CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I

Service Tax Appeal No. 30636 of 2016

(Arising out of **Order-in-Original** No.HYD-EXCUS-002-COM-001-16-17 dated 26.04.2016 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad)

M/s Balaji Integrated Shipping India Pvt Ltd., .. **APPELLANT**
402, 4th Floor, Technolpolis Building,
1-10-74, Begumpet,
Hyderabad,
Telangana – 500 016.

VERSUS

Commissioner of Central Tax Secunderabad - GST .. **RESPONDENT**
Kendriya Shulk Bhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana – 500 004.

APPEARANCE:
Shri Ram Sharma C, Advocate for the Appellant.
Shri V Srikanth Rao, Authorised Representative for the Respondent.

CORAM: HON'BLE Mr. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30237/2024

Date of Hearing:31.01.2024
Date of Decision:31.01.2024

[ORDER PER: ANIL CHOUDHARY]

Appellant is a Clearing and Forwarding agent registered with the Department of Service Tax under the Head Clearing and Forwarding Agency Services and GTA Services.

2. On scrutiny of their financial records and on comparison with the ST-3 returns, it appeared that they were entering into agreements with various customers for clearance of export goods by sea. As per the agreements, they are charging the customers for Ocean Freight, CONCOR/CWC charges, handing charges, CFS charges, Customs/Overtime charges, Agency charges, Documentation charges, Examination charges, opening/repacking charges, sundry charges, etc., in the bills issued by them. On verification of the invoices raised, it appeared that they are excluding (i) Ocean Freight (ii) CWC charges/CONCOR charges (iii) CFS charges from the gross amount charged for the purpose of discharging service tax liability, in respect of the

above mentioned three charges. It was observed that they are acting as pure agent inasmuch as they are recovering only the actual expenditure incurred by them from the recipient of service. However, in respect of ocean freight, it appeared they are not acting as pure agent as they are recovering the ocean freight after adding their markup to the actual expenditure incurred. It appeared that they are not acting as pure agent and the markup was collected as a consideration for services provided by them to their customers. Further, under Section 67(i) of the Act, it appeared that gross amount for the purpose of calculation of service tax shall include markup amount on the ocean freight charges. It appeared that service tax is payable on the amount of ocean freight plus the markup of the appellant assessee on the basis of details of ocean freight submitted by the appellant for the period 2008-09 to 2012-13. It appeared that they are liable to pay service tax of Rs. 60,56,570/-. Further on reconciliation of financial records with ST-3 returns, it appeared that service tax is short-paid which is calculated as follows:

Year	Taxable value as per income ledgers	Taxable value declared in the ST-3 returns (Rs)	Difference in taxable value (Rs)	Rate of service tax (%)	Service Tax payable (Rs)
2008-09	80,41,492	25,00,983	55,40,509	12.36	6,84,807
2009-10	1,42,16,195	1,03,79,123	38,37,072	10.30	3,95,218
2010-11	2,02,22,236	1,09,71,420	92,50,816	10.30	9,52,834
Total					20,32,859

3. Further, it appeared that in respect of GTS service, the appellant is required to discharge service tax of Rs. 5,48,770/- for the period 2008-09 to 2009-10. The appellant accepted this liability in respect of GTA service and deposited an amount of Rs. 5,48,770/- vide challan dated 19.04.2012 with interest amounting to Rs. 2,22,459/- vide separate challan dated 28.04.2012.

4. Further, it appeared to Revenue that the aforementioned discrepancies came to light as a result of verification of the financial records of appellant by the officers of the Department. The appellant assessee failed to discharge tax liability properly and accordingly show cause notice dated 30.01.2014 was issued invoking extended period of limitation, proposing to demand the aforesaid three amounts along with proposal for appropriation with respect to GTA service. Further penalties were proposed under Sections 77 and 78 of the Act. This show cause notice was adjudicated on contest vide Order-in-Original dated 26.04.2016 and the proposed demands were confirmed along with appropriation of tax paid under GTA service.

Further, penalty of Rs. 10,000/- was imposed under Section 77 and Rs. 86,38,199/- under Section 78 of the Act.

5. Similar periodical notice dated 26.03.2015 was issued for the period 2013-14 which also stood adjudicated by the common Order-in-Original, an amount of Rs. 21,12,773/- was confirmed on account of Ocean Freight with interest. Further penalty of Rs. 2,11,277/- was imposed under Section 76 of the Act and further penalty of Rs. 10,000/- was imposed under Section 77 of the Act.

6. Being aggrieved, the appellant is before this Tribunal. The Learned Counsel for the appellant interalia urges that the appellant is a trader in bulk cargo space. The appellant books bulk space for the whole container and thereafter sells the space by way of retail, to the prospective exporters who may need full or part of the container, after adding their markup. Admittedly, tax has been demanded by Revenue by taking the amount of ocean freight collected or received and the amount of ocean freight expenditure as per their Financial Account. As the appellant is engaged in purchase and sale of cargo space, the said activity is not service but amounts to trade. The appellant relies on the ruling under in similar circumstances in the case of Tiger Logistics (India) Ltd., Vs CST, Delhi [2022 (63) GSTL 337 (Tri-Del)]. He also relies on the ruling in the case of Haiko Logistics India Pvt Ltd., Vs CST, Delhi [2023 (13) Centax 79 (Tri-Del)] wherein under similar circumstances demand of service tax has been set aside.

7. So far as the demand of service tax of Rs. 20,32,859/- is concerned, Learned Counsel urges that the demand is vague as Revenue has not identified as to for which service or under which head of service tax, tax is short paid. It is natural that there are some receipts which are not taxable or by way of other income or by way of reimbursement. Revenue is required to identify and make out a specific case under which head of service, tax is being demanded or as short paid. It is evident from the show cause notice that service tax has been demanded by way of vague allegation by comparing the figures as per gross receipt of the income ledger and the taxable value shown in the ST-3 returns. The appellant submits that the demand of service tax being bald and vague, is required to be set aside. It is further urged that appellant has maintained proper books of accounts and vouchers. All the information has been admittedly taken from the records maintained in the normal course of business. No case of concealment or

fraud or mis-statement is made out. Accordingly, it is urged that show cause notice is bad for invocation of extended period of limitation.

8. Learned AR relies on the impugned order.

9. Having considered the rival contentions, we find that the appellants have got both receipts in the freight account and also incurred expenditure under ocean freight as per their financial accounts. Claim of the appellant that they are trading in container space is found to be correct. Accordingly, on this ground alone demand of Rs. 60,56,570/- plus Rs. 21,12,773/- is set aside.

10. We further fund that the demand of Rs. 20,32,859/- is vague in its nature as no head of service has been identified by the Revenue under which the tax is short paid. Revenue is required to identify the head of service under which tax to be demanded. As the period under dispute is prior to 01.07.2012, this demand is set aside, being vague and uncertain.

11. In view of the above aforementioned findings, we find that there is no case of suppression, fraud or wilful mis-statement. Accordingly, penalties imposed under Section 77 and 78 are set aside.

12. Thus, the appeal is allowed and the impugned order is set aside. The appellant is entitled to consequential benefits as per law.

(Dictated and pronounced in open court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

jaya