IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75603 of 2019

(Arising out of Order-in-Original No. 28/COMMR/ST-II/KOL/2018-19 dated 30.11.2018 passed by the Commissioner of C.G.S.T. & C.X., Kolkata South, GST Bhawan, 180, Rajdanga Main Road, Shantipally, Kolkata – 700 107)

M/s. Speedways Logistics Private Limited **: Appellant**
P-66, Circular Garden Reach Road,
Kolkata – 700 043

VERSUS

Commissioner of C.G.S.T. and Central Excise **: Respondent**
GST Bhawan, 3rd Floor,
180, Shantipally, Rajdanga Main Road,
Kolkata – 700 107

APPEARANCE:

Shri Ankit Kanodia, Advocate
Ms. Megha Agarwal, Advocate
For the Appellant

Shri Debapriya Sue, Authorized Representative
For the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 76694 / 2024

DATE OF HEARING: 08.08.2024

DATE OF DECISION: 22.08.2024

ORDER: [PER SHRI K. ANPAZHAKAN]

M/s. Speedways Logistics Pvt. Ltd. (hereinafter referred as the Appellant), having STC No. AABCG0609FSD002 is engaged in the business of providing services of transport of good by road, CHA, freight forwarders etc. On the basis of an investigation initiated by DGGI, a Show Cause Notice dated 24.05.2018 was issued to the Appellant demanding service tax of Rs.3,02,29,255/-, including Cess, for the period 2012-13 (January to March 2013) to 2016-17. The Notice was adjudicated by the Ld. Commissioner of C.G.S.T. & C.Ex., Kolkata South vide the impugned Order-in-Original No. 28/Commr/ST-II/KOL/2018-19 dated 30.11.2018 wherein the Ld. Commissioner has confirmed the entire demand of service tax as proposed in the Show Cause Notice along with interest and penalty. Aggrieved against the impugned order, the appellant has filed this appeal.

2. The appellant submits that the demand of service tax confined in the impugned order relates to the following categories as tabulated below: -

Sl. No.	**Head of Service**	**Amount (Rs.)**
1.	Commission/brokerage received from Shipping Lines- Para 4.4 of OIO	Rs. 10,11,406/-
2.	Cargo handling services- Para 4.5 of OIO	Rs. 46,39,520/-
3.	Difference on ocean freight collected and paid to shipping lines- Para 4.6 of OIO	Rs 1,37,13,491/-
4.	Director Sitting fees- Para 4.7 of OIO	Rs. 2,96,020/-
5.	GTA services - Para 4.8 of OIO	Rs. 1,05,68,818/-
	Total	Rs. 3,02,29,255/-

2.1. As regards the demand of Service Tax of Rs.10,11,406/- (including cess) on commission/brokerage received from Shipping Lines, the Appellant submits that there is no service provided by them to the shipping lines and the commission earned is on account of booking of cargo with the shipping lines over the years. The Appellant states that the Show Cause Notice had alleged that they had rendered the service as a 'commission agent' and hence the charges received were liable for service tax under the category of 'business auxiliary service'. In this regard, the appellant submits that there is no agreement of 'commission agent' between the Appellant and shipping lines; it is only due to bulk business the shipping lines sometimes pays incentives to them which is not against any taxable service provided or to be provided by them. In this regard, the appellant relies on the decision of the Larger Bench of the CESTAT in the case of *Kafila Hospitality & Travels Pvt. Ltd.[2021-TIOL-159-CESTAT-DEL-LB],* wherein it has been held that the commission earned for selling of space by the shipping lines is not liable to service tax under the category of 'business auxiliary service'. Thus, they submit that the demand confirmed in the impugned order on this count is not sustainable.

2.2. As regards demand of Service Tax of Rs.1,37,14,491/- (including cess) in relation to difference in ocean freight paid and collected, the Appellant submits that the demand of service tax has been confirmed on the profit earned on ocean freight collected and paid during the period January 2013 to March 2016; in the impugned order, the Ld. Adjudicating authority has held that the profit earned by the Appellant has been shown in the balance sheet under ocean freight but actually they are in the nature of Information and Tracking of Delivery Schedule services provided by the Appellant to their customers. The Appellant states that the issue of taxability of profit earned on ocean freight, is no longer *res integra* as the same issue has already been decided by various Tribunals in favour of the appellant. In support of their submission, the Appellant relied on the following decisions:

a. *Tierra Logistics Pvt. Ltd. vs Commissioner of CGST and Central Excise, Kolkata South (25.09.2023 - CESTAT - Kolkata): MANU/CK/0324/2023*

b. *Haiko logistics India pvt. Ltd. Versus Commissioner of Service Tax - DELHI-III [(2023) 13 Centax 79 (Tri.-Del)]*

c. *M/s Balmer Lawrie and Company Ltd. Vs The Commissioner Of Service Tax Delhi II Commissionerate [2023-TIOL-346-CESTAT-DEL]*

d. *M/s Tiger Logistics (India) Ltd. vs Commissioner of Service Tax-II, Delhi [2022 (63) G.S.T.L. 337 (Tri. - Del.)]*

e. *Bhatia Shipping Private Limited vs Commissioner of Service Tax, Mumbai [2022-TIOL-116-CESTAT-MUM]*

f. *Direct Logistics India Pvt. Ltd. Versus Commr. Of ST., Bangalore S.T.-I [2021 (55) G.S.T.L. 344 (Tri. - Bang.)]*

Accordingly, the appellant submits that the demand confirmed in the impugned order on this count is not sustainable.

2.3. As regards demand of Service Tax of Rs. 46,39,520/- (including cess) in relation to cargo handling services, the Appellant submits that the demand of service tax has been erroneously confirmed by the Ld. Adjudicating authority without appreciating the nature of expenses, which are reimbursable expenses during the course of provision of CHA services. The Appellant states that such expenses related to AD Code Registration charges, Custom Clearance charges, Port charges, EDI Registration charges, AWB fee etc. which were nothing but reimbursement of actual expenses and hence they cannot form part of consideration for levy of service tax. In this regard, the Appellant relies on the decision of CESTAT New Delhi in the case of *Commissioner of Service Tax, New Delhi v. Karam Freight Movers [2017 (4) G.S.T.L. 215 (Tri. - Del.)]* and CESTAT Ahmedabad in the case of *Suraj Forwarders v. Commissioner of Service Tax, Ahmedabad [2016 (42) S.T.R. 843 (Tri. - Ahmd.)]* wherein it has been held that the amounts reimbursed on actual basis are not to be included in the taxable value for Service Tax purpose. Thus, the Appellant submits that the demand confirmed in the impugned order on account of cargo handling service is liable to be set aside.

2.4. Regarding confirmation of demand of Rs.2,96,020/- on Director Sitting Fees, the Appellant submits that they are not contesting this demand and they have already paid this amount; hence, it is submitted that no penalty is imposable on this demand confirmed in the impugned order.

2.5. As regards Confirmation of demand of Service Tax of Rs. 1,05,68,818/- (including cess) on transportation charges as recipient of services, the Appellant submits that the demand has been raised only on the basis of the head of expense mentioned in the trial balance sheet without any verification to ascertain whether the expenses incurred were liable for service tax. The Appellant submits that in order to run their business of transportation, they have hired trucks from various individuals as well as local markets who in turn transported the goods of the customers of the Appellant; in this scenario, the various individual truck owners raise invoices for the transportation done on the behalf of the Appellant and they in turn collect these charges from their customers for providing the said transport services. The Appellant submits that the services provided by the various local truck owners are not liable for service tax under GTA service, as there was no consignment note issued by such persons to the Appellant; the goods were moved on the 'consignment note' issued by the Appellant to their customers and on the value of which the customers of the Appellant were paying service tax under reverse charge mechanism as per section 68(2) of the Finance Act, 1994. The Appellant submits that the Ld. adjudicating authority has totally erred in not allowing the benefit of exemption Notification No. 25/2012-ST dated 20.06.2012; he has not even discussed the eligibility of the benefit of the notification to the appellant in the order passed. Thus, the Appellant submits that the demand confirmed in the impugned order on this count is not sustainable.

3. The Ld. Authorized Representative appearing for the Revenue reiterated the findings in the impugned order.

4. Heard both sides and perused the appeal documents.

5. We observe that the ld. adjudicating authority has confirmed the demand under various categories. The Appellant has accepted the demand of service tax of

Rs.2,96,020/- confirmed in the impugned order on the 'Director Sitting Fees' and contested the remaining demands. Regarding the demand of Rs.2,96,020/- confirmed on the Director Sitting Fees, we observe that the Appellant has already paid this amount, but not paid the interest. Accordingly, we uphold the demand of service tax along with interest confirmed in the impugned order on this count. As there is no suppression of fact with intention to evade the tax established in this case, we hold that no penalty is imposable on the Appellant on this demand confirmed and upheld.

5.1. Regarding the demand of Service Tax of Rs. 10,11,406/- (including cess) confirmed in the impugned order on the commission/brokerage received by the appellant from Shipping Lines, we observe that there is no taxable service rendered by the appellant to the shipping lines and the commission earned is on account of booking of cargo with the shipping lines over the years. This amount is not liable for service tax under the category of business auxiliary service, as there is no agreement of 'commission agent' between the Appellant and shipping lines. This view has been taken by the Larger Bench of the Tribunal in the case of *Kafila Hospitality & Travels Pvt. Ltd.[2021-TIOL-159-CESTAT-DEL-LB] (Service Tax Appeal No. 59716 of 2013 – Interim Order No. 04 of 2021 dated 18.03.2021 – CESTAT, New Delhi – decided vide Final Order No. 51831 of 2021]*, wherein it has been held that the commission earned for selling of space by the shipping lines is not liable to service tax under the category of 'business auxiliary service'. The relevant paragraphs of the said decision are reproduced below: -

> *"75. Section 67 of the Act deals with valuation of taxable services for charging service tax. 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.*
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> *76. In this connection, it would be appropriate to refer to the decision of the Supreme Court in Union of India vs. Intercontinental Consultancy and Technocrats. 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.*
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> *77. 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 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 pre-determined target, incentives will not be paid to the travel agents."*

By relying on the decision of the Larger Bench cited above, we hold that the demand confirmed in the impugned order on this count is not sustainable and accordingly, we set aside the same.

5.2. Regarding the demand of Service Tax of Rs. 1,37,14,491/- (including cess) confirmed in the impugned order, we observe that this demand has been confirmed on the profit earned by the Appellant on the ocean freight collected and paid during the period from January 2013 to March 2016. We observe that in the impugned order, the ld. adjudicating authority has held that the profit earned by the Appellant are in the nature of Information and Tracking of Delivery Schedule services provided by the Appellant to their customers. We observe that there is no finding in the impugned order to substantiate this allegation. From the records submitted by the Appellant we find that the amount involved in this regard are the profit earned by the Appellant from ocean freight. Further, we observe that the issue of taxability of profit earned on ocean freight is no longer *res integra* as the same issue has already been decided by this Tribunal in the case of *Tierra Logistics Pvt. Ltd. (25.09.2023 - CESTAT - Kolkata) : MANU/CK/0324/2023 [Final Order Nos. 76774-76775 of 2023 dated 25.09.2023 in Service Tax Appeal No. 76501 of 2018 (CESTAT, Kolkata)].* The relevant part of the said decision is reproduced below: -

> *"17. In their submissions, the Appellant claimed that this income is pertaining to Ocean Freight, which is derived from transportation of containerized goods through international ocean water outside the jurisdiction of India. We observe that the space for transportation of containerized goods outside the territorial water of the country has been bought by the Appellant company in a bulk and thereafter sold to other companies on principal to principal basis. In this sale they earn a margin of profit over the cost incurred by them on such bulk purchase. Since this transaction is entirely conducted on principal-to-principal basis and not on Principal - to - Agent basis, we hold that the income derived would not fall within the ambit of Business Support Service. In the impugned order, it has been held that the Appellant*

has realized income in the form of margin arising out of difference between the ocean freight income and ocean freight expenses as indicated in their trial balance. It has been held that the excess realization effected during the course of providing or arranging freight facility to the customer would fall within the purview of 'Business Support Service' in terms with Section 65 (105) (zzzq) of the Finance Act 1994. In this regard, we observe that the principal to principal transactions of buying space for transportation of containerized goods outside the territorial water of the country and selling the same to the other entities involves the Appellant taking the risk of making commitment for canvassing cargo for allotment of space as a principal. As per the definition of Business Support Service, any activity which is rendered on behalf of another person ie, when the relationship is in the nature of principal-to-agent, then only such activity is liable to service tax under the category of Business Support Service. In the instant case, the Appellant were buying the space for transportation of containerized goods outside the territorial water of the country and selling the same to their clients in their own capacity and is not obligated to work on principal-to-agent relationship. Accordingly, we hold that the income received by the Appellant is not liable to service tax under the category of 'Business Support Service' as confirmed in the impugned order.

18. We observe that the issue stands settled by several decisions of this Tribunals cited by the Appellant. In the case of Direct Logistics India Pvt. Ltd. Vs. Commissioner of S.T. 2021(55)GSTL 344(T) this Tribunal observed has held as under :

> *"..*
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> *14. It is undisputed that the appellant is registered with service tax department for "Clearing and Forwarding Agent Service" and has been paying service tax on the service charges. What is exigible to service tax under Section65(105)(j) is any service provided or to be provided to a client by a Clearing and Forwarding Agent in relation to clearing and forwarding operations in any manner. Transport of goods is distinct from clearing and forwarding operations. In this case, the appellant is not only providing clearing and forwarding service but is also providing transport on its own account to its clients by purchasing freight space on the ships from the shipping lines. In some cases, they buy the space on the ship specifically to meet the requirement of the client and in other cases, the appellant buys space on the ship in*

anticipation of the clients' requirement and then sells the space to the clients. Trading in Ocean Freight is not a service being rendered to the client and no amount is being paid by the client to the appellant as per the records towards trading of cargo space. Evidently as any prudent business world, the appellant is buying space on the cargo ship at a lower price and selling it to its client at a higher price. The difference is its profit. It would have been a different case, if the appellant is organizing space on the ship for their clients and the client is paying shipping line directly and the service of organizing or arranging the space on the ship, the appellant gets paid service charge by the client. In such an arrangement, the amount being received would be a consideration for the service. The present arrangement is an arrangement of the trader who buys cargo space at a lower price and sells it at a higher price and enjoys the margin as profit.

15. The nature of the transaction is also clear from the fact that there are cases on record where the appellant had booked the space for higher amount on the ship but due to market conditions, had to sell the space to its customers at a lower price incurring loss. Therefore, in our considered view, the profits gained by the appellant by buying space on ships at lower price and selling at a higher price to the customers cannot by any stretch of imagination be called "Clearing and Forwarding Agent Service". No service tax can be charged on this amount. On an identical question, in the case of Sea max Logistics Ltd. v. Commissioner of Central Excise and Service Tax, Tirunelveli, reported in 2018(7) TMI262-CESTAT Chennai has held that no service tax is chargeable on the difference between the ocean freight collected from the clients and the ocean freight paid to the shipping lines.

..."

19. In view of the above discussions and by following the decisions of the Tribunals cited by the Appellant refereed above, we hold that the demands confirmed in the impugned order on this count is not sustainable and accordingly, we set aside the same."

By relying on the decision of the Tribunal cited above, we hold that the demand confirmed in the impugned order on this count is not sustainable and accordingly, we set aside the same.

5.3. Regarding the demand of Service Tax of Rs.46,39,520/- (including cess) in relation to cargo handling services, we observe that the demand of service tax has been confirmed by the ld. adjudicating authority on the amounts received by the appellant as 'reimbursable expenses' during the course of provision of CHA services. We find that the such expenses received by the appellant are related to AD Code Registration charges, Custom Clearance charges, Port charges, EDI Registration charges, AWB fee etc. which were nothing but 'reimbursement' of actual expenses and hence they cannot form part of consideration for levy of service tax. In support of this contention, we rely on the decision of CESTAT New Delhi in the case of *Commissioner of Service Tax, New Delhi v. Karam Freight Movers [2017 (4) G.S.T.L. 215 (Tri. - Del.)]* wherein it has been held that the amounts reimbursed on actual basis are not to be included for Service Tax purpose. The relevant paragraphs of the said decision are reproduced below:-

> *"9. Against the above categorical finding on facts, we note that the appeal by Revenue did not bring out any contrary evidence to persuade as to vary the said findings. Further, we also note that the reliance placed by the Revenue on the provisions of Rule 5(1) of Valuation Rules is of no consequence. In any case, we also note that the said Rule is found to be ultra vires of the main statutory provision for valuation under Finance Act, 1994 by the Hon'ble Delhi High Court in Intercontinental Consultants and Technocrats Pvt. Ltd. v. Union of India - 2013 (29) S.T.R. 9 (Delhi).*

> *10. We also note that the Tribunal in CST v. Lee & Muirhead Pvt. Ltd. - 2012 (26) S.T.R. 249 (Tri-Chennai), Aspinwall & Co. Ltd. v. CCE, Mangalore - 2011 (21) S.T.R. 257 (Tri.-Bang.) & Suraj Forwarders v. CST, Ahmadabad - 2016 (42) S.T.R. 843 (Tri.-Ahmd.) had occasion to examine the includibility of reimbursable expenditure in the taxable value for CHA service. It is held that when amounts are reimbursed on actual basis, the said charges are not to be included for service tax purpose."*

Thus, by relying on the decision cited above, we hold that the demand confirmed in the impugned order on account of cargo handling service is not sustainable and hence we set aside the same.

5.4. Regarding confirmation of demand of Service Tax of Rs.1,05,68,818/- (including cess) on transportation charges as recipient of services, we observe that the demand has been raised on the basis of the head of expense mentioned by the Appellant in the trial balance sheet. The Appellant submits that in order to run their business of transportation, they have hired trucks from various individuals as well as local markets who in turn transported the goods of the customers of the Appellant. The individual truck owners raise invoices for the transportation done on the behalf of them and they in turn collect these charges from the customers for providing the said transport services. The Appellant submitted copies of invoices raised by the truck owners. On verification, we find that these invoices were raised for 'Hire charges' and not for transportation of goods, except one invoice raised by M/s. Rishab Trans Management dated 05.01.2017. Copy of the same is extracted below: -

358

RISHAB TRANS MANAGEMENT

BILL No: RTM/17/040	DATE : 05/01/2017

Name: Speedways Logistics Pvt. Ltd.

Address: P66, C.G.R Road, Kolkata - 700043

Sl No.	Particulars	Rate
	Transportation Charge P&H 1055 Crane from Calcutta to Barh by trailer no; NL02K/8385, NL01D/3952 & NL01D/9852	420,000.00
	N.B:- Service Tax to be paid by Party.	
	TOTAL FREIGHT	420,000.00
	LESS ADVANCE	250,000.00
	BALANCE DUE	170,000.00

Amount in Words: One lac and seventy thousand only.

PARTHA SARMA
Superintendent
CGST, Kolkata Zonal Unit
42, Karaya Road, Kolkata-700017

Signature
RISHAB TRANS MANAGEMENT

From the invoice extracted above, we observe that the invoice has been raised on the Appellant for transportation of the goods and it has been categorically mentioned in the said invoice that the Service Tax is to be paid by the Party. Accordingly, in respect of this invoice, the liability of payment of Service Tax on the freight amount of Rs.4,20,000/- is on the Appellant. Therefore, we hold that the Appellant is liable to pay Service Tax on this invoice on the freight amount of Rs.4,20,000/- under the category of GTA Service, along with interest.

5.5. In respect of the remaining demand confirmed under the category of GTA Service, we observe that the services provided by the various local truck owners are not related to goods transportation service as there was no 'consignment note' issued by such persons to the Appellant. The goods were moved on the 'consignment note' issued by the Appellant to their customers and on the value of which the customers of the Appellant were liable to pay service tax as recipients of service. Thus, in this regard, we hold that the Appellant is not liable to pay service tax under the category of GTA service and hence the demand confirmed in the impugned order on this count, except the one invoice extracted above at paragraph 5.4 (*supra*), is not sustainable and accordingly, we set aside the same.

6. In view of the above discussions, we pass the following order:

(i) The demand of Service Tax of Rs.10,11,406/- (including cess) confirmed in the impugned order on the commission/brokerage received by the Appellant from Shipping Lines, is set aside.

(ii) The demand of Service Tax of Rs.1,37,14,491/- (including cess) confirmed in the impugned order on the profit earned by the Appellant on the ocean freight is set aside.

(iii) The demand of Service Tax of Rs.46,39,520/- (including cess) in relation to cargo handling services is set aside.

(iv) Out of the demand of Service Tax of Rs.1,05,68,818/- (including cess) confirmed in the impugned order on the expenses incurred by the

Appellant towards transportation charges as recipient of services, the appellant is liable to pay Service Tax under the category of GTA Service, along with interest, on the freight amount of Rs.4,20,000/- as per the invoice dated 05.01.2017, as already discussed in paragraph 5.4 of this Order (*supra*). However, we hold that no penalty is imposable on the Appellant on this demand confirmed. The remaining portion of the demand confirmed under this head in the impugned order under the category of GTA Service, is set aside.

(v) The demand of service tax of Rs.2,96,020/- confirmed in the impugned order on the Director Sitting Fees is upheld. The Appellant is liable to pay interest on this demand confirmed. As there is no suppression of facts with intention to evade the tax established in this case, no penalty is imposable on the Appellant on this demand confirmed.

(vi) The appeal filed by the Appellant is disposed of on the above terms.

(Order pronounced in the open court on **22.08.2024**)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd