IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Service Tax Appeal Nos. 42480 and 42481/2015

(Arising out of Order in Appeal No. 203 & 204/2015 dated 23.9.2015 passed by the Commissioner of Service Tax (Appeals – I), Chennai)

PVGT Freight Forwarders & Logistics Pvt. Ltd. **Appellant**
No. 68/88, Shaik Maistry Street
Royapuram, Chennai – 600 013.

Vs.

Commissioner of GST & Central Excise **Respondent**
Chennai North Commissionerate
26/1, Mahatma Gandhi Road
Nungambakkam, Chennai – 600 034.

APPEARANCE:

Shri S. Murugappan, Advocate for the Appellant
Shri N. Satyanarayanan, Authorised Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NOS. 41462 & 41463/2025

Date of Hearing: 19.09.2025
Date of Decision: 12.12.2025

Per M. Ajit Kumar,

Both these appeals are filed by the appellant against Order in Appeal No. 203 & 204/2015 dated 23.9.2015 passed by the Commissioner of Service Tax (Appeals – I), Chennai (impugned order).

2. Brief facts of the case are that during audit, the appellants were found to be providing freight forwarding and logistics activity such as clearing export cargo by collecting various documents and filing the same with the Customs EDI; arranging for movement of cargo to the

CFS etc. which the department felt were classifiable under the category of 'Business Support Service' (BSS) as they were activities related to 'Managing Distribution and Logistics'. They also collected Ocean/Air freight from their clients and in some cases the actual amount of freight incurred were less than the amount collected thus resulting in excess collection of freight leading to a mark up in freight charges collected. Further, they used their own vehicles for the transportation of goods for export/import and paid service tax as goods transport agent. It appeared that the payment of service tax on abated value as GTA was not entitled to them as they were providing logistics service and were not a GTA or a consignor or a consignee. Hence proceedings were initiated by issuance of two Show Cause Notices dated 18.10.2011 and 21.04.2012 for the period April 2010 to September 2010 and October 2010 and March 2011 for recovery of Rs.18,37,523/- and Rs.24,49,244/- along with interest and for imposing penalty. After due process of law, the Ld. Adjudicating Authority confirmed the demand along with interest and imposed penalty under sec. 76 of the Finance Act, 1994. Aggrieved by the said order, the appellant preferred appeals before the Ld. Commissioner (Appeals). Vide the impugned order, the Ld. Commissioner (Appeals) rejected the appeals. Hence the present appeals.

3. The learned Advocate Shri S. Murugappan appeared for the appellant and Ld. Authorized Representative Shri N. Satyanarayanan appeared for the respondent.

3.1 The Shri S. Murugappan Ld. Counsel for the appellant submitted

that a Show Cause Notice dt. 09.02.2011 was issued to them for the same issue pertaining to the earlier period i.e. 01.05.2006 to 31.03.2010 demanding duty and interest. After due process of law, the Adjudicating Authority confirmed the demand with interest and imposed penalty. The appeal filed against the subject Order was allowed by this Hon'ble Tribunal by setting the same aside in terms of Final Order No. 42210/2018, dated 04.07.2018, [**PVGT Freight Forwarders & Logistics Pvt. Ltd. Vs The Commissioner of Service Tax**], reported in 2018 (9) TMI 1719 – Cestat, Chennai. The present two SCN's cover the subsequent period i.e. April 2010 to September 2010 and October 2010 and March 2011. Under such circumstances he prayed that the impugned order for the subsequent periods may also be set aside and the appeal allowed with consequential relief.

3.2 The Shri N. Satyanarayanan the Ld. AR for the respondent reiterated the findings in the impugned order.

4. We have heard the parties and perused the appeals. We find that the issue is covered in the appellants own favour for the earlier period. Para 5 and 6 of the Final Order No. 42210/2018 (supra) is reproduced below:

> "5. We have considered the rival contentions and also gone through the judgments relied upon by the Ld. Advocate. We find that the Chennai Bench of CESTAT has addressed this very same dispute in Bax Global India Ltd. Vs. Commissioner of Service Tax, Chennai – 2017 (9) T.M.I. 1264 – CESTAT Chennai. The Bench inter alia held as follows :
>
> > *5.5We, however, find that on the same issue, in appellant's own case, the Tribunal in RE : Bax Global India Ltd. Vs CST Bangalore - 2008 (9) STR 412 (Tri.-Bang.) held that amount collected by CHA like cartage revenue, MSIL/JWG charges, due carrier, documentation charges etc. are for services rendered by third party and*

the appellant initially make payment for the activities on behalf of the client and later collected the amount from the client and that these are actually reimbursable expenses and not relating to the CHA activities. Even in respect of air freight, the Tribunal held that these charges cannot be said to be related to the activities of CHA. The relevant portion of the Tribunal's decision is reproduced below for ready reference.

"9. On a very careful consideration of the issue, we find that the appellants apart from the activity of the Customs House Agent undertake work as freight forwarders and other activities related to that. We have perused the details of the billing for their entire period under dispute. It is broadly categorized in the following way. The charges are relating to :-

(1) Air exports
(2) Air imports
(3) Ocean exports
(4) Ocean imports
(5) Customs clearance
(6) Logistic.

For example, in respect of Air exports, for the year 2000-2001 the Freight revenue is of the order of 8.8 crores. That means, this amount represents the freight collected by the appellants towards air freight for the customers and then paid to the airliners. This amount has also been sought to be taxed under the Customs House Agent activity. This shows the adjudicating authority has not applied his mind to the details of the various activities undertaken by the appellants and how they relate to the amount collected by them. In respect of air exports apart from freight, they collected various other charges i.e. Cartage revenue, MSIL/JWG charges, due carrier, documentation etc. In all these cases the services are rendered by the third party and the appellants initially make payment for the activities on behalf of the client and later collect the amount from the clients. These are actually reimbursable expenses and they do not relate to any CHA activities. In these cases, on going through the statement, we find that in certain cases the appellants had incurred less cost and in certain cases, they had incurred more cost. In any case, the profit or loss incurred in respect of activities which are not related to CHA activities should not be the concern of the Department for the purpose of collecting service tax. The Apex Court's decision in Baroda Electric Meters Ltd. case (supra), even though it relates to the Central Excise, has definitely a bearing on this. If the appellant performs an activity which is not related to the customs house agent then service tax cannot be levied on that activity under the category of CHA services. Similarly, we have seen the break up of all other services. It was already pointed out by the appellants that in certain cases, the appellants directly render certain services which do not relate to CHA

and they collect fees directly from the clients. These charges are ‚charges collect fee', ‚DO fee', Currency Adjustment Fee', ‚Cartage revenue', etc. The appellants have clearly explained the nature of each of these charges. The Commissioner has not discussed the nature of each of the charges and given a finding whether it relates to CHA services. The definition of CHA as given in the Finance Act, 1994, Section 65(35) reads as follows :-

(35) "Customs House Agent" means a person licensed, temporarily or otherwise, under the regulations made under sub-section (2) of Section 146 of the Customs Act, 1962 (52 of 1962);

(105)(h) to a client, by a custom house agent in relation to the entry or departure of conveyance or the import or export of goods;

Regulation 2(c) of the Customs House Agents Licensing Regulations, 2004 defines customs house agent as under :

(c) "Customs House Agent" means a person licensed under these regulations to act as agent for the transaction of any business relating to the entry or departure of conveyances or the import or export of goods at any Customs Station.'

When we carefully go through the definition of the customs house agent, we find that the activity of the CHA relates to the entry or departure of conveyances or import or export of goods at any Customs station. Therefore the activity of the CHA is limited to the Customs Station. It cannot extend beyond it. For example, in the present case, the appellants collect air freight for export from the clients, but before collection he pays from his pocket to the Airliner. Thus this activity relates to transportation from a port in India or from a place in India to any other place in a foreign country. These freight charges cannot be said to be related to the activity of the CHA. In any case, the air freight fee is for a passage beyond India. This service is also not rendered by the CHA. The freight charges collected is for the transportation of the goods and the transportation service is rendered actually by the Airliner and not the CHA. These points have not been properly gone through by the adjudicating authority. Similarly, if we see the breakup of other services, they do not relate to CHA activity at all. Further we find that storage and handling charges came into the service tax net only with effect from 16.8.2002. In these circumstances, we are of the opinion that there is no merit in the impugned order. Moreover, as contended by the learned Advocate, the major amount portion of the Billing represents freight charges and the Commissioner (Appeals) had already decided the issue in favour of the appellants. The order of the Commissioner (Appeals) has not been challenged by the Revenue. In

such circumstances, we agree with the learned Advocate for the appellants that the Revenue cannot agitate over the issue which has become final. The demand is also time-barred. In view of the above observation, we are of the view that the impugned order is not sustainable. Summing up, we find that the appellants had already discharged the duty liability in respect of the Customs House Agent activities undertaken by him. As regards all the other activities, we find that they do not relate to customs house agent activities. Even if any profit has been made in respect of those activities, they cannot be subjected to service tax in view of the Apex Court decision in the Baroda Electricity Meters Ltd. case (supra). In fine the demand is not sustainable. There is no justification for imposition of any penalty. We set aside the impugned order and allow the appeal with consequential relief."

5.6The second issue is whether free booking of space in shipping liners would amount to BAS or not. The appellant in respect of demand under BAS. The appellant pre-books the slots even before they get an order from their exporter or other client. It is not the case that the appellants are doing on behalf of client only after they get an export order. The Tribunal in RE : Greenwich Meridian Logistics (I) Pvt. Ltd. Vs CST Mumbai - 2016 (43) STR 215 (Tri.- Mumbai) held that while notional surplus was earned from purchase and sale of space however that it was not by acting for the client. The relevant portion of the order is reproduced below :

"11. Slots may be contracted for by the shipper or its agent with the shipping line through the steamer agent. Implicit is a uni-directional flow of consideration because the space belongs to the shipping line. Steamer agent or agent of shipper may earn commission in such a transaction. Leaving that situation aside, the contention of the appellant is that it is a 'multi-modal transport operator' which entails a statutorily assigned role in cross-border logistics. According to Section 2 of the Multi-modal Transportation of Goods Act, 1993.

(m) 'multimodal transport operator' means any person who –

(i) concludes a multimodal transport contract on his own behalf or through another person acting on his behalf;

(ii) acts as principal, and not as an agent either of the consignor, or consignee or of the carrier participating in the multimodal transportation, and who assumes responsibility for the performance of the said contract;

and

(iii) is registered under sub-section (3) of section 4; and (a)'carrier' means a person who performs or undertakes

to perform for a hire, the carriage or part thereof, of goods by road, rail, inland waterways, sea or air;

12.The appellant takes responsibility for safety of goods and issues a document of title which is a multi-modal bill of lading and commits to delivery at the consignee's end. To ensure such safe delivery, appellant contracts with carriers, by land, sea or air, without diluting its contractual responsibility to the consignor. Such contracting does not involve a transaction between the shipper and the carrier and the shipper is not privy to the minutiae of such contract for carriage. The appellant often, even in the absence of shippers, contract for space or slots in vessels in anticipation of demand and as a distinct business activity. Such a contract forecloses the allotment of such space by the shipping line or steamer agent with the risk of non-usage of the procured space devolving on the appellant. By no stretch is this assumption of risk within the scope of agency function. Ergo, it is nothing but a principal-to-principal transaction and the freight charges are consideration for space procured from shipping line. Correspondingly, allotment of procured space to shippers at negotiated rates within the total consideration in a multi-modal transportation contract with a consignor is another distinct principal-to-principal transaction. We, therefore, find that freight is paid to the shipping line and freight is collected from client-shippers in two independent transactions.

13.The notional surplus earned thereby arises from purchase and sale of space and not by acting for a client who has space or slot on a vessel. Section 65(19) of Finance Act, 1994 will not address these independent principal-to-principal transactions of the appellant and, with the space so purchased being allocable only by the appellant, the shipping line fails in description as client whose services are promoted or marketed."

5.7Similar view has been expressed by the Tribunal in the case of DHL Lemuir Logistics Pvt Ltd. Vs CCE Thane - 2017 (47) STR 309 (Tri.- Mumbai) wherein the Tribunal held as follows:

"7.In the context of these contra transactions of specified space on the air carrier, we examine the taxable service and the definition thereto. The taxable service according to Section 65(105)(zzb) of Finance Act, 1994 is that provided or agreed to be provided:

to a client, by any person in relation to business auxiliary service and relevant extract of Section 65(19) of Finance Act, 1994 defining ‚business auxiliary service' is:

"any service in relation to

xxxx

promotion or marketing of service provided by the client;? (ii) or

any customer care service provided on behalf of the? (iii) client; or

procurement of goods or services, which are inputs for the? (iv)
client; or

xxxx

provision of service on behalf of client; or?(v)

xxxx

and includes services as a commission agent'

A harmonious reading of the provisions supra points to the 'client' being an essential ingredient in the rendering of a taxable service; the client is the one who pays the consideration for rendering of such service. No record of any receipts from airlines has been brought on record to evince the flow from them as clients. On the contrary, the appellant pays the airlines for booking of space in aircraft. The airlines, therefore, lack the distinguishing characteristics of a client. The excess reimbursement is the true market price paid by the consignor to the appellant over and above the price at which slot was pre-booked from the airline. Of the many activities listed in the definition supra, the closest may, at best, be the procurement of services that are inputs for a client. However, here too, the appellant does not, in relation to the amounts entered in the books of accounts, procure space for the client but on its own behalf which are then sold to its clients. As no commission is involved in this trading of 'freight slots', the appellant can hardly be designated as commission agent. Therefore, pre-booking of slots which may realise upon allotment to a customer does not conform to the definition supra and hence is not liable to tax within the scope of the show cause notice. The Tribunal in Greenwich Meridien Logistics (I) Pvt. Ltd. v. Commissioner of Service Tax Mumbai [2016 (4) TMI 547-CESTATMUMBAI = 2016 (43) S.T.R. 215 (Tri.-Mum.)] found in favour of the assessee in a parallel matter relating to ocean freight. The demand of ` 2,56,896 fails the test of authority of law and is set aside."

5.8 We do not find any cogent ground or reason to deviate from the ratio already laid down by the Tribunal in the appellant's own case and in DHL Lemuir Logistics Pvt. Ltd. (supra). This being so, the impugned order cannot sustain and will have to be set aside, which we hereby do. In consequence, appeal is therefore allowed with consequential benefits, if any, as per law".

> 6. From the above, we find that this very issue has been considered and decided by this Bench and, therefore, by following the ratio decidendi of the abo1ve case, we set aside the impugned Order-in-Original and allow the appeal with consequential reliefs, if any."

5. Considering that issues herein have not been distinguished on facts by revenue for the impugned period, judicial discipline requires that we follow Final Order No. 42210/2018 (supra), passed by a Bench of co-equal strength. Hence the impugned order is set aside and the appeals are allowed. The appellant is eligible for consequential relief as per law. The appeals are disposed of accordingly.

(Order pronounced in open court on 12.12.2025)

(**AJAYAN T.V.**)
Member (Judicial)

(**M. AJIT KUMAR**)
Member (Technical)

Rex