

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD**

REGIONAL BENCH

Service Tax Appeal No. 21045 of 2015

(Arising out of Order-in-Appeal No.41/2014-15(V-II)ST dated 10.02.2015 passed by
Commissioner of Customs Central Excise & Service Tax (Appeals) Visakhapatnam)

**Chandra Ship Management Pvt Ltd
D.No. 11-01-7/c Meenakshi Manor,
Prakasham Street, Ramaraopet,
Kakinada-533004**

..Appellant

Verses

**The Commissioner of Central Excise
Customs & Service Tax,
Port Area,
Visakhapatnam,
Andhra Pradesh-530035**

...Respondent

APPEARANCE:

Mr M.V.S. Prasad, Adv for the appellant
Mr B.S. Rao A.R. for the Respondent

CORAM:

**HON'BLE MR ANIL CHOUDHARY MEMBER(JUDICIAL)
HON'BLE MR A.K. JYOTISHI , MEMBER(TECHNICAL)**

FINAL ORDER NO. 30170/2023

Date of Hearing: 03.07.2023

PER ANIL CHOUDHARY

The issue in brief is whether the appellant is liable to pay service tax towards charges collected towards reimbursement of fuel, water & other consumables.

2. Learned counsel has contended that as per the Agreement/Charter Party, a copy of which is annexed in the appeal paper book, hire charges are payable separately excluding the consumables, port and agency charges, taxes, licenses, permits, etc. The collection of such amount towards fuel, consumables is by way of sale, and cannot form part of service. Accordingly, learned counsel prays for consequential benefits.

3. Learned A.R. relies on the impugned order.

4. Upon hearing parties we find that the issue is no longer *resintegra* and the same has been decided by the Commissioner (appeals) in favour of the appellant in their own case being Order-in-Appeal No. VIZ-EXCUS-002-APP-72-73-16-17 dated 31.10.2016 wherein it has been held as follows:

“8.1 In view of the above discussion I find that appellant had supplied their Tugs/Barges to Charterers on hire basis under an agreement, that the cost of Marine Gas Oil, Lube Oil, Water and other consumables is borne by the Charterer. The mechanism adopted to attach the charges to their customers was by raising debit notes, but nothing was mentioned in respect of hire includes the cost of consumables. If the barge hire is inclusive of such cost/expenditure and once again if the appellant charged it, that can be treated as additional receipts, otherwise the costs of consumables are only being attached to charterer. Contradicting this fact that cost of consumables were not borne by the charterer no allegation was made. Further the Charterer being a person outside India, the repairs are to be carried out in India, which is within the knowledge of the Owner, the repairs are carried out by the appellant and the same upon agreed terms and conditions (charged it to the charterer,) hence I find no infirmity in the transaction. As far as the taxing provision under Finance Act 1994 is concerned, what matters is whether the rendition of service is a taxable service or not, if so what was the gross value of such service rendered and whether legal levy has been discharged or not. I find that there is no dispute on the factual matrix of the Tug/Barges had been supplied by the appellant to their customers (Charterers), on hire basis and on such consideration received, the appellant discharged applicable service tax liability. The cost of repairs and cost of consumables are the charterer’s responsibility, therefore such expenditure cannot form as taxable values for the service under ‘Supply of Tangible Goods Services’. In view of the above discussion, I find the amounts received for repairs and cost of consumables does not form part of consideration and is not an additional amounts received for the purpose of rendering taxable service. Therefore, the demand is not tenable. Once the demand is found not tenable the attendant interest and penalties imposed are redundant. I find strength in the appellant’s argument, hence I am constrained to differ from the lower authority’s decision and I find the confirmation of tax demand along with attendant interest and imposition of penalties is legally unsustainable. Therefore, the impugned orders are set aside.

In view of the above discussion, I pass the following order.

ORDER

The Impugned order is set aside and party appeals are allowed.”

5. We find that the issue has been rightly decided by the Commissioner (Appeals) and there is no infirmity in the order. Accordingly, the impugned order is set aside and this appeal is allowed with consequential benefit.

(order pronounced and dictated in the open Court)

**(ANIL CHOUDHARY)
MEMBER(JUDICIAL)**

**(A.K. JYOTISHI)
MEMBER (TECHNICAL)**

