

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

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 85565 of 2016

(Arising out of Order-in-Original No. 28-30/ST-V/SKD/15-16 dated 16.11.2015 passed by the Commissioner of Service Tax-V, Mumbai)

CEVA Freight (India) Private Limited

A-902 & 903, 9th Floor, The Qube, M.V. Road,
Andheri (East), Mumbai – 400 059.

.... Appellants

Versus

**Commissioner of Service Tax-V, Mumbai
(Now Commissioner of CGST, Mumbai East Commissionerate)**

4th Floor, Utpad Shulk Bhawan,
Plot No.C-24, Sector-E, Bandra Kurla Complex
Bandra (East), Mumbai – 400 051.

.... Respondent

APPEARANCE:

Shri Gajendra Jain along with Shri Aditya Jain, Advocates for the Appellant

Shri Shambhoo Nath, Special Counsel for the Respondent

CORAM:

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

FINAL ORDER NO. A/86821/2025

Date of Hearing: 09.06.2025

Date of Decision: 19.11.2025

Per: M.M. PARTHIBAN

This appeal has been filed by M/s CEVA Freight (India) Private Limited, Mumbai (herein after, referred to as "the appellants", for short) assailing the Order-in-Original No. 28-30/ST-V/SKD/15-16 dated 16.11.2015 (herein after, referred to as "the impugned order") passed by the Commissioner of Service Tax-V, Mumbai.

2.1 The brief facts of the case are that the appellants herein are engaged *inter alia*, in the business of booking of cargo, freight forwarding, customs brokerage, logistics and supply chain management, freight transportation, etc. for which they charge their customers in the form of freight, handling charges and various other charges. The appellants were undertaking the above services by shipment of both inbound and outbound consignment of cargo by air transportation, sea transportation, firstly negotiating with various airlines, shipping lines for purchase of bulk spaces on board the

ship/ aircraft from the respective shipping lines, airlines in advance at a negotiated price, on a principal to principal basis, and later they were offering the services of freight space for inbound/outbound transportation to their customers. The appellants issue invoices to their customers for sale of space for cargo on ship/aircraft and also issue their own House Bill of Lading/Airway Bill. For the purpose of payment of service tax on taxable output services and for compliance with the Service Tax statute, they are registered with the jurisdictional Commissionerate under service tax registration No. AAACC2674HST004.

2.2 During the course of EA-2000 audit conducted on the records maintained by the appellants, the department had observed that in respect of aforesaid services provided by the appellants, they are collecting markup over and above the ocean freight/air freight charges which is the actual amount of ocean/air freight; earned certain margin/commission on freight income, which is shared with overseas group companies by adopting incorrect valuation method, which are liable to service tax. Further, the appellants shared certain reimbursement expenditure incurred as commission expenses with their group companies situated abroad, which are taxable on reverse charge basis at the hands of appellants under Section 66A of the Finance Act, 1994. Accordingly, the department interpreted that the services rendered by the appellants are covered under the taxable category of 'Business Auxiliary Service' (BAS) in terms of Section 65(105)(zzb) of the Finance Act, 1994 read with definition provided under Section 65(19) *ibid*; and under 'Business Support Services' (BSS) in terms of Section 65(105)(zzzq) of the Finance Act, 1994 read with definition provided under Section 65(104c) *ibid*.

2.3 Since, the appellants had failed to pay appropriate service tax to the government exchequer, the department had issued three Show Cause Notices (SCNs) dated 22.10.2013, 01.05.2014 and 07.04.2015 demanding service tax of under the category of BAS/BSS during the periods (i) 2008-2009 to 2011-2012 (ii) April,2012 to September, 2013 (iii) October, 2013 to September, 2014 under Section 73(1)/73(1A) *ibid* along with interest and for imposition of penalty on the appellants under Sections 76, 77, 78 *ibid*. The matter arising out of the above SCNs was adjudicated *vide* the impugned order dated 16.11.2015 in confirming all the proposals made therein. Feeling aggrieved with the impugned order, the appellants have preferred this appeal before the Tribunal.

3.1 Learned Advocate appearing for the appellants submitted that they had purchased freight space in advance and then sold such freight space to their customers; the difference between the purchase price and sale price of freight space is the margin for the appellants. This margin could either be positive, resulting into profit; or negative, incurring loss, as it is subject to variety of reasons such as non-availability of customers, poor export market conditions, macroeconomic downturn etc. Further, the shipping lines/air lines issue the Bill of Lading/Master Air Way Bill (MBL/MAWB) for the total space procured by the appellants, and when the appellants sell the individual cargo space required by their customers, they issue House Bill of Lading/House Air Way Bill (HBL/ HAWB) to such individual customers. The HBL/ HAWB is document of title, which states that in case there is any deficiency in provision of ocean/air freight services, the appellants would be responsible for the same, as they provide the service of transportation of goods by sea/air to their customers on they provide one account. Therefore, these transactions are in the nature of a principal to principal basis, and the appellants are in no way connected with marketing or promoting of the business of shipping lines/airlines. Therefore, he stated that such services rendered by the appellants cannot be covered under BAS. In support of the same, he relied upon the decisions of the Tribunal in the case of *Total Transport Systems Private Limited. Vs. Commissioner of CGST & Service Tax, Mumbai* and *EMU Lines Pvt. Ltd Vs. Commissioner of CGST & Service Tax, Belapur*. Learned Advocate also referred to the clarification issued by Central Board of Excise and Customs (CBEC) in the educational guide, wherein it was clarified that the freight forwarder acting on his own account cannot be called as intermediary. Further, he stated that such services provided for export cargo/outbound consignment would get covered under Rule 10 of Place of Provision of Service Rules, 2012 to be treated as exports; and such services provided for import/inbound consignment would get covered under non-taxable entry under 66D(p) of the negative list, and therefore these are not be liable to service tax.

3.2 As regards the amounts received from their overseas group companies, it is simply sharing of cost between their group companies towards reimbursement of expenses, incurred on cost-to-cost basis, along with allocation of additional service charges agreed between them, and there is no element of service involved. Therefore, he submitted that there is no scope for levy of service tax on such activities.

3.3 With respect to procurement of international transportation of cargo services from their group overseas companies and subsequently providing services of sale of cargo space to their customers, he stated that the margin derived from such activity is in the nature of trading of freight, and since the transactions are on principal to principal basis, these cannot be termed as BAS for charging service tax on reverse charge basis.

3.4 Furthermore, learned Advocate submitted that the issues under dispute has been settled in a number of judicial pronouncements passed by this Tribunal and such orders affirmed by the Hon'ble High Court of Bombay and Hon'ble Supreme Court. In this regard, he relied upon the following case laws:

(i) *Total Transport Systems Limited Vs. Commissioner of CGST & Service Tax, Mumbai* – 2024 (5) TMI 723 CESTAT Mumbai

(ii) *Greenwich Meridian Logistics (I) Pvt. Ltd. Vs. Commissioner of Service Tax, Mumbai* – 2016 (43) S.T.R. 215 (Tri-Mumbai.) which is upheld by Hon'ble High Court of Bombay in 2019 (28) G.S.T.L. 591 (Bom.) and the appeal thereon by department was dismissed by Hon'ble Supreme Court in Civil Appeal Diary No.6897 of 2019

(iii) *EMU Lines Private Limited Vs. Commissioner of CGST & Service Tax, Belapur* – 2023 (72) G.S.T.L. 373 (Tri. Mumbai.)

(iv) *Gujarat State Fertilizers & Chemicals Limited & Another Vs. Commissioner of Central Excise* - 2016 (45) S.T.R. 489 (S.C.)

(v) *Commissioner of Service Tax, Mumbai-VII Vs. A.T.E. Enterprises Private Limited* – 2018 (8) G.S.T.L. 123 (Bom.)

Thus, it is contended by the learned Advocate that the impugned order upholding confirmation of the adjudged demands cannot be sustained.

4. On the other hand, learned Special Counsel appearing for the Revenue reiterated the findings recorded in the impugned order. He further stated that the appellants have charged certain markup charges in addition to actual ocean/air freight charges collected by shipping lines/air lines, and these amounted to promotion or marketing of services rendered by such shipping lines/air lines, and thus the appellants are liable for payment of service tax on these charges. The appellants had accounted for the receipts from their overseas group companies as shared service income, but provided support services of business or commerce of their overseas shipping companies and thus the entire gross receipts shall be treated as consideration for providing such services. Hence, he stated that the appellants are liable to pay service tax on such charges. Furthermore, he stated that in respect of commission expenses, margin share on freight

incurred by the appellants, being the service recipient in India, they are liable to pay service tax on reverse charge basis, as concluded in the impugned order. Hence, he prayed that the appeal filed by the appellants may not be entertained.

5. Heard both sides and perused the case records along with paper books submitted by both sides.

6. The issue for decision before the Tribunal is to determine whether the confirmation of adjudged demands under the taxable category of Business Auxiliary Services' (BAS) and 'Business Support Services' (BSS) in the impugned order dated 16.11.2015 by invoking extended period of limitation is sustainable or otherwise. We find that the disputed period of the transactions is from 2008-2009 to September, 2014, i.e., both pre Negative List period, prior to 01.07.2012 and post Negative List regime, after 01.07.2012.

7. In order to address the above issue, we would like to refer the relevant legal provisions contained in Chapter V of the Finance Act, 1994 as it existed during the disputed period in respect of the taxable service under dispute.

Finance Act, 1994

"Definitions.

Section 65. *In this Chapter, unless the context otherwise requires,—*

xxx

xxx

xxx

(19) "business auxiliary service" means any service in relation to
 (i) promotion or marketing or sale of goods produced or provided by or belonging to the client; or
 (ii) promotion or marketing of service provided by the client; or
 (iii) any customer care service provided on behalf of the client; or
 (iv) procurement of goods or services, which are inputs for the client; or
Explanation.—For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "inputs" means all goods or services intended for use by the client;
 (v) production or processing of goods for, or on behalf of, the client;
 (vi) provision of service on behalf of the client; or
 (vii) a service incidental or auxiliary to any activity specified in sub clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision, and includes services as a commission agent, but does not include any activity that amounts to manufacture of excisable goods.

(b) "excisable goods" has the meaning assigned to it in clause (d) of section 2 of the Central Excise Act, 1944 (1 of 1944);

- (c) wilful mis-statement; or
- (d) suppression of facts; or
- (e) contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax,

the person, liable to pay such service tax or erroneous refund, as determined under sub-section (2) of section 73, shall also be liable to pay a penalty, in addition to such service tax and interest thereon, if any, payable by him, which shall be equal to the amount of service tax so not levied or paid or short-levied or short-paid or erroneously refunded:....”

Section 65A. Classification of taxable services.

(1) For the purposes of this Chapter, classification of taxable services shall be determined according to the terms of the sub clauses of clause (105) of section 65.

(2) When for any reason, a taxable service is, prima facie, classifiable under two or more sub-clauses of clause (105) of section 65, classification shall be effected as follows:—

- (a) the sub-clause which provides the most specific description shall be preferred to sub-clauses providing a more general description;
- (b) composite services consisting of a combination of different services which cannot be classified in the manner specified in clause (a), shall be classified as if they consisted of a service which gives them their essential character, insofar as this criterion is applicable;
- (c) when a service cannot be classified in the manner specified in clause (a) or clause (b), it shall be classified under the sub clause which occurs first among the sub-clauses which equally merit consideration.

Post Negative List regime(w.e.f. 01.07.2012):

65B(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

- (a) an activity which constitutes merely,—
 - (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
 - (ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or
 - (iii) a transaction in money or actionable claim;
- (b) a provision of service by an employee to the employer in the course of or in relation to his employment;
- (c) fees taken in any Court or tribunal established under any law for the time being in force.

Explanation 1.— For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply to,—

- (A) the functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or

(B) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

(C) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee before the commencement of this section..."

PLACE OF PROVISION OF SERVICES RULES, 2012

"Place of provision generally .

Rule 3 . *The place of provision of a service shall be the location of the recipient of service:*

Provided that in case of services other than online information and database access or retrieval services, where the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service.

Place of provision of services where provider and recipient are located in taxable territory. 8. Place of provision of a service, where the location of the provider of service as well as that of the recipient of service is in the taxable territory, shall be the location of the recipient of service.

Place of provision of goods transportation services.

Rule 10. *The place of provision of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of the goods: Provided that the place of provision of services of goods transportation agency shall be the location of the person liable to pay tax.*

Order of application of rules.

Fule 14. *Notwithstanding anything stated in any rule, where the provision of a service is, prima facie, determinable in terms of more than one rule, it shall be determined in accordance with the rule that occurs later among the rules that merit equal consideration."*

8.1 On plain reading of above legal provisions, for the period prior to 01.07.2012, it transpires that in order to categorize a particular activity as a 'service' and to charge service tax thereon, it should be covered under the specific category of taxable services as per defined scope of coverage under tax net, inasmuch as each of the taxable services are defined separately under clause (105) of Section 65 of the Finance Act, 1994. The definition of taxable services under the category of 'Business Auxiliary Services' (BAS) covered specifically under the taxable clause (zzb) of Section 65(105) ibid include any service provided to a client in relation to BAS. Thus, the definition provided for the phrase 'Business Auxiliary Services' under Section 65(19) ibid holds the determining test to see, whether the activity of purchase of cargo space in ship/vessels/air crafts in bulk, which is available with a particular shipping line/airline, in advance for an agreed price paid by appellants and subsequently selling the same

to different customers is covered under the scope of such definition so as to make it liable to be tax under the service tax net as per Section 65(105)(zzb) *ibid*. Similar is the case in respect of 'Business Support Service' (BSS) covered specifically under the taxable clause (zzzq) of Section 65(105) *ibid*.

8.2 We have examined the documents placed on record and the appeal papers such as invoices issued by the appellants to their customers; MBL/MAWB as well as HBL/HAWB issued by the shipping/air lines and the appellants, respectively. From the nature of transactions entered into by the appellants with the shipping line/airline, it is found to be on principal-to-principal basis. Though the actual transportation of goods during ocean voyage/air voyage is undertaken by the shipping/air lines, the appellants are not marketing or acting as agents for the shipping/air lines, but are engaged in sale of such space of container/cargo in ship's ocean voyage/aircrafts voyage. Thus, there is no element of BAS found to be existent in these transactions.

8.3 Further, the definition of Business Auxiliary Service and Business Support Service provide list of activities which are divided into two parts i.e. the "means" part and the "includes" part. The "means" part covers any service in relation to business or commerce within its sweep, but the same should have been rendered as 'commission agent'. However, the "includes" part of the definition specifies services such as promotion, marketing, sale of goods; promotion or marketing of services; customer care services; procurement or distribution services; production or processing of goods etc. Further, services incidental or ancillary to the above services were also included in the scope of such definition. We find that the sale of cargo/container space/aircraft space adopted by the appellants is not specifically mentioned in the above definition. The documents placed on record, indicate that the appellants are issuing separate invoice for the sale of space either as Full Container Load (FCL) or Less-than full Container Load (LCL) or part/full Unit Load Device (ULD) to their customers as well as Bill of Lading for the ocean voyage or Air waybill for air transportation. The shipping/air lines are charging separately on the appellants for the cargo space/container/aircraft space of the ship/airlines booked by them. Hence, we find the transaction of the appellants is on principal-to principal basis has been clearly brought out with supporting evidence. Further, it is also evident from these records that the appellants are neither agents of the shipping line/airline nor they are promoting, marketing the services of

the shipping line/ airline. In view of the above, we are of the considered view that the activities undertaken by the appellants in sale of cargo/container space/ aircraft space as explained above does not get covered under the definition of Section 65(19) *ibid* as Business Auxiliary Services' (BAS) or under the definition of Section 65(104c) *ibid* as Business Support Services' (BSS), as the case may be.

8.4 We also find that Ministry of Finance, Central Board of Excise & Customs (CBEC) in clarifying the issue of service tax on freight forwarders on transportation of goods from India have issued Circular No.197/7/2016-Service Tax dated 12.08.2016. In the said circular it is explained the distinction between persons acting as a simple booking agent and those who negotiate the terms of freight with the airline/shipping line/ocean carrier or liner as well as the actual rate with exporter/importer. The said circular of CBEC clarify that the later category who undertakes the risks associated with the voyage and issues document for transportation, undertaking the legal responsibility for transportation is not exposed with the liability to service tax as the transactions are on principal to principal basis. The relevant paragraphs of the said circular is extracted and given below:

"2.1 The freight forwarders may deal with the exporters as an agent of an airline/carrier/ocean liner, as one who merely acts as a sort of booking agent with no responsibility for the actual transportation. It must be noted that in such cases the freight forwarder bears no liability with respect to transportation and any legal proceedings will have to be instituted by the exporters, against the airline/carrier/ ocean liner. The freight forwarder merely charges the rate prescribed by the airline/carrier/ocean liner and cannot vary it unless authorized by them. In such cases the freight forwarder may be considered to be an intermediary under rule 2(f) read with rule 9 of POPS since he is merely facilitating the provision of the service of transportation but not providing it on his own account. When the freight forwarder acts as an agent of an airline/carrier/ocean liner, the service of transportation is provided by the airline/carrier/ocean-liner and the freight forwarder is merely an agent and the service of the freight forwarder will be subjected to tax while the service of actual transportation will not be liable for service tax under Rule 10 of POPS.

2.2 The freight forwarders may also act as a principal who is providing the service of transportation of goods, where the destination is outside India. In such cases the freight forwarders are negotiating the terms of freight with the airline/carrier/ocean liner as well as the actual rate with the exporter. The invoice is raised by the freight forwarder on the exporter. In such cases where the freight forwarder is undertaking all the legal responsibility for the transportation of the goods and undertakes all the attendant risks, he is providing the service of transportation of goods, from a place in India to a place outside India. He is bearing all the risks and liability for transportation. In such cases

they are not covered under the category of intermediary, which by definition excludes a person who provides a service on his account.

3.0 It follows therefore that a freight forwarder, when acting as a principal, will not be liable to pay service tax when the destination of the goods is from a place in India to a place outside India...."

Plain reading of the CBIC circular, particularly the clarification at paragraph 3, along with the facts of the present case, establish that relationship in the contractual arrangement in providing the services by the appellants are on principal-to-principal basis and therefore would qualify for not being liable to pay service tax, as clarified therein.

9.1 We find that in the case of *Total Transport Systems Limited* (supra) arising from similar set of facts, this Bench of the Tribunal has held that demand of service tax on BAS is not sustainable. The relevant paragraphs in the said order is extracted and given below:

"8.2 From the plain reading of above legal provisions, for the period prior to 01.07.2012, it transpires that in order to categorize a particular activity as a 'service' and to charge service tax thereon, it should be covered under the specific category of taxable services as per defined scope of coverage under tax net, inasmuch as each of the taxable services are defined separately under clause (105) of Section 65 of the Finance Act, 1994. The definition of taxable services under the category of 'Business Auxiliary Services' (BAS) covered specifically under the taxable clause (zzb) of Section 65(105) ibid include any service provided to a client in relation to BAS. Thus, the definition provided for the phrase 'Business Auxiliary Services' under Section 65(19) ibid holds the determining test to see, whether the activity of purchase of cargo/container space in bulk, which is available with a particular shipping line, in advance for an agreed price paid by appellants and subsequently selling the same to different customers is covered under the scope of such definition so as to make it liable to be tax under the service tax net as per Section 65(105)(zzb) ibid. From the nature of transactions entered into by the appellants with the shipping line, it is found to be on principal-to-principal basis. Though the actual transportation of goods during ocean voyage is undertaken by the shipping lines, the appellants are not marketing or acting as agents for the shipping lines, but are engaged in sale of such space of container/cargo in ship's ocean voyage. The definition of business support service provides list of activities which are divided into two parts i.e. the "means" part and the "includes" part. The "means" part covers any service in relation to business or commerce within its sweep, but the same should have been rendered as 'commission agent'. However, the "includes" part of the definition specifies services such as promotion, marketing, sale of goods; promotion or marketing of services; customer care services; procurement or distribution services; production or processing of goods etc. Further, services incidental or ancillary to the above services were also included in the scope of such definition. We find, that the sale of cargo/container space adopted by the appellants is

*not specifically mentioned in the above definition. The documents placed on record, indicate that the appellants are issuing separate invoice for the sale of space either as Full Container Load (FCL) or Less-than full Container Load (LCL) to their customers as well as Bill of Lading for the ocean voyage or combined freight charge in case of Multi-modal transport document. The shipping lines are charging separately on the appellants for the cargo space/container space of the ship booked by them. Hence, we find the transaction of the appellants is on principal-to principal basis has been clearly brought out with supporting evidence. Further, it is also evident from these records that the appellants are neither agents of the shipping line nor they are promoting, marketing the services of the shipping line. In view of the above, we are of the considered view that the activities undertaken by the appellants in sale of cargo/container space as explained above does not get covered under the definition of Section 65(19) *ibid* as Business Auxiliary Services' (BAS).*

9.2 We further find that in the case of *Greenwich Meridian Logistics (I) Pvt. Ltd.* (supra), the Co-ordinate Bench of the Tribunal has held that the services provided in connection with sale of space of cargo and the notional surplus earned thereby arises from purchase and sale of space and not by acting for a client who has space or slot on a vessel. Therefore, it was held that the same is not liable to service tax. The relevant paragraphs in the said order is extracted and given below:

"9. *The description of the taxable service in Section 65(105) of Finance Act, 1994 as well as the definition, if any, of the terms therein are the primary determinant for taxation of any service. From the observation of the Hon'ble High Court of Gujarat supra, it is clear that the provision of service is manifest by the existence of service provider performing an activity for which consideration is received from the recipient of the service. A finding on these aspects is distinctly absent in the impugned order.*

10. *The original authority has proceeded on the assumption that there is only one payment and, that too, for freight charged by the shipping line. He has rejected the possibility of trading in space or slots on vessels by holding that trading in space or slots is a figment and freight is all that is transacted. This is a patent misconstruing of the usage of that expression. Freight, though used colloquially to describe all manner of carriage, is the nomenclature assigned to the consideration for space provided on a vessel for a particular voyage. Freight is charged by the entity that is in possession of space on a vessel from an entity that requires the space for carriage of cargo.*

11. *Slots may be contracted for by the shipper or its agent with the shipping line through the steamer agent. Implicit is a uni-directional flow of consideration because the space belongs to the shipping line. Steamer agent or agent of shipper may earn commission in such a transaction. Leaving that situation aside, the contention of the appellant is that it is a 'multi-modal transport operator' which entails a statutorily assigned role in cross-border logistics. According to Section 2 of the Multi-modal Transportation of Goods Act, 1993.*

- (m) "multimodal transport operator" means any person who -
- (i) concludes a multimodal transport contract on his own behalf or through another person acting on his behalf;
 - (ii) acts as principal, and not as an agent either of the consignor, or consignee or of the carrier participating in the multimodal transportation, and who assumes responsibility for the performance of the said contract; and
 - (iii) is registered under sub-section (3) of section 4;
- and
- (a) "carrier" means a person who performs or undertakes to perform for a hire, the carriage or part thereof, of goods by road, rail, inland waterways, sea or air;

12. *The appellant takes responsibility for safety of goods and issues a document of title which is a multi-modal bill of lading and commits to delivery at the consignee's end. To ensure such safe delivery, appellant contracts with carriers, by land, sea or air, without diluting its contractual responsibility to the consignor. Such contracting does not involve a transaction between the shipper and the carrier and the shipper is not privy to the minutiae of such contract for carriage. The appellant often, even in the absence of shippers, contract for space or slots in vessels in anticipation of demand and as a distinct business activity. Such a contract forecloses the allotment of such space by the shipping line or steamer agent with the risk of non-usage of the procured space devolving on the appellant. By no stretch is this assumption of risk within the scope of agency function. Ergo, it is nothing but a principal-to-principal transaction and the freight charges are consideration for space procured from shipping line. Correspondingly, allotment of procured space to shippers at negotiated rates within the total consideration in a multi-modal transportation contract with a consignor is another distinct principal-to-principal transaction. We, therefore, find that freight is paid to the shipping line and freight is collected from client-shippers in two independent transactions.*

13. *The notional surplus earned thereby arises from purchase and sale of space and not by acting for a client who has space or slot on a vessel. Section 65(19) of Finance Act, 1994 will not address these independent principal-to-principal transactions of the appellant and, with the space so purchased being allocable only by the appellant, the shipping line fails in description as client whose services are promoted or marketed.*

14. *We, therefore, find no justification for sustaining of the demand and, accordingly, set aside the impugned order. Demands, with interest thereon, and penalties in both orders are set aside. Cross-objections filed by the department are also disposed of."*

In an appeal filed by the department against the above order before the Hon'ble High Court of Bombay, it was held that the issue of valuation would not be maintainable before them, and later the department filed Civil Appeal before the Hon'ble Supreme Court vide Civil Appeal Diary No. 6897/2019, which was dismissed by the Apex Court.

9.3 We further find that the Co-ordinate Bench of the Tribunal in the case of *EMU Lines Private Limited* (supra) have held that the service of procurement of space on the vessel would not amount to Business Auxiliary Service for levy of service tax. In the said case, the department had appealed against the said order before the Hon'ble Supreme Court, who have held in the judgement delivered on 27.02.2023 that they are of the opinion that the order of the Tribunal does not call for interference and dismissed the appeal preferred by the department.

10. We further find that the Hon'ble Supreme Court in the case of *Gujarat State Fertilizers & Chemicals Limited* (supra) have held that the sharing of expenditure under an agreement by no stretch of imagination be treated as common service provided among the two parties and there is no question of levy of service tax on such activity. The relevant paragraphs in the said judgement are extracted and given below:

"15. *We have considered the aforesaid submissions in the light of the material placed on record. We shall advert to the second aspect namely, as to whether the arrangement between GSFC and GACL amounts to providing any services by GSFC to GACL and 50% incineration expenses incurred would constitute charges for providing such services. There is no dispute about the manner in which HCN is received through pipeline from M/s. Reliance Industries Ltd. by GSFC and GACL and then shared in the ratio of 60 : 40 respectively. GSFC and GACL are public sector undertakings, as already mentioned above. Since HCN is to be received through pipeline, it is abundantly clear that in order to save the expenditure, both the parties agreed that there should be a common pipeline. Once HCN is received through the said common pipeline, it comes first to GSFC's premises and from there it is diverted in the ratio of 60 : 40, meaning thereby that GSFC receives 60% of the HCN whereas GACL receives 40% of the supply in accordance with their respective requirement. To enable GACL to receive this HCN through common pipeline, arrangement/agreement was entered into between these two parties. For this purpose, handling facilities were installed in the premises of GSFC. However, fact remains, for which there is no dispute, that for installation of these facilities both the parties had contributed towards the investment. Since the said handling facilities are in the premises of GSFC, incineration also takes place at the said premises. Handling facilities expenditure thereof is shared equally by both the parties. That is clearly provided in the agreement/arrangement that was agreed to between the parties and is reflected in the Minutes dated 6-7-1980. Once these facts are accepted, we find that handling portion and maintenance including incineration facilities is in the nature of joint venture between two of them and the parties have simply agreed to share the expenditure. The payment which is made by GACL to GSFC is the share of GACL which is payable to GSFC. By no stretch of imagination, it can be treated as common 'service' provided by GSFC to GACL for which it is charging GACL.*

16. *We are, thus, of the opinion that the second ingredient has not been established in the present case and the question of service tax does not arise. In view thereof, it is not necessary to go into the question as to whether receiving of HCN through the said common pipeline in the tank which is setup by the GFSC and GACL amounts to 'storage' or not and we leave the said question open.*

17. *For the aforesaid reasons, the demand of 'service tax' made by the respondent is unwarranted and is hereby set aside."*

11. In view of the foregoing discussions and on the basis of the orders passed by the Co-ordinate Benches of the Tribunal and judgements delivered by the Hon'ble Supreme Court as above, the impugned order dated 16.11.2015 passed by the Commissioner of Service Tax-V, Mumbai does not stand the legal scrutiny. Therefore, the adjudged demands along with interest and imposition of penalty on the appellants, in impugned orders is not legally sustainable and thus is liable to be set aside.

12. In the result, the impugned order dated 16.11.2015 is set aside and the appeal filed by the appellants is allowed in their favour.

(Order pronounced in open court on 19.11.2025)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)