CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHENNAI</u>

REGIONAL BENCH – COURT NO. III

Service Tax Appeal No. 41695 of 2014

(Arising out of Order-in-Appeal No. CMB-CEX-000-APP-048-14 dated 29.04.2014 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore)

M/s. Tirupur Container Terminals Pvt. Ltd., **...Appellant**
Lemuir House,
New No. 10/ Old No. 125, G.N. Chetty Road,
T. Nagar,
Chennai-600 017.

Versus

Commissioner of GST and Central Excise **...Respondent**
Chennai South Commissionerate
MHU Complex,
No.692, Anna Salai, Nandanam,
Chennai-600 035.

<u>APPEARANCE:</u>
Shri Joseph Prabakar, Advocate for the appellant
Shri M. Selvakumar, Authorised Representative for the Respondent

<u>CORAM:</u>
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER(TECHNICAL)

<u>FINAL ORDER No. 40092/2025</u>

DATE OF HEARING: 05.11.2024
DATE OF DECISION: 17.01.2025

Per: Mr. P. Dinesha

The assessee appears to be discharging or providing 'Cargo Handling Services' and, as observed in the Order-In-Original, the definition of "Cargo Handling Service" (CHS) under section 65 (23) of the Finance Act, 1994 did not include handling of export cargo but, however, the same in respect of import cargo was made liable under service tax. It is the case of the Revenue that besides CHS, the service provider was also arranging logistics for transporting the import and export cargo for which, an additional amount was collected, which was alleged to be higher than the actual cost of transportation from CHA. The said additional amount so collected by the service provider was noticed to be reflected in the P&L Account of the service provider under the heading 'Transportation income'.

2. This activity of providing or managing logistics was felt to be covered under 'Business Support Service' (BSS) under Section 65(104c) of the Finance Act, 1944 and accordingly, a SCN was issued wherein, it was *inter-alia* proposed to recover the above service tax under BSS along with appropriate interest under Section 75 *ibid*, apart various penalties. It appears that the service provider filed its detailed reply by justifying the non-payment of service tax under BSS, they also appear to have relied on various judicial announcements in support of their claim and thus pleaded for dropping of the proposed demand against them.

3. The Adjudicating Authority appears to have considered the reply of the service provider in adjudication and *vide* OIO No. 1/2014 (ST-ADC) dated 27.01.2014, proceeded to confirm the demands as proposed. Aggrieved by the said demands, it appears that the service provider filed an Appeal before the first appellate authority and the first appellate authority also having dismissed their Appeal vide OIA No. CMB-CEX-000-APP-048-14 dated 29.04.2014, the same has been assailed in the present Appeal before us.

4. We have heard Shri Joseph Prabakar, Ld. Advocate for the Appellant and Shri M. Selvakumar, Ld. Asst. Commissioner, defended the orders of the Authorities below; we have perused the documents placed on record and we have also considered the judicial precedents relied upon during the course of arguments. Upon hearing both sides, we find that the only issue to be decided by us is, "whether the demand of service tax under BSS is justified"?

5. In the Order-In-Original, it has been recorded at para 8.4 that the service provider had entered into agreements with transporting agencies and was paying freight/transportation charges accordingly. From the balance sheet of the service provider, it was also noticed that

freight/transportation charges were collected by the service provider, which was being paid as freight charges for the transport of goods from/to various destinations.

6. It was thus believed that the nature of service provided by the assessee was under the category of CHS alone. Hence, it was observed that the service provider had rendered a composite service, the major service being CHS and the logistics involved in transportation of cargo was only an ancillary service. It was also recorded that insofar as the logistic support was concerned, the same involved transportation of cargo to the Gateway ports, the transportation charges was accepted by the service provider, that separate invoices for being raised by them on the CHA reflecting the name of the exporter, and it was this income that is shown as 'transportation income' in the books of the service provider. It has been further observed that para 8.5 that in all these cases, the service provider hired vehicles and paid transportation charges to the vehicle owner, as per agreements entered into with the transporting agencies and the amount was collected from various exporters who had exported goods through their ICD. It was thus concluded that the service provider was providing service in relation to information and tracking of delivery schedules and managing

distribution and logistics on behalf of the exporters/importers, which is covered under the definition of support services of business. Further, the service provider being a custodian, facilitated the movement of export/import transport cargo, and therefore, they necessarily undertook the support service activities relating to the movement of cargo from inland port to Gateway Port and vice versa.

7. It is the case of the service provider that as an inland container depot, the assessee is providing CHS, they handle containers for both export and import. Liability to pay service tax on freight charges on the pretext of liability to service tax in terms of Rule 2(1)(d)(v) of the Service Tax Rules, 1994 is on the recipient of such services. In terms of the provisions of Sections 65(50b), 65(105)(zzp) & 65(50a), the liability in terms of Rule 2(1)(d)(v) *ibid* on the consignor or consignee of the services, as the case may be. It is further argued that they provide transportation services to their clients through outsourced agencies; when the services of CHS for export is provided, the liability to service tax does not arise at all. With the enactment of BSS with effect from 01.01.2005, the onus of payment of service tax is on the recipient of this service. Admittedly, the service provider being only an ICD had transported either loaded containers or empty containers, the

recipients of such services were the corporate bodies or firms and as such, the liability to service tax would always be on them.

8. Without prejudice to the above, the Appellant would also contend that when there is a difference between transport income and transport expense as reflected in their books of accounts, the difference cannot automatically lead to the conclusion that the same was on account of support service; the service provider would always have its margin since their activity is a business activity. Hence, in the business of Goods Transport Agency, the administrative expenses would be incurred and remaining amount from the freight income would naturally be the profits and when such a service is provided by outsourcing, the profit would be the difference between the freight amount charged over and above its cost of outsourcing, which could never be considered as a receipt generated out of business support service since the same lacks legal sanctity.

9. The classification of services is governed by Section 65 A *ibid*. It is not the case of the department that the appellant did not provide transportation service as a part of handling of cargo. The only reason advanced in the SCN is

earning income over and above incurred expenditure on transportation. The Appellant is to provide transportation service and it invoices its customer for transportation service. Hence, the Revenue has failed to provide arny reason in support of its averment that the service is that of 'logistics' and it would be liable for service tax under the classification of "business support service”. Moreover, under the provisions of section 65A of the Finance Act, 1994 specific description is always preferred over general description. If the Appellant being an ICD has provided service of transportation by road, it cannot be classified under any other entry. The law does not authorize such classification. For providing transportation service, the liability cannot be fixed otherwise than on the recipient thereof in terms of Rule 2(1)(d)(v) of the Service Tax Rules, 1994.

10. Apart from the above we find that the period of dispute is from 2007-08 to 2011-12 and Show Cause Notices came to be issued on 19.10.2011 and 10.10.2012 invoking the extended period of limitation. We understand from the facts borne on record that the appellant being an ICD had admitted its liability under the specific classification namely CHS and hence, the Revenue could not have presumed as to

the knowledge of the appellant for the taxability of difference between transport income and transport expense as reflected in the books of accounts to be liable to Service Tax under 'transportation charges', which fact was not alleged even in Show Cause Notice. Hence, at best, the liability could have been restricted to the normal period of limitation. But in any case, since we are of the view that the tax paid under CHS was specific and appropriate, hence the demand of additional tax of difference in transport income- transport expense under transportation charges cannot sustain for the entire period in dispute, hence the Impugned demands confirmed in the Order-In-Appeal requested to be set aside, which we hereby do.

11. In the result, the appeal stands allowed with consequential benefits, if any, as per the law.

(Order pronounced on 17.01.2025)

sd/-	sd/-
(VASA SESHAGIRI RAO)	**(P. DINESHA)**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

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