CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 86271 of 2016

(Arising out of Order-in-Original No. 61-62/ST-V/SKD/2015-16 dated 13.01.2016 passed by the Commissioner of Service Tax-V, Mumbai)

M/s Team Global Logistics Private Limited **.... Appellant**
701, 702 A Wing, Times Square Building,
Andheri Kurla Road, Andheri (East),
Mumbai – 400 059.

Versus

Commissioner of Service Tax-V, Mumbai **.... Respondent**
4th Floor, Utpad Shulk Bhawan, Plot No, C-24,
Sector – E, Bandra Kurla Complex, Bandra (East),
Mumbai – 400 051.

APPEARANCE:

Ms. Puloma Dalal, Chartered Accountant for the Appellant

Shri S.B.P. Sinha, Authorized Representative for the Respondent

WITH

Service Tax Appeal No. 86964 of 2016

(Arising out of Order-in-Original No. 61-62/ST-V/SKD/2015-16 dated 13.01.2016 passed by the Commissioner of Service Tax-V, Mumbai)

Commissioner of Service Tax-V, Mumbai **.... Appellant**
4th Floor, Utpad Shulk Bhawan, Plot No, C-24,
Sector – E, Bandra Kurla Complex, Bandra (East),
Mumbai – 400 051.

Versus

M/s Team Global Logistics Private Limited **.... Respondent**
701, 702 A Wing, Times Square Building,
Andheri Kurla Road, Andheri (East),
Mumbai – 400 059.

Appearance:

Shri S.B.P. Sinha, Authorized Representative for the Appellant

Ms. Puloma Dalal, Chartered Accountant for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87610-87611/2024

Date of Hearing: 29.10.2024

Date of Decision: 29.10.2024

Per: S.K. MOHANTY

Brief facts of the case are that the assessee-appellant is engaged in providing services relating to export and import of cargo. For the said purpose, it was registered with the jurisdictional Service Tax Department under various category of services, defined under the Finance Act, 1994. It is also a Multi-modal Transport Operator (MTO) and is registered with the Director General, in the Directorate of Shipping, as per Section 4(3) of the Multi Modal Transportation of Goods Act, 1993. During the course of audit under the EA-2000, the Service Tax authorities noticed that the assessee-appellant had collected service charges on account of documentation, destuffing, transportation, issue of delivery orders etc., in respect of impot cargo and terminal handling, documentation charges etc., in respect of export cargo and had duly discharged the service tax liability thereon. However, during the course of scrutiny of records, the Audit Wing noticed that the assessee-appellant had shown additional income under the head 'operating income' in the financial accounts for the year 2006-07 to 2008-09, but had not declared the same in the ST-3 returns. Accordingly, the officers in the Audit Wing had concluded that the said operating income was received by the assessee-appellant on account of provision of the taxable services, which had not suffered payment of service tax thereon. On the basis of such understanding, the Department had initiated show-cause proceedings against the assessee-appellant, which culminated into the Order-in-Original dated 13.01.2016 (impugned herein), wherein the learned Commissioner of Service Tax, Mumbai-V has confirmed the demands, as per the proposals made in the show-cause notices. Feeling aggrieved with the impugned order, the assessee-appellant has filed the present appeal before the Tribunal. Revenue has also assailed the impugned order dated 13.01.2016 on the ground that extending the cum-tax benefit is contrary to the statutory provisions.

2. Heard both sides and perused the case records.

3. We find that the original authority in the impugned order, at paragraph 11, has recorded the activities undertaken by the assessee-appellant, stating that it is engaged in providing the business of freight forwarding, as a MTO; that the MTO's in common parlance are also known as freight consolidator/freight forwarders; the assessee-appellant issues its own carrier

house bill of lading and is responsible for cargo undertaken by it; the master bill of lading is always issued by the shipping line and on the basis of these documents, the assessee-appellant further issues its house bill of lading in favour of its customers i.e., shippers; the assessee-appellant buys cargo space in any vessel operating by any shipping line and in turn sales the same as a whole (i.e. container space) or in fragments, known as activity of consolidation of various exporters/importers (shippers); the purchase of booking of space is made from the shipping lines and the sale is made to client at a price higher than the purchase price. Such *modus operandi* adopted by the assessee-appellant and the margin of income earned by it was interpreted by the Department as provision of taxable service under the category of "Business Auxiliary Service (BAS)".

4. On reading of said paragraph 11 in the impugned order, it would transpire that the assessee-appellant is engaged in buying of cargo's space from the shipping lines and selling the same to its customers i.e., the shippers. Thus, the assessee-appellant had undertaken the activities of sale and purchase of cargo's space on principal-to-principal basis and there is no element of the concept of agency, in order to be categorized as a taxable service under BAS. We find that though the adjudicating authority has accepted the fact that there is no involvement of the dealings between the principal and agent and the transaction made by the assessee-appellant with both sides is on principal-to-principal basis, but in paragraph 13, he has held that the cargo space was not directly procured by the customers from the shipping line and the same were procured by the assessee-appellant on their behalf as an agent. Therefore, we are of the view that there is contradiction in the stand taken by the Revenue that assessee-appellant had transacted its business on principal-to-principal basis and also in the capacity of principal and agent. Since the assessee-appellant had procured the space from the shipping lines, without the involvement of its customers and sold the same of its own without involvement of any third party, such transaction, in our considered view, cannot fall under the scope and ambit of BAS inasmuch as in order to be categorized under the purview of the said taxable service, there must be involvement of at least three parties, which is absent in the present case.

5. We find that the issue arising out of the present dispute is no more open for any debate, in view of the decisions rendered by the co-ordinate Benches of the Tribunal in the following cases: -

a. *Team Global Logistics Pvt. Ltd. Vs. Commissioner & Ors. (Final Order No. 41113-41114/2023 dated 13.12.2023).*
b. *Commissioner of Service Tax, Mumbai Vs. Greenwich Meridian Logistics (I) Pvt. Ltd. – 2016-TIOL-869-CESTAT-MUM.*
c. *Commissioner of Service Tax, New Delhi Vs. EMU Lines Pvt. Ltd. – 2017-TIOL-4246-CESTAT-DEL.*
d. *Commissioner of Service Tax, New Delhi Vs. M/s Karam Freight Movers – 2017-TIOL-907-CESTAT-DEL.*

6. In view of the foregoing discussions, we do not find any merits in the impugned order, insofar as the adjudged demands were confirmed therein against the assessee-appellant. Therefore, the impugned order is set aside and the appeal is allowed in favour of the assessee-appellant. Since, the adjudged demands confirmed in the impugned order has been set aside, the appeal of Revenue cannot also be sustained. Thus, appeal filed by the Revenue is also dismissed.

7. In the result, the appeal filed by assessee-appellant is allowed and Revenue's appeal is dismissed.

(Operative portion of the order pronounced in open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha