IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL

SOUTH ZONAL BENCH, CHENNAI

ST/00259/2007

[arising out of Order-in-Original No.47/COMMR/07, dated 07.08.2007 passed by the Commissioner of Central Excise, Tirunelveli]

M/s. ST. JOHN FREIGHT SYSTEMS LTD. APPELLANT

Versus

COMMISSIONER OF CENTRAL EXCISE, TIRUNELVELI RESPONDENT

Appearance:

For the Appellant Shri V.S. Manoj, Adv.

For the Respondent Shri A. Cletus, ADC (AR)

CORAM:

Hon'be Smt. Sulekha Beevi C.S, Member (Judicial)

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing/decision **28-08-2017**

FINAL ORDER NO. 41960/2017

Per Bench:

The appellants are Custom House Agent and are registered with service tax department. On verification of records by DGCEI, it was found that appellants had short-paid service tax as detailed below:

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(i) They had handled raw sugar/granite as bulk cargo during the years 2002-03 to 2005-06 and collected unloading, loading and crane charges, which attract service tax under the Head Port Services and Cargo Handling Services, but not paid service tax on the same;

(ii) They collected certain fixed amounts from their clients towards the services rendered by them as CHA in the case of importation, which did not appear to be towards reimbursable expenses and in the absence of supporting documentary evidences appear to be includible in the taxable value for the purposes of calculating service tax on CHA Services;

(iii) They raised invoices charging amounts as "all inclusive" towards Handling Charges, Stuffing Charges, PSA Sical Charges, Transportation Charges, Sundries and the Service Charges at fixed rates and availed abatement of 85% for the purpose of payment of service tax but the services rendered appear to be classifiable under Port Services and liable for service tax on gross value;

(iv) They had not effected payment of service tax in respect of the charges collected from the principal in the name of communication and conveyance and liner out cost under Steamer Agent Services and on board stevedoring charges, wooden dunnage etc., which are liable for service tax under the category of Port Services;

(v) They had not paid service tax on the amount received in the form of foreign exchange in respect of the service rendered in India during the period from 01.03.2003 to 20.11.2003 and 14.03.2005 onwards; and

(vi) They had not paid service tax on the service charges collected in the name of re-arranging jumbo bags into truck, which attract service tax under the category of Port Services.

2. Show-cause notice was issued raising the above allegations and proposing demand of service tax. After due process of law, the original authority passed order as under:-

(a) Confirmed demand of service tax of Rs.74,77,276/- being the service tax for various services for the period 01.10.2001 to 31.03.2006;

(b) Confirmed demand of Rs.2,82,326/- being the service tax credit wrongly taken and availed by them for the period 16.08.2002 to 31.03.2003 and 20.11.2003 to 31.03.2006;

(c) Ordered appropriation of Rs.40,32,651/- already paid by appellant for various services;

(d) Confirmed demand of interest on the above;

(e) Ordered appropriation of Rs.4,97,480/- already paid; and

(f) Imposed penalties under section 76 and 78 of the Finance Act.

Being aggrieved, the appellant is now before the Tribunal.

3. On behalf of appellant, the learned counsel Shri Manoj submitted that appellant is confining the contest in this appeal only on the demand raised in regard to CHA Services and Business Auxiliary Services. The details of demand under dispute in this appeal are tabulated by the counsel as below:-

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St. John Freight Systems Limited

Details of Demand & Payment – O-I-O No.47/Commr./07 and Appeal No.259/2007

(Amount in Rupees)

Sl. No.	Category of Service	Demand as per DRI	Payment Made			Balance Payable	Not disputed	Disputed demand
			Agreed by Commissioner as per O-I-O No.47 (per Annexure-I)	Not taken into account by the Commissioner (Per Annexure - II)	Total Payment			
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	**Customs House Agent Service**	**9,84,881**	**-**	**1,05,319**	**1,05,319**	**8,79,562**	**-**	**8,79,562**
2.	Port Service	33,76,931	26,23,202	4,44,867	30,68,069	3,08,862	3,08,862	-
3.	Steamer Agent Service	1,16,517	-	11,539	11,539	1,04,978	1,04,978	-
4.	Storage & Warehousing Services	4,07,813	-	80,811	80,811	3,27,002	3,27,002	-
5.	Cargo Handling Services	20,28,296	13,48,095	3,18,729	16,66,824	3,61,472	3,61,472	-
6.	Technical Inspection	35,479	-	-	-	35,479	35,479	-
7.	Maintenance or Repair Services	64,339	61,354	14,467	75,821	(11,482)	-	(11,482)
8.	**Business Auxiliary Services**	**4,63,020**	**-**	**-**	**-**	**4,63,020**	**-**	**4,63,020**
9.	Wrong Availment of CENVAT	2,82,326	-	-	-	2,82,326	2,82,326	-
	Total	77,59,602	40,32,651	9,75,732	50,08,383	27,51,219	14,20,119	13,31,100

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Sulekha Beevi

4. The learned counsel submitted that appellant contests only Sl.No.1 and Sl.No.8 of the table at Annexure-A and also ~~regarding~~ the findings in the Order-in-Original with regard to the amount already paid by appellant. With regard to Sl.No.1 – CHA Services, he submitted that they had incurred expenses for obtaining endorsement in A.R-4, DEEC books, Customs examination. That these being actual expenses, which are reimbursed, cannot be included in the taxable value of services. He relied upon the judgment in the case of *Union of India Vs M/s. Intercontinental Consultants & Technocrats Pvt. Ltd.* reported in *2014 (35) S.T.R.J99 (S.C.)* and in the case of *Commissioner of Service Tax, Chennai Vs M/s. Sangamitra Services Agency* reported in *2014 (33) S.T.R.137 (Mad.)*. It was also argued by him, that any amount collected over and above such reimbursable expenses would not be taxable under the category of CHA Services. With regard to the demand under Business Auxiliary Service, which is the demand of service tax on incentive received from Shipping Liner, the learned counsel submitted that the issue stands covered by the decision of this Bench rendered in *M/s. Indio Lloyd Freight Systems Pvt. Ltd. Vs Commissioner of Service Tax, Chennai* vide *Final Order No.41497/2017, dated 03.08.2017*. The last submission made is that the appellant has discharged the service tax liability in respect of the other services shown in the table at para 3 above. That the Commissioner has not considered this aspect and that appellant is prepared to furnish documents to establish this aspect, and prayed to set aside the penalties.

5. Against this, the learned Authorised Representative Shri A. Cletus strongly defended the impugned order. He submitted that

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appellant has collected charges for endorsement of A.R.-4, BBK Charges, DEEC Endorsement Charges, Documentation Charges etc. These amounts are over and above the actual expenses incurred on behalf of the client, for which, they are liable to pay service tax under the category of CHA Services, since these activities are connected with the import/export. Therefore, the amount over and above the reimbursable expenses would definitely be subject to levy of service tax. With regard to issue in Sl.No.8, he submitted that such incentives are received for rendering service as steamer agent and hence, liable to service tax. The argument of the learned counsel for appellant is that they have discharged the service tax liability in respect of all other demand except Sl.No.1 & 8 was countered by the learned Authorised Representative stating that whatever amount was paid by the appellant has been taken note of by the Commissioner.

6. Heard both sides and perused the records.

7. The learned counsel for appellant has limited the contest in the appeal to Sl.No.1 & 8 of the table at para 3 above. The demand in Sl.No.1 under the category of CHA Services is on the charges collected under the heads A.R-4 expenses, DBK Charges, DEEC Endorsement Charges etc. Major part of such charges are undisputedly reimbursable expenses. The issue whether reimbursable expenses are includible in taxable value or not is settled in the cases of M/s. *Intercontinental Consultants & Technocrats Pvt. Ltd.* (supra) and *M/s. Sangamitra Services Agency* (supra). Following the same, we hold that the demand on reimbursable expenses is neither legal nor proper and requires to be set aside. The amount, if any, collected over and above the actual would not fall under CHA Services. At the

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most, it would come under Business Auxiliary Services, being services rendered for and on behalf of client. Thus, we hold that the demand in Sl.No.1 under CHA Services is unsustainable and we set aside the same.

8. The second issue is the demand on incentive received from Shipping Liner. This Bench in the case of *M/s. Indo Lloyd Freight Systems Pvt. Ltd.* (supra) has considered and held the issue in favour of the assessee. The relevant portion of the order reads as under:-

> "The issue has been sufficiently discussed in the case of *M/s. Lee & Muir Head Pvt. Ltd. Vs Commissioner of Service Tax, Bangalore* reported in *2009 (14) S.T.R.348 (Tri.-Bang.)* wherein the Tribunal in a similar situation has observed as under:-
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>> As regards Brokerage Commission of 2% paid for booking of the export cargo, it is seen that the agents of Shipping Bills 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% to2%. Even, if this is considered Business Auxiliary Services, as they promote taxable services of other person, it is seen that there is a Notification No.13/2003, dated 20.06.2003, which gives exemption under Business Auxiliary Services, for services rendered as Commission Agent. Moreover, Board's Circular, dated 25.04.2003 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."

9. Following the above decisions, we hold that the demand under Sl.No.8 [Business Auxiliary Services) is unsustainable and we set aside the same.

10. The learned counsel for appellant has also put forward the grievance that the Commissioner has not taken note of the amounts paid by the appellant. That appellant would be able to establish with documents that entire liability has been discharged before the issuance of show-cause notice. He prayed that the penalties may be set aside. In fact, on perusal of records, the appellant has discharged substantial

portion of the demand even prior to issuance of show-cause notice. Further, though it is alleged that appellant has suppressed facts with intent to evade payment of tax, there is no specific evidence to prove the same. Further, penalties under section 76 and 78 have been imposed simultaneously. Hence, we find the penalties imposed are unwarranted and we hereby set aside the same. However, we direct the adjudicating authority to verify whether the appellant has discharged the service tax in respect of other services shown in the table to Annexure-A, as claimed by them, and consider the same. For this limited purpose, the matter is remanded to the adjudicating authority.

11. In the result, the impugned order is modified to the extent of setting aside demand under CHA Services [Sl.No.1 of the table at para 3 above] and Business Auxiliary Services [Sl.No.8 of the table at para 3 above]. The penalties imposed are entirely set aside. The issue of verification of the amount already paid by appellant is remanded to the adjudication authority. The appeal is partly allowed and partly remanded in above terms with consequential reliefs, if any.

(Dictated and pronounced in open court)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S)
MEMBER (JUDICIAL

ksr
01-09-2017

Customs, Excise & Service Tax Appellate Tribunal

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