CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO.III

Service Tax Appeal No.51142 of 2019

[Arising out of Order-in-Original No.45-46/RK/COMMR./CGST/AUDIT-II/2018-19 dated 15.02.2019 passed by the Commissioner of Central Goods & Service Tax, Audit-II, New Delhi]

M/s. Seagull Maritime Agencies Pvt.Ltd. **Appellant**
D-25, DSIIDC Shed-II, Okhla Industrial Area,
Phase-II, New Delhi-110020.

Vs.

Commissioner of Central Goods & Service Tax, Audit-II, New Delhi **Respondent**
Plot 2B, 1st Floor, EIL Annexe Bhikaji Cama Place,
New Delhi-110066.

Appearance:

Present for the Appellant : Shri P.K.Sahu, Advocate

Present for the Respondent: Ms. Jaya Kumari, Authorized Representative

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO. 59873/2024

Date of Hearing : 12.11.2024
Date of Decision: 12.12.2024

RAJEEV TANDON :

Service Tax Appeal No.51142 of 2019 has been filed by M/s. Seagull Maritime Agencies Pvt.Ltd. assailing the Order-in-Original

No.45-46/RK/COMMR./CGST/AUDIT-II/2018-19 dated 15.02.2019 passed by the Commissioner of Central Goods & Service Tax, Audit-II, New Delhi.

2. The appellant is registered with the Service Tax Commissionerate, Delhi for provisioning of 'Business Support Service' (Section 65(105)(zzzq) of the Finance Act, 1994). The appellants have been issued show cause notice dated 23.04.2016 in the matter seeking recovery for alleged non-payment of Service Tax on extra charges collected i.e. mark up for the freight income (ocean freight/air freight). The period of dispute in the matter pertains to 2010-11 to 2014-15 and 1st April 2015 to 30th June 2017. The department vide the impugned show cause notice confirmed the demand of Service Tax for an amount of Rs.3,67,38,471/- along with interest besides imposing penalty of equal amount.

2.1 The show cause notice alleged that on perusal of the financial statements of the appellant, it was noticed that the major source of revenue are income from sea freight, air freight, commission for haulage, consultation income and income from customs clearance. Upon verification of these invoices concerned, the department alleged that no Service Tax was paid by the appellant on the mark up collected by way of ocean freight (mark up - i.e. difference between the amount charged from the customers towards sea/air freight and the amount paid to the shipping line/airline). The department therefore alleged that the said mark up was a consideration liable to Service Tax as the nature of service rendered by the appellant could not be considered as transportation of goods. It is also the contention of the department that the transportation is actually rendered by the shipping lines/airlines to the exporters importers for which a consideration has been received by way of ocean/air freight charges, and that the Service Tax exemption pertains to transportation and is granted to the transporters. The department inter alia alleged that for export/import of cargo in effect services of shipping lines/airlines are required to provide containers for

export of cargo which services are however obtained by the exporters by way of agents/intermediaries. It is a fact on record that the agents like the appellant are concerned with booking of container/cargo space/cargo with the shipping lines/airlines for export purposes and it is these containers/cargo space booked by such agents that are availed by the exporters for the purpose of export.

2.2 In view of the nature of activity as stated above, the department contends the same as procurement of service as input service for its clients.

3. The appellants have submitted that they act as agent or intermediary who is procuring the transportation service being rendered by the shipping line/airline for and on behalf of importer/exporter of goods. It is in this process that they earn freight margin/mark up as a consideration. The show cause notice thus alleged that as the appellant and the service recipient are located in India, the mark up earned by them being in the nature of agency charges is liable to Service Tax, as the same did not form part of negative list and was also not covered in terms of the exemption Notification No.25/2012-ST dated 20.06.2012. It is in this background that the show cause notice besides proposing recovery of Service Tax also invoked other Sections for levy of penalty under Section 76, 77 and 78 of the Finance Act, 1994.

4. We have heard Shri P.K.Sahu, Ld.Advocate for the appellant and Ms. Jaya Kumari, Ld.Authorized Representative for the department and perused the case records.

5. While the Ld.Authorized Representative for the department reiterates the findings of the impugned order, the Ld.Advocate’s primary contention being that they are a freight forwarder, engaged in providing transportation service by air and sea. He has *inter alia* submitted that the issue is no more *res integra* and is covered by a series of judgements on the subject. In his pleadings, the Ld.Advocate submitted that the appellant was engaged in

transportation of goods from a place in India to outside India and vice versa and was engaged in provisioning of input service by performing various activities such as transportation of goods by sea, air, rail, road and customs clearance required for such transportation of goods. It has been the primary contention of the appellant that they acted as principal to principal with both the customers (shipper) and the shipping line/airline. This is to state that the appellant purchased cargo space so as to provide transportation service for its customers. The appellant also placed reliance on CBEC Circular No.17/07/2016-ST dated 12.08.2016 clarifying that a freight forwarder may act as principal and raise invoice to the exporter on his own account. In that case the freight forwarder is providing transportation of goods and is not acting as "intermediary". They submit that in such circumstance, the appellant is not liable to pay service tax, when the destination of the goods is a place outside India, as also flows from the said circular.

6. We note from records that the Ld.Commissioner has not disputed the fact that the appellant is providing the above referred services to its clients and acts on a principal to principal basis. However, despite so, he has taken the stance that the appellant is covered under the category of an intermediary, which under the circumstances is not factually correct.

7. In identical circumstances, the Tribunal vide its order in the case of **Marinetrans India (P) Ltd. v. CST [2020 (33) G.S.T.L. 241 (Tri.-Hyd.)]** had held that buying and selling of cargo space in a ship, does not amount to rendering a service and any profit and income earned through such transactions would not be leviable to Service Tax. The relevant para of of the order passed by the Tribunal is reproduced below:-

> ***"6.*** *We have considered the arguments on both sides and perused the records. It is not in dispute that the appellant herein is purchasing the space from the shipping lines and then is selling the same to*

exporters. It is the case of the Revenue that this amounts to acting as an intermediary for helping the business of the shipping lines and therefore they are liable to pay service tax on business auxiliary services on the profit which they receive. It is the case of the appellant that this is a deal on principal to principal basis between them and the shipping lines and again between the exporters and them. They are not acting as an agent. They could purchase the space for a lower price and sell it at a higher price and thereby earn profit. On the other hand, if they failed to sell the space to exporters, after purchasing from the shipping lines, they may incur a loss. They are not receiving any commission whatsoever from the shipping line or from the exporters. We have considered the Circular of the C.B.E. & C. cited by the Learned Departmental Representative at Para 2.1-3 which are as follows :

> *"2.1 The freight forwarders may deal with the exporters as an agent of an airline/carrier/ocean liner, as one who merely acts as a sort of booking agent with no responsibility for the actual transportation. It must be noted that in such cases the freight forwarder bears no liability with respect to transportation and any legal proceedings will have to be instituted by the exporters, against the airline/carrier/ocean liner. The freight forwarder merely charges the rate prescribed by the airline/carrier/ocean liner and cannot vary it unless authorized by them. In such cases the freight forwarder may be considered to be an intermediary under rule 2(f) read with rule 9 of POPS, since he is merely facilitating the provision of the service of transportation but not providing it on his own account. When the freight forwarder acts as an agent of an airline/carrier/ocean liner, the service of transportation is provided by the airline/carrier/ocean-liner and the freight forwarder is merely an agent and the service of actual transportation will not be liable for service tax under Rule 10 of POPS.*
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> *2.2 The freight forwarders may also act as a principal who is providing the service of transportation of goods, where the destination is outside India. In such cases the freight forwarders are negotiating the terms of freight with the airline/carrier/ocean liner as well as the actual rate with the exporter. The invoice is raised by the freight forwarder on the exporter. In such cases where the freight forwarder is undertaking all the legal responsibility for the transportation of the goods and undertakes all the attendant risks, he*

is providing the service of transportation of goods, from a place in India to a place outside India. He is bearing all the risk and liability for transportation. In such cases they are not covered under the category of intermediary, which by definition excludes a person who provides a service on his account.

3. It follows therefore that a freight forwarder, when acting as a principal, will not be liable to pay service tax when the destination of the goods is from a place in India to a place outside India."

7. *It is evident from the C.B.E. & C. circular also that the Revenue was also of the view that service tax is payable when one acts as an intermediary and not as a trader dealing on principal to principal basis on their own account which is undisputedly the case here. We, further, find that in an identical case, in the case of Phoenix International Freight Service Pvt. Ltd. (supra) the Tribunal has held that buying and selling space on ships does not amount to rendering a service and any profit or income earned through such transactions is not leviable to service tax. We find no reason to deviate from this view taken by the Tribunal which view is also supported by the C.B.E. & C. circular cited above. In conclusion, the demand of service tax, interest and penalties are liable to be set aside and we do so."*

8. With regard to the issue as contended in the present matter, the Tribunal in the case of **Bhatia Shipping (P) Ltd. v. CST ([2022] 136 Taxman.com 407 [Mum-CESTAT])** had the following to say :-

"5. The appellant is primarily engaged in the business of freight forwarding, clearing and forwarding and other allied activities that involve booking of Containers/Air Cargo with various Shipping Lines/Airines for their customers and recovering other miscellaneous charges from their customers (mainly importers and exporters). The appellant provides cargo space to the customers who are importers/exporters of goods. The appellant pays charges for space booking to different Shipping Lines/Airlines and later on sells such space to the exporters/importers at a slightly higher amount. The difference between the amount paid by the Appellant to the Shipping

Lines/Airlines and the amount recovered by the Appellant from the customers (exporter/importers) is called the "mark-up".

6. The Department was of the view that this "mark-up" was for services provided by the Appellant to customers and was, therefore, liable to service tax under the category of "support services of business or commerce", covered under section 65(104) of the Finance Act, 1994. The Department was also of the view that after July, 2012, the service was not covered by any service notified in the negative list and, therefore, continues to be taxable.

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10. A division Bench of the Tribunal in the earlier decision rendered in Satkar Logistics v. CST Service Tax Appeal No.50411 of 2016 decided on 10-08-2021 accepted the contention advanced on behalf of the appellant that the appellant was only trading in space and was not providing any service. The Division Bench also noted that the issue involved in the Appeal was covered by the decision of the Tribunal in Greenwich Meridian Logistics (India) Pvt.Ltd. v. CST (2016) 69 taxman.com 100/55 GST 635 (Mum.-CESTAT) and Commissioner of Service Tax, New Delhi v. Karam Freight Movers (2017) 82 taxman.com 363 (New Delhi-CESTAT).

11. Subsequently, the decision earlier rendered in Satkar Logistics on 21-08-2018 was followed by the Division Bench of this Tribunal in Satkar Logistics."

9. Under the circumstances, when the appellant is acting on a principal to principal basis, as regards purchase and selling of space from shipping line/airline and selling to importers/exporters we are of the view that the said act would not amount to an activity liable to Service Tax. This is particularly so when they are not acting as an agent/intermediary for promoting the business of the shipping lines/ and airlines and the transactions of the appellant are independent of both backward and forward integration of the activities performed.

10. In view of the discussions supra and the cited case laws, the order of the lower authority is set aside and the appeal is allowed with consequential relief, if any, as per law.

[Order pronounced on 12th December 2024]

(BINU TAMTA)
MEMBER (JUDICIAL)

(RAJEEV TANDON)
MEMBER (TECHNICAL)

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