CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 88100 of 2019

(Arising out of Order-in-Appeal No. IM/CGST A-1/MUM/359&360/18-19 dated 31/08/2018 passed by Commissioner (Appeals-I), CGST & Cx., Mumbai-400012)

M/s Bhatia Shipping Private Limited .... Appellant

VERSUS

Commissioner of Service Tax-I
Mumbai .... Respondent

AND

Service Tax Appeal No. 88102 of 2019

(Arising out of Order-in-Appeal No. IM/CGST A-1/MUM/359&360/18-19 dated 31/08/2018 passed by Commissioner (Appeals-I), CGST & Cx., Mumbai-400012)

M/s Bhatia Shipping Private Limited .... Appellant

VERSUS

Commissioner of Service Tax-I
Mumbai .... Respondent

APPEARANCE:

Shri Bharat Raichandani & Ms. Ankita Vashita, Advocates for the Appellant
Shri S.B. Hatangadi, Authorized Representative of the Department

CORAM: HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85046-85047/2022

DATE OF HEARING : September 01, 2021
DATE OF DECISION : January 27, 2022

JUSTICE DILIP GUPTA

Service Tax Appeal No.88100 of 2019 and Service Tax Appeal No. 88102 of 2019 have been filed to assail the order dated 31.08.2018 passed by the Commissioner of Central Tax (Appeals-I) Mumbai[1] by which the two appeals filed by M/s Bhatia Shipping Pvt. Ltd.[2] to assail the orders dated 08.01.2016 and 26.04.2016 passed by the Additional Commissioner have been dismissed.

2. In **Service Tax Appeal No. 88100 of 2019** the show cause notice dated 05.01.2016 was issued to the Appellant for the period 01.04.2014 to 31.03.2015. The Additional Commissioner by the impugned order dated 26 April, 2016 confirmed the demand with interest and penalty.

3. In **Service Tax Appeal No. 88102 of 2019,** three show cause notices are involved. The show cause notice dated 24.09.2012 is for the period from 01.04.2011 to 31.03.2012. The second show cause notice dated 22.10.2013 is for the period 01.04.2012 to 31.03.2013. The third show cause notice dated 19.01.2015 is for the period 01.04.2013 to 31.03.2014. All the three show cause notices were adjudicated upon by a common order dated 08.01.2016 by the Additional Commissioner. While the demand imposed in the show cause notice dated 24.09.2012 was dropped, the demands proposed in the other show cause notices dated 22.10.2013 and 19.10.2015 were confirmed.

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1. **the Commissioner (Appeals)**
2. **the appellant**

4. These two orders passed by the Additional Commissioner were assailed by the appellant before the Commissioner (Appeals) who, by a common order dated 31.08.2018, dismissed both the Appeals.

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/Airlines 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[3]", covered under section 65(104) of the Finance Act, 1994[4]. 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.

7. Shri Bharat Raichandani, learned Counsel appearing for the Appellant Assisted by Ms. Ankita Vashita stated that the Department

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3. BSS
4. the Finance Act

had also confirmed the demand of service tax for the period 2008-09 to 2012-13 against one Satkar Logistics which decision was challenged by Satkar Logistics before the Tribunal in Service Tax Appeal No. 52534 of 2015 and by a decision dated August 21, 2018, the Tribunal allowed the appeal and set aside the order confirming the demand of service tax.

8. Shri S.B. Hatangadi, Learned Authorized Representative appearing for the Department has, however, placed reliance upon two decisions of the Tribunal in **Bhuvaneswari Agencies (P) Ltd.** v/s **Commissioner of Central Excise, Bangalore**[5] **a**nd **D. Pauls Consumer Benefit Ltd.** v/s **Commissioner of C. Ex., New Delhi**[6] and contended that the impugned orders do not suffer from any illegality.

9. The submissions advanced by the learned Counsel for the Appellant and the learned Authorized Representative appearing for the Department have been considered.

10. The Division Bench in the earlier decision rendered in **Satkar Logistics** 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.

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5. 2007 (8) STR 167 (Tri.-Bang.)
6. 2017 (52) S.T.R. 429 (Tri.-Del.)

Commissioner[7] **and Commissioner of Service Tax, New Delhi** V. **Karam Freight Movers**[8].

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 v/s Commissioner of Service Tax, Delhi-III**[9].

12. Learned Authorized Representative placed reliance upon the decision of the Tribunal in **Bhuvaneshwari Agencies (P) Ltd.**

13. This decision was distinguished by the Commissioner (Appeals) in the case of the appellant in the order dated 16.08.2011 and the relevant portion contended in paragraph 11 is reproduced below:-

> 11. So far as the applicability or otherwise of the ratio of the Hon'ble CESTAT decision in the case of Bhuvaneshwari Agencies (P) Ltd. Vs.CCE-2007(8) STR 1670) in the present context is concerned, I am inclined to accept the Appellant view point that the facts of the present case and the case before the Hon'ble Tribunal are totally different. In that case, the revenue was proposing to demand Service Tax from an assessee who happened to be a Custom House Agent, on the activities undertaken by them regarding arranging shipment of the export cargo and negotiating the same with chipping lines on behalf of their clients, under taxable service of the category of Business Auxiliary Service. The Hon'ble Tribunal held that the aforesaid service rendered by the CHA would fall under the category of 'Steamer Agent and not under the Business Auxiliary Service. In the present case the facts are not so. The Appellants are neither booking nor advertising nor canvassing for cargo for and on behalf of shipping line. Their activities are confined to mere purchase and sale of space on board a ship which alone will not make the Appellants a steamer agent. Therefore, I hold that the ratio of the Hon'ble CESTAT decision in the case of Bhuvaneshwar Agencies (P) Ltd. Vs.CCE-2007(6) STR 167(T) is not applicable in the present case. On the contrary, I find that the case law cited by the Appellants in support of their contentions do support their view points.

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7. 2016 (43) STR 215 (Tribunal)
8. 2017 (4) GSTL 215 (Tri.-Del)
9. Service Tax Appeal No. 50411 of 2016 and Service Tax Appeal No. 51262 of 2017 decided on 10.08.2021

14. It has been stated that the aforesaid order was accepted by the Department and no appeal was filed.

15. Learned Authorized Representative also placed reliance upon the order of the Tribunal rendered in **D. Pauls Consumer Benefit Ltd**.

16. This decision in **D. Pauls Consumer Benefit Ltd**. was overruled by Larger Bench of the Tribunal in **Kafila Hospitality & Travels Pvt. Ltd. v/s Commissioner, Service Tax, Delhi**[10] in the reference answered on March 18, 2021.

17. Thus, for all the reasons stated above the impugned order dated 31.08.2018 passed by the Commissioner (Appeals) cannot be sustained and is set aside. The two appeals are, accordingly, allowed.

(Order pronounced in the open Court on **27.01/2022**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.ANJANI KUMAR)
MEMBER (TECHNICAL)

Rekha

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10. Service Tax Appeal No. 59716 of 2013 decided on March 18, 2021.