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

SERVICE TAX APPEAL NO.50792 OF 2021

[Arising out of Order-in-Original No.16-17/Commr./Delhi East/P.V./2021 dated 16.03.2021. passed by the Commissioner, Adjudication, Central Tax, GST Delhi East]

M/s. Shikhar Logistics Pvt. Ltd. **Appellant**
32, 2nd Floor, Krishna Market,
Kalkaji, New Delhi-110 019.

VERSUS

Commissioner of Central Tax, **Respondent**
GST Delhi East, C.R. Building, I.P. Estate,
New Delhi-110 002.

APPEARANCE:

Shri Bimal Jain, Advocate for the appellant.
Shri V.K. Jain, Authorised Representative for the respondent.

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO.51186/2025

DATE OF HEARING: 06.08.2025
DATE OF DECISION:18.08.2025

BINU TAMTA:

1. The appellant is engaged in the business of freight forwarding and other allied activities such as booking of space on shipping lines/airlines and further, selling the said space to the customers (exporters/importers). The case of the Department is that the appellant while charging their customers for booking the cargo collects charges over and above of what they have actually paid to the shipping lines/ airlines. According to the Revenue, the extra amount collected from their customers over and above the amount

which the appellant had paid to the shipping lines can be termed as provisions of taxable service classifiable under 'Business Auxiliary Service" and its liable to service tax. Show cause notice dated 18.07.2016 was issued for the period 20.11.2012 to 2014-15 demanding a sum of Rs.2,12,38,744/- towards service tax along with interest and penalty. On adjudication, the demand has been confirmed by the order-in-original no.16-17/Commr/Del East/PV/2021 dated 16.03.2021. Hence the present appeal has been filed by the appellant.

2. Heard Shri Bimal Jain, Advocate for the appellant and Shri V.K. Jain, Authorised Representative for the Revenue.

3. In nutshell, the submission of the learned counsel for the appellant is that the appellant is not buying cargo space on behalf of their customers but, they are buying the cargo space on its own behalf from the Shipping lines/Airlines on principal-to-principal basis and then, selling to the customers either at a profit or costs to costs basis or loss. The appellant is essentially engaged in trading of cargo space and not providing any service on behalf of any persons neither the customers i.e. exporters/importers nor the shipping lines/airlines**.**

4. Learned counsel for the appellant further submitted that the issue is no longer *res integra* and has been decided in series of decisions by this Tribunal taking a consistent view that the mark-up amount taken by the assessee during the transaction of buying the cargo space and further selling it to their customers and thereby making an amount by way of

marker is not towards rendering any services, rather it amounts an activity of business where there is an element of profit and also the risk of incurring of loss in the event there is no sale. The decision cited by the learned Counsel are as under:-

(1) **CST, New Delhi Vs. Karam Freight Movers**[1]

(2) **Tiger Logistics (India)Ltd. Vs. CST-II, Delhi**[2]

(3) **Greenwich Meridian Logistic (I)P.Ltd.Vs.CST, Mumbai**[3]

The observations made by the Tribunal in the case of **Greenwich Meridian Logistic (I) Pvt. Ltd. Vs. CST, Mumbai** is reproduced below:-

> **"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."

5. Reliance has also been placed on the Circular No.197/7/2016-ST dated August 12, 2016, which has been appreciated by this Tribunal in

[1] 2017 (4) GSTL 2015
[2] 2022 (63) GSTL 337 (Tri.-Del.)
[3] 2016(43) STR 215 (Tri.-Mumba)

the case of **Marinetrans India Pvt. Ltd. Vs. CST, Hyderabad[4].**

Para-2.2 of the said circular is reproduced below:-

> "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 al 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."

6. The point to be appreciated in the light of the decisions is that the appellant herein is working on principle to principle basis and there is no principal agent relationship between the appellant and the ships/airlines or customers. The appellant is registered as a Multimodal Transport Operator (MTO) with the Director General of Shipping. The appellant books the cargo space in Ships/Airlines and pays the charges. Further, the appellant provides such cargo space to their customers, i.e. importers/exporters for import/export of goods. The charges collected by the appellant from their customers are not fixed and is based upon the demand and area of the cargo space. Thus, sometimes the cargo space is sold at profit (over and above what the appellant actually paid to the Shipping lines/Airlines) and sometimes at par with cost and sometimes at a loss.

7. Referring to the definition of "Multimodal Transport Operator" as defined under Section 2(m) of the Multimodal Transporatation of Goods Act,

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[4] 2020 (33) GSTL 241 (Tri. Hyd.)

1993, the appellant submitted that in the capacity of Multimodal Transportation of Goods, they are responsible for safe custody of the cargo and, therefore, it buys insurance cover to take the responsibility for all the risks during the transportation and is also liable for any loss or damage to the consignment.

8. Since the issue has been consistently decided in favour of the appellant, the impugned order is set aside and the appeal is allowed.

[Order pronounced on 18.08.2025]

(BINU TAMTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

Ckp.