR)

CORAM:

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

Date of hearing/decision **17-01-2019**

FINAL ORDER NOs. **40135-40136 / 2019**

Per Bench:

Brief facts are that the appellants are registered under the category of Steamer Agents Services, Transport of Goods by Road and Business Auxiliary Service. During the course of audit, it was noticed that the appellants had not paid service tax on certain amounts received by them and also certain amounts retained by them. Show-cause notice was issued proposing to demand the service tax along with interest and also for imposing penalties. After due process of law, the original authority confirmed the demand, interest and imposed penalties. On appeal, the Commissioner (Appeals) upheld the same. Hence this appeal.

2. The learned Consultant Shri Thangaraj G. appeared and argued on behalf of the appellant. He explained that the appellants, who is a steamer agent approaches other steamer agents for transport of goods by sea in respect of few countries. The differential ocean freight collected is the appellants' logistics/trading income. The transactions are purely on principal to principal basis. He relied upon the decision in the case of *Commissioner of Service Tax, New Delhi Vs M/s. Karam Freight Movers* reported in *2017 (4) G.S.T.L. 215 (Tri.-Del.)* and submitted that the issue stands covered by the said decision.

3. The learned Authorised Representative for the Revenue Shri B. Balamurugan supported the findings in the impugned order. He argued that the appellants were collecting a mark-up on the value of freight charges and, therefore, these are commission, which is subject to levy of service tax under Business Auxiliary Service.

4. Heard both sides.

5. The main allegation against the appellants are that they have collected a mark-up on the ocean freight. The Tribunal in the case of *M/s. Karam Freight Movers* (supra) have analysed the very same issue and held that mere sale and purchase of cargo space is trading and is not a taxable activity. It is trading of cargo space. The relevant discussion is reproduced as under:-

> "7. Regarding the brokerage or commission received from airlines or agents, the ld. Counsel submitted that as a CHA regularly involved in shipment of cargo they book cargo space in the ship/airlines, well in advance, and when the actual cargo is shipped, they charge the client on the basis of rate applicable at the relevant time. There is difference in the amount spent for reserving space and the amount they received from the exporters. This amount cannot be subject to service tax as it is an activity involving trading of cargo space. In other words, it is a profit earned on their business and not

an amount received towards any service. The ld. Counsel relied on the Board's Circular dated 21-12-2009 in respect of reimbursable expenditure for CHA service and various decided case laws in support of his contention.

12. In the present case it was recorded that the respondent was already paying service tax on commission received from airlines/shipping lines under business auxiliary service since 10-9-2004. The original authority recorded that the show cause notice did not specify as to who is the client to whom the respondent is providing service. Original authority considered both the scenario, airline/shipping lines as a client or exporter/shipper as a client. In case the respondent is acting on behalf of airlines/shipping lines as client, it was held that they are covered by tax liability under BAS. Further, examining the issue the original authority viewed that commission amount is necessarily to be obtained out of transaction which is to be provided by the respondent on behalf of the client, that is, the exporters. The facts of the case indicated that the mark-up value collected by the respondent from the exporter is an element of profit in the transaction. The respondent when acting as agent on behalf of airlines/shipping lines was discharging service tax w.e.f. 10-9-2004. However, with reference to amount collected from exporters/shippers the original authority clearly recorded that it is not the case that this amount is a commission earned by the respondent while acting on behalf of the exporter and said mark-up value is of freight charges and are not to be considered as commission. Based on these findings the demand was dropped. We do not find any impropriety in the said finding. The grounds of appeal did not bring any contrary evidence to change such findings. Accordingly, we find no merit in the appeal by Revenue. The appeal is dismissed."

6. Following the decision referred to in para 5 above, we are of the view that the demand cannot sustain and requires to be set aside. The impugned order is set aside. The appeal is allowed with consequential reliefs, if any.

(Dictated and pronounced in open court)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S)
MEMBER (JUDICIAL

ksr
21-01-2019

	DRAFT			Remarks
	I	II	III	
Date of dictation	**17.01.2019**			
Draft Order - Date of typing	**18.01.2019**			
Fair Order Typing	**21.01.2019**			
Date of number and date of dispatch	**21.01.2019**			