CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. IV

SERVICE TAX APPEAL No.50623 OF 2019

[Arising out of Order in Appeal No. 497/ST/JPR/2018 dated 30/11/2018 passed by Commissioner (Appeals), Central Goods and Service Tax & Central Excise, Jaipur]

M/s. Seamax Logistics Ltd. **...Appellant**
A-1, 1ST FL, Amrapali Plaza,
Vaishali Nagar, Jaipur
Rajasthan - 302021

Versus

Commissioner of **....Respondent**
Central Excise & ST, Jaipur-1
NCR Building, Statue Circle,
C-Scheme, Jaipur,
Rajasthan-302005

APPEARANCE:
None appeared for the appellant
Mr. S.K. Meena, Authorized Representative for the Respondent

Coram:
HON'BLE DR.RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MRS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING/DECISION: 04/11/2024

FINAL ORDER NO.59755/2024

DR. RACHNA GUPTA

None has appeared for the appellant. Ld. Departmental Representative has mentioned that the department had also filed a cross-appeal against the impugned Order-in-Appeal No.497/2018 dated 30th of November, 2018. However, due to the enhanced monetary limit vide the revised Instruction No.20/2024 dated 6th August, 2024, the said cross appeal bearing No.50613 of 2019 has been withdrawn by the Department on the grounds of amount involved being less than monetary limit prescribed therein.

2. With respect to the present appeal ld. Departmental Representative has conceded that though the appellant is not present either in person or through representative but the issue involved in the present appeal stands already decided in favour of the assessee. However, while reiterating the findings of Commissioner (Appeals) in the impugned order, ld. DR has requested for disposal of the present appeal.

3. We have perused the appeal record. The facts in brief relevant for the adjudication are that the appellant is registered for providing taxable services under the category of Business Auxiliary Service, Transport of goods by road and transport of goods by rail services. During the course of appellants' audit it was observed that the appellant was procuring the containers from shipping lines and was providing the same to their clients /exporters. They were collecting from their clients in the name of ocean freight, an amount higher than the ocean freight actually paid to the shipping lines. The department observed that during the period from October 2010 to September, 2015 appellant collected an amount of Rs.39,28,14,357/- from the exporter but paid an amount of ocean freight of Rs.34,40,37,660/- to the shipping lines thereby retaining an amount of Rs.4,87,76,697/-. The said amount is alleged as an amount of consideration towards providing taxable Business Auxilliary Services.

4. During the said period the appellant was also observed to have received the commission/ brokerage of Rs.7,75,831/- from the shipping lines on which also they had not paid the service tax. Accordingly, Show Cause Notice No.940/139/2016 dated 27.04.2016

was served upon the appellants proposing the demand of service tax amounting to Rs.56,51,284/- not paid on the retained amount of Rs.4,87,76,697/- collected in the name of ocean freight. Service tax amounting to Rs.79,911/- was also proposed to be recovered on the amount of commission/brokerage received by the appellant from various shipping lines. The interest on the said both the amounts of service tax and the appropriate penalties were also proposed to be recovered/ imposed on the appellant. The said proposal has been confirmed initially vide Order-in-Original No.83/2016 dated 01.12.2017. In an appeal against the said order the impugned order has been passed vide which the demand of service tax amounting to Rs.56,51,284/- has been set aside. The department was in appeal against this order. However, said appeal has already been withdrawn on the grounds of monetary limit instructions. The demand of service tax amounting to Rs.79,911/- on the amount of Rs.7,75,831/- received by the appellant from October, 2010 to September, 2015 as commission and brokerage has still been confirmed. The present appeal has been filed by the assessee to assail the said demand.

5. None had appeared for the appellant nor there is any written synopsis placed on record. Several effective opportunities have already been given to the appellant but appellant has opted to not to appear. In the given circumstances, the record of the appeal is perused. It is observed from the reply to Show Cause Notice as was given by the appellant to the Department that the demand was objected for issue being already decided in favour of the appellant.

6. Ld. Departmental Representative has conceded for the issues in the present appeal to have no more been *res-integra*.

7. We have observed the decision of this Tribunal, Chennai Bench in the matter of **APL Logistics (India) Pvt. Ltd. reported in 2014(36) STR 1310 (Tri.-Chennai)** wherein it has been held that the service tax is not leviable on ocean freight. Tribunal Mumbai Bench in the case of **Greenwich Meridian Logistics (India) Pvt. Ltd. reported in 2016-TIOL-869-CESTAT-Mumbai** has held that the freight as collected from the Shipper / Exporter and the freight as is paid to the shipping line are two independent transactions. Since ld. Departmental Representative has acknowledged the said decisions and that there is no difference of fact in the present case, we have no reason to differ from those findings and we hold that the demand on the differential freight amount has wrongly been confirmed.

8. Coming to the demand confirmed vis-à-vis commission and brokerage received by the appellant, we observe that the amount of commission/ incentive/brokerage cannot be included in the value of taxable services as is to be arrived at in terms of section 67 of the Finance Act, 1994.

9. Sub-section (1) of Section 67 provides that where service tax is chargeable on any taxable service with reference to its value, then such value shall, where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by the service provider. It is, therefore, clear that only such amount is subject to service tax which

represents consideration for provision of service and any other amount which is not a consideration for provision of service cannot be subjected to service tax.

10. In this connection, it would be appropriate to refer to the decision of the Supreme Court in Union of India v. Intercontinental Consultancy and Technocrats [2018 (10) G.S.T.L. 401 (S.C.)]. The Supreme Court observed that service tax is on the "value of taxable services" and, therefore, it is the value of the services which are actually rendered which has to be ascertained for the purpose of calculating the service tax. It is for this reason that the expression "such" occurring in Section 67 of the Act assumes importance. The Supreme Court, therefore, observed that the authority has to find what is the gross amount charged for providing "such" taxable services and so any other amount which is calculated not for providing such taxable service cannot be a part of that valuation as the amount is not calculated for providing "such taxable service." This, according to the Supreme Court, is the plain meaning attached to Section 67, either prior to its amendment on 1 May, 2006 or after this amendment

11. Consideration, which is taxable under Section 67 of the Finance Act, should be transaction specific. Incentives, on the other hand, are based on general performance of the service provider and are not to be related to any particular transaction of service. It needs to be noted that commission, on the other hand, is dependent on each booking and not on the target. If the air travel agent does not achieve

the predetermined target, incentives will not be paid to the travel agents.

12. The Larger Bench of this Tribunal in the case of **Kafila Hospitality & Travels Pvt. Ltd. vs. Commissioner of Service Tax, Delhi reported in 2021 (47) GSTL 140 (Tri.-LB)** has dealt with this issue and has held as follows:-

> *"Valuation (Service Tax) - Incentives for achieving targets. They are paid on general performance of service provider and not to related to particular transaction. Hence, they are not consideration liable to Service Tax under Section 67 of Finance Act, 1994."*

13. For the similar reasons as above, we are in agreement with those findings in the present appeal as well. Resultantly, the demand confirmed on commission is also ordered to be set aside and appeal is allowed.

[Pronounced in the open Court]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Anita