

ST/362, 363/2012

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

Regional Bench – Court No. III

Service Tax Appeal No.362 of 2012

(Arising out of Order-in-Original No.16/2012 dated 21.03.2012 passed by the Commissioner of Central Excise, Chennai II Commissionerate)

M/s. Nilja Shipping Pvt. Ltd. : **Appellant**
No.52, (New No.107) Armenian Street,
Chennai 60 001

VERSUS

The Commissioner of Central Excise : **Respondent**
Chennai II Commissionerate,
M.H.U Complex, Nandanam
Chennai 600 035

AND

Service Tax Appeal No.363 of 2012

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APPEARANCE:

Shri N. Prasad, Advocate
For the Appellant

Shri Arul C. Durairaj, Superintendent (AR)
For the Respondent

**CORAM : HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)**

FINAL ORDER NOS. 40273-40274 / 2020

DATE OF HEARING: 10.02.2020

DATE OF DECISION: 10.02.2020

PER : SULEKHA BEEVI C.S

The brief facts of the case are that appellants are engaged in the business as freight forwarders and provide worldwide containerised and conventional cargo transportation and logistics services. During audit of accounts, it was noticed that besides collecting various charges, such as documentation charges, examination charges, freight charges, appellants also collected amount towards purchasing of cargo space from shipping lines. Department was of the view that said activity falls under 'Business Support Service' and therefore subject to levy of service tax. Show cause notice was issued for different periods proposing to demand short paid service tax along with interest under BSS and also proposing to impose penalty. After due process of law, the original authority confirmed demand, interest and imposed penalty. Aggrieved, appellant is now before the Tribunal.

2. Ld. Counsel Shri N. Prasad appeared and argued on behalf of the appellant. He furnished details of demand, date of SCN, period involved in the above two appeals as under :

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S.N o.	Appeal No.	SCN No. and date	Period	Impugne d order	Demand (Rs.)	Penalty	Interest
1.	ST/362 / 2012	606/ 2010 dt.11.10.10	May 2006 to June 2009	OIO No.16 & 17/2012 dt. 21.3.12	15,11,33,113	15,11,33,113	Imposed under Section 75(not quantified)
2.	ST/363 / 2012	6/6/2011 dt.11.1.11	July 2009 to March 2010	OIO No.16 & 17/2012 dt. 21.3.12	1,68,57,902	1,68,57,902	

It is submitted by him that the department has proceeded to demand service tax on the ocean freight collected by the appellant under the category of 'Business Support Service'. Ld. counsel explained the activity of collection of ocean freight by the appellant. In the year 2000, appellant has achieved recognition to carry on the business of Multi Modal Transport Operator. They are freight forwarders whose business is to receive and ship goods for exporters and importers. Such exports are made through containers belonging to shipping company when exports are by sea. They are registered as Steamer Agent and also GTA. The appellant books by itself the container through various shipping liners. The liners raise invoices on the appellant for the ocean freight charges. These charges are recovered from the exporter. The appellant does not represent any shipping line or any exporter as an agent in such activity. It is explained that appellant purchases the cargo space from the shipping lines and whenever they find a customer such cargo space is sold to them. The activity is nothing but purchase and sale of cargo space. The allegation that the said activity is a service and therefore classifiable

under BSS is erroneous. It is also alleged in the SCN that the appellant is liable to include such expenses in the taxable value of services for payment of service tax. In this case when the appellant provides cargo space by sale and collects ocean freight with charges of cargo space, it cannot be said that such activity is an input service for the appellant. Therefore the allegation that these charges are to be included as 'input service' also cannot sustain.

3. Ld. counsel relied upon the decision in the case of *Surya Shipping Vs CCE & ST Rajkot* - 2020 (2) TMI 282 CESTAT Ahmedabad.

4. Ld. A.R. Shri Arul C. Durairaj appeared for the department. He supported the findings in the impugned order. It is submitted by him that the activity of purchase and sale of cargo space provided by the appellant is input service for the various output service provided by the appellant. The said expenses are for providing output service and therefore should be included in the taxable value for discharging service tax. The activity is taxable service under BSS.

5. We have heard the submissions made by both sides and also perused the records.

6. It is brought out from the facts explained by both sides that activity is nothing but purchase and sale of cargo space. The amount received for such activity is a profit earned for purchase and sale of the cargo space. The Tribunal in the case of *Surya Shipping* (supra) has analyzed the very same issue and observed as under :

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“In the case of Pawan Cargo Forwarders Pvt. Limited vs. Pr. Commissioner of Service Tax, Chennai (supra) dealing with identical issue following order has been passed:-

“5. We find that the very issue had been addressed in the decisions of this Tribunal in the case of Skylift Cargo (P) Ltd. Vs CST Chennai (supra) and La Freight Pvt. Ltd. Vs CST Chennai (supra) relied upon by Ld. Advocate holding that mere sale and purchase of cargo space and earning profit in the process is not a taxable activity. The relevant portion of the decision in Skylift Cargo (P) Ltd. is reproduced for ready reference as under:-

“2. The facts of the case are that assessee M/s. Skylift Cargo (P) Ltd., [hereinafter referred to as assessees] are engaged in providing Cargo Handling Service, Clearing & Forwarding Service, Customs House Agent Service. They are also involved in the activities of booking domestic and international air cargo for various airlines for rendering the said bookings. Department took the view that the assessee were paying service tax under Business Auxiliary Service only on the commission amount without considering the incentive amount. Accordingly, proceedings were initiated against the assessee by way of issue of show-cause notices. These proceedings culminated in confirmation of demands of differential service tax liability of Rs.19,98,332/- and Rs.93,11,332/- respectively with interest liability thereon. Penalties, which were upheld by the impugned orders in respect of appeal nos.ST/00026/2008 and ST/20005/2009. Aggrieved, assessees are before this forum.”

“We find that the facts of this case are pari materia with those in Skylift Cargo (P) Ltd. (supra) and La Freight Pvt. Ltd. Vs. CST Chennai (supra) relied upon by Ld. Advocate wherein the issue was held in favour of the assessee. We also find that the same view has been taken by this Tribunal earlier also in the case of Tax Global India Ltd. Vs CST Chennai [Final Order No.42113/2017 dt. 18.09.2017 in Appeal No.ST/150/2008]. We do not find any ground to take a different view. Hence following the ratio already laid down, we set aside the impugned order and allow the appeals with consequential benefits if any, as per law.”

The Tribunal has held that sale and purchase of cargo space is not service. If it is not a service then there is no question of considering it as an input service so as to include the charges in the taxable income. The amount received is nothing but profit from sale. In various cases, the department has demanded service tax under the category of BAS. In the case of *Surya Shipping* (supra) the demand was made under BSS. In the present case also the demand is under

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BSS. In *Surya Shipping* the Tribunal held that the activity not being a service cannot be subject to levy of service tax under BSS also.

7. Following the above decision, we are of the considered opinion that the demands cannot sustain. Impugned orders are set aside. Appeals are allowed with consequential relief, if any, as per law.

(Dictated and pronounced in open court)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)