



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय
Office of the Commissioner (Appeals)
केंद्रीय जीएसटी अपील आयुक्तालय - अहमदाबाद
Central GST Appeal Commissionerate- Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015



☎ 26305065-079 : टेलीफैक्स 26305136 - 079 :

DIN-20201264SW090000EDB3

स्पीड पोस्ट

- क फाइल संख्या : File No : V2(ST) 193/Ahd-South/2019-20
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-57/2020-21
दिनांक Date : 25.11.2020 जारी करने की तारीख Date of Issue : 18.12.2020
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No.08/DC/Div-I/MK/19-20 dated 17.02.2020
passed by the Deputy Commissioner, Central Excise, Division-IV,
Ahmedabad-I.
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s Exim Logistics,
20, Nirmal Society,
Ishwarnagar Garden Road,
Maninagar, Ahmedabad.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

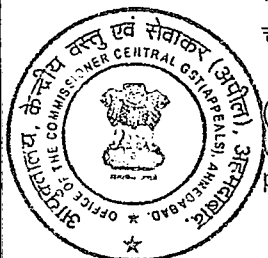
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



- (क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।
- (A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
- (ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।
- (B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

- (c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.
- (1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

- (2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रूपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-

Appeal to Custom, Excise, & Service Tax Appellate Tribunal:

- (1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत के अंतर्गत:-

Under Section 35B/ 35E of Central Excise Act, 1944 or Under Section 86 of the Finance Act, 1994 an appeal lies to :-

- (क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004
- (a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



(2) The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of could be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contained in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है .

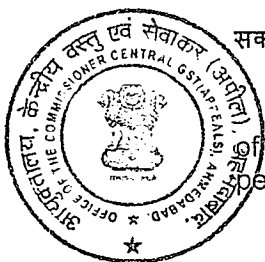
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs. 10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

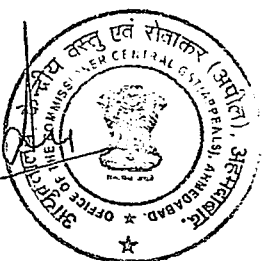
The present appeal has been filed by M/s Exim Logistics, 20, Nirmal Society, Ishwarnagar, Canal Garden Road, Maninagar, Ahmedabad – 380008 [hereinafter referred to as 'the appellant'] against Order-in-Original No. 08/DC/Div-I/MK/2019-20 dated 17.02.2020 [hereinafter referred to as the 'impugned order'] passed by the Deputy Commissioner of CGST, Division-I, Ahmedabad South [hereinafter referred to as 'adjudicating authority'].

2. The facts of the case, in brief, are that the appellant is providing taxable service under the category of Clearing and Forwarding Agent Service, Business Support Service and Business Auxiliary Service falling under erstwhile Section 65(105)(j), (zzzq) and (zzb) of the Finance Act, 1994 respectively. During the course of the audit of the records to the appellant for the F.Y. 2013-14 to 2016-17, it was observed that they were engaged in providing service of Clearing and Forwarding Agent in case of export consignment. They issued invoices to their customers wherein the narration of the activity under taken by them was split into two parts i.e. Taxable and Non-Taxable. Under the 'non-taxable' part, the narration has been shown as 'Freight Charges'. The appellant contended that the said income pertained to Ocean Freight which is non-taxable. Based on sample invoice issued by the appellant to exporter as well as by the shipping lines to the appellant, it was observed by the audit that the appellant has acted as intermediary/agent of the shipping lines and as such the services rendered by them are leviable to Service Tax as they fell under the category of intermediary as defined under Rule 2 (f) of the Place of Provision rules, 2012.

2.1 Based on the audit observations, the appellant was issued a Show Cause Notice No. IV/1(b)-340/C-II/AP-14/Ahd/2017-18 dated 24.09.2018 by the Assistant Commissioner, Circle – II, Central Tax Audit, Ahmedabad demanding Service Tax amounting to Rs. 17,68,496/- under proviso to Section 73(1) of the Finance Act, 1994 along with applicable interest under Section 75 of the Finance Act, 1994. The SCN also proposed imposition of penalty under Section 78 of the Act. The SCN was confirmed by the adjudicating authority vide the impugned order dated 17.02.2020.

3. Being aggrieved with the impugned order, the appellant preferred this appeal on the following grounds:

- (a) They being freight forwarder buys the cargo space at bulk rates on principal basis and then sell it to customers. As they are placing bulk orders, the airlines/shipping lines offer the freight at discounted rates. Once the goods are delivered to shipping lines, the responsibility of goods are transferred to the shipping lines. However, due to transfer of responsibility, the transaction does not tantamount that they are working as an agent.

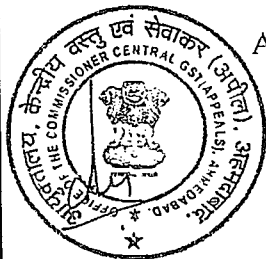


- (b) Service Tax is not leviable on difference of sales and purchase of Ocean Freight;
- (c) The appellant has not acted as an agent but carried out activity of Principal to Principal basis. They are not acting as an intermediary under Rule 2 (f) of the Place of Provision of Service Rules, 2012 because they are not an agent of the shipping lines for provision of service. The value of intermediary's service is invariably identifiable from the main supply of service he is arranging. There are two independent deals between Service provider and Exporter and Service Provider and Shipping Line. They are working as principal and therefore in terms of Para 3 of the Circular dated 12.08.2016 they are not liable to pay service tax when the destination of goods is from a place in India to a place outside India;
- (d) The place of provision of services of transportation of goods shall be the place of destination of goods. They provide transportation of goods from India to outside India. Service Tax from the exporter for export cargo by sea to foreign place cannot be subjected to Service Tax in terms of Rule 10 of Place of Provision of Service Rules, 2012;
- (e) Section 174 of the CGST Act, 2017 is not applicable in the instant case in as much as saving provisions of Section 174 (2) cannot be extended to Service Tax since Chapter-V was omitted;
- (f) Show Cause Notice issued is time barred as there was no suppression of facts;
- (g) There is no suppression of facts involved as they were registered with department and filed ST-3 returns;
- (h) Service Tax is not leviable where the appellant has acted as a Pure Agent;
- (i) Penalty under Section 78 is not imposable as ingredients of fraud etc. are not there;
- (j) Penalty not imposable when matter related to interpretation;
- (k) They are eligible for cum-tax benefit.

3.1. The appellant has in support of his contentions placed reliance on following judicial pronouncements:

- a) Hon'ble CESTAT, Mumbai in case of Greenwich Meridian Logistics (I) Private Limited v/s Commissioner of Service Tax, Mumbai [2016(43) STR 2015 (Tri-Mumbai)];
- b) The Commissioner (Appeals), Central Tax, Ahmedabad in case of M/s Safe Sea Logistics Private Limited, Ahmedabad in Order-in-Appeal No. AHM-EXCUS-002-APP-5-18-19 dated 26.04.2018;
- c) Hon'ble Supreme Court of India in case of M/s Continental Foundation Joint Venture v/s Commissioner Central Excise, Chandigarh- I [2007-TIOL-152-SC-CX];
- d) Hon'ble Supreme Court of India in case of M/s Chemphar Drugs & Liniments v/s Collector of Central Excise [2002-TIOL-260-SC-CX];
- e) M/s Intercontinental Consultants and Technocrats Private Limited v/s Union of India [2013(29)STR 9(Del.)]

4. Personal Hearing in the case was held on 18-09-2020. Shri Bishan Shah, Chartered Accountant, attended hearing on behalf of the appellant. He reiterated submissions made in



Appeal Memorandum. He further stated that their case is covered by Board's Circular and judgement of Hon'ble High Court in Greenwich Meridian Logistics. He has subsequently vide e-mail dated 18.09.2020 submitted additional written submissions mentioning various case laws on the matter.

5. I have carefully gone through the facts of the case available on record, grounds of appeal and the submissions made by the appellant, both oral as well as written. It is observed that the issue to be decided in this case is whether the net income earned by the appellant on account of sale and purchase of ocean freight is liable for service tax and whether the appellant falls within the ambit of definition of "intermediary" as defined under Rule 2(f) of the Place of Provision Rules, 2012. The demand pertains to period 2013-14 to 2016-17. It is contention of the department that the appellant had undertaken activity of booking of cargo on behalf of the shipping lines and has received commission from the shipping lines for this activity, which falls within the ambit of service as defined under Section 65B (44) of the Finance Act, 1944.

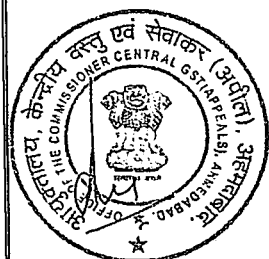
6. It is observed from case records that the appellant is a freight forwarder and inter-alia acting as clearing and forwarding agent in case of export consignment. They had purchased space from the shipping lines and had in turn sold to various exporters and in the process earned an income out of this transaction. These are undisputed facts and is apparent from the table mentioned at Para 7 of the impugned order also. The SCN as well as the adjudicating authority have relied on Board's Circular No. 197/7/2016 – Service Tax dated 12.08.2016 as well as terms and condition in the Bill of Lading to conclude that since the appellant was not taking the risk and there was no legal responsibility of freight forwarder at all in transportation of goods and hence they did not act on Principal to Principal basis while providing the service of transportation of goods with destination outside India. Accordingly, they were acting as intermediary between shipping line and exporter as defined under Rule 2 (f) of the Place of Provision Rules, 2012 and being an agent of shipping lines, the income so earned was liable for service tax.

7. Section 65B (44) of the Finance Act, 1994 defines service as any activity carried out by a person for another for consideration, and includes a declared service, but shall not include activities mentioned in said section as well as services mentioned in Negative List of services under Section 66D of the Finance Act, 1994. Further, as per Rule 2 (f) of the Place of Provision Rules, 2012 "intermediary" means a broker, an agent, or any other person by whatever name called, who arranges or facilitates a provision of service (hereinafter called the main service) between two or more persons, but does not include a person who provides the main service on his account. Besides that, the CBEC has vide Circular No. 197/7/2016 – ST dated 12.08.2016 has clarified that in terms of Place of Provision of Service Rules, 2012,



the place of provision of service of transportation of goods by air/sea, other than by mail or courier, is the destination of goods. As the place of provision of service of transportation of goods by air/sea from a place in India to a place outside India, will be a place outside the taxable territory and hence not liable to service tax. It has been further clarified that in case of intermediary as defined under Rule 2 (f) of the Place of Provision Rules, 2012, the place of provision will be location of service provider i.e. intermediary and hence would be taxable. The Circular has analyzed the role of freight forwarder in his capacity as principal as well as an agent and has finally clarified 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. Therefore, the main question to be decided in the case is whether the appellant was an intermediary between shipping lines and exporter so as to fall in the service tax net or was he providing main service of transportation of goods from a place in India to a place outside India on his account so as to fall outside the service tax net.

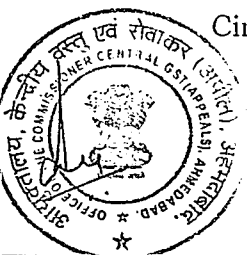
7.1. It is observed that in order to fasten the liability of service tax on the appellant as an intermediary or income earned by him by way of sale of space in the vessel, the relevant agreement documents need to be analyzed. However, I find no such agreement on record which throws light on the nature of relationship between the shipping lines and the appellant and that of the appellant and the exporter. The SCN has mentioned two invoices bearing nos. EL/128/13-14 dated 12.02.2014 and EL/058/13-14 dated 14.08.2013 issued by the appellant to Exporter as well as Invoices Nos. AHDINV29355 dated 11.2.2014 and No. AHDINV26504 dated 12.08.2013 issued by the Shipping Lines to the appellant. No further details are given except that these documents mentioned bills of lading nos. EPIRINDAHD 105632 and EPIRINDAHD 105061, wherein the appellant was mentioned as forwarding agent. I find that in the absence of any agreement between the parties concerned, their relationship as principal or agent cannot be determined. It is an undisputed fact that the appellant was issuing invoices to the exporter and that he was also issued invoice by the shipping lines mentioning the freight amount. The SCN as well as the adjudicating authority has contended that since Bill of Lading issued by the Shipping Lines mentioned the exporter in shipper's category, the appellant was acting as an agent of the shipping lines. It is observed in this regard that the Board's aforementioned Circular has in Para 2.1. while analyzing the role of intermediary categorically clarified that in case the freight forwarder acts as agent of the airlines/shipping lines, he bears no responsibility of transportation. Further, he merely charges the rate authorized by the airlines/shipping lines. I find no evidence on record to suggest that the fares charged by the applicant from the exporter was authorized by the shipping lines. It is apparent from case records that the transaction between applicant and the shipping lines and between the applicant and exporter was covered under two separate invoices mentioning two different freight amount and that there is no evidence regarding flow of consideration from the applicant to the shipping lines.



Hence, as per the evidences available on record, the transaction is covered under Para 2.2. of the Board's aforementioned Circular wherein the appellant is negotiating the terms of freight with the airlines/shipping lines as well as the actual rate with the exporter. The fact that the appellant had received invoice for purchase of slots in the vessel and that appellant had also issued invoice for sale of slots to the exporter, establishes that both the transactions had been on principal to principal basis. There is no evidence on record to suggest that the appellant was acting on behalf of the shipping lines and that there was a pre-existing arrangement for share of consideration arising out of such transaction. Mere manner of issuance of bill of lading by the Shipping Lines does not determine the nature of transaction in the case.

7.2. As regards the contention that the appellant was not taking the risk, as mentioned in condition Nos. 3 and 4 of the invoices issued by them, I find that the condition No. 3 mentioned that the appellant would not be taking the risks of goods lying in their godowns etc. unless they are directed to affect insurance. There is no further mention of any details in the invoice as to what was the terms actually entered into with the exporter. Further, there is also no mention of the fact as to whether the appellant had issued any Bills of Lading or not, which is the actual document to understand the liability of the appellant vis-à-vis the exporter in terms of export consignment. Besides that, there is no dispute that the appellant has acted as forwarding agent and had also discharged their service tax liability in respect of services rendered in relation to export of goods belonging to the exporter. Hence, the allegation levelled in the SCN and affirmed in the SCN lacks documentary evidence. I also find that the case of the department has to stand on its own based on evidences, this becomes more important especially when the Board has issued Circular on the issue and the department has conducted audit of records of the appellant. Further, being taxability issue, the onus to prove the burden lies on the department.

8. I also find that taxability of the issue in question stand settled by the decision of Hon'ble Tribunal in the case of Greenwich Meridian Logistics (India) Private Limited v/s Commissioner of Service Tax reported in 2016(43) STR 215 (Tri-Mumbai) wherein it has been held that freight paid to the shipping line by the freight forwarders and freight collected by them from client shippers are two independent transactions and the notional surplus earned by the freight forwarders in such independent principal to principal transaction is not liable for Service Tax. The departmental appeal in this case to Hon'ble High Court, Mumbai as well as before the Hon'ble Supreme Court has been dismissed. Though the above decision of the Hon'ble Tribunal pertains to the period prior to 01.07.2012, the nature of transaction involved in the case remains the same for the period after 01.07.2012 also and the activity remains not taxable even in the changed tax regime of negative list also for there being no service element in the transaction. The CBEC has clearly clarified vide its Circular No. 197/7/2016 – Service Tax dated 12.08.2016 that when the transaction involved



is on principal to principal basis, no service tax is leviable. The Hon'ble Tribunal in the case of Sea Master Shipping and Logistics Vs. Commissioner of C.T., Vishakapatnam [2019 (25) GSTL 458 (Tri.-Hyd.)] has decided similar issue for the period after 01.07.2012 wherein it was held that :

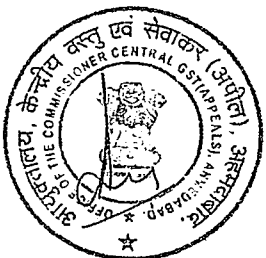
"When the appellant is purchasing space, on his own account, on the ship and, in turn, selling the same to their customers, is acting as businessmen and not as a service provider. He is purchasing the space at a lower price and selling the same at a higher price for a profit. Conversely, if he is not able to sell the entire spaces that he had bought or he is forced to sell the same at a lower rate, he may incur a loss. In the instant case, the demand is made on the profit earned during the relevant period by purchasing and selling the space. By no stretch of imagination, can this be considered as a service to their customers. The appellant is acting as a principal and is buying spaces in that capacity and is selling the same to their customers as a principal. There is no provision in the Finance Act, 1994 to charge service tax on profit earned from trading. Service tax can only be levied on the value of taxable services rendered. In view of the above, I find that the impugned order is unsustainable and needs to be set aside and I do so."

(Para 6)

9. Similar kind of view was held by various benches of Hon'ble Tribunal in catena of decisions, citations of some of which are as under:

- (a) Chinubhai Kalidas & Bros Vs. CST, Ahmedabad – 2018 (11) TMI 1024 – CESTAT Ahmedabad;
- (b) CST, New Delhi Vs. Karam Freight Movers – 2017 (4) GSTL 215 (Tri.-Del.);
- (c) Pawan Cargo Forwarders Pvt. Ltd. Vs. 2017 – 2019-TIOL-152-CESTAT-MAD
- (d) Skylift Cargo Pvt. Ltd. Vs. CST, Chennai – 2018(2) TMI-320-CESTAT-Chennai;
- (e) Marinetrans India Pvt. Ltd. Vs. CST, Hyderabad – 2019-TIOL-1260-CESTAT-HYD;
- (f) DHL Lemuir Logistics Pvt. Ltd. Vs. CCE, Thane-I – 2017 (47) STR 309 (Tri.-Mumbai);
- (g) Surya Shipping Vs. CCE & ST, Rajkot – Final Order No. A-12235-12236/2019 dated 22.08.2019 – CESTAT, Ahmedabad; and
- (h) Nilja Shipping Private Limited Vs. Commissioner of Central Excise, Chennai-II - Final Order No. 40273-40274/2020 dated 10.02.2020 – CESTAT, Chennai.

10. In view of the discussions held above and following the judicial pronouncements referred and discussed, it is held that the activity of purchasing and selling of cargo space in ocean going vessels by the appellant in the instant case is a trading activity which he has done acting as a principal and hence there is no element of service in the activity so as to



attract levy of service tax under the provisions of the Finance Act, 1994. The contentions raised in the show cause notice and the impugned order for the demand on the issue fails to survive in the eyes of law and therefore, the impugned order passed by the adjudicating authority confirming the demand is liable to be set aside for being not legally sustainable both on facts and merits. When the demand fails, there does not arise any question of interest or penalty in the matter.

11. Accordingly, the impugned order passed by the adjudicating authority is set aside and the appeal of the appellant is allowed.

12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed off in above terms.

Akhilesh Kumar
25 November 2020
(Akhilesh Kumar)
Commissioner (Appeals)
Date: 25.11.2020.

Attested:

Anilkumar P.

(Anilkumar P.)
Superintendent(Appeals),
CGST, Ahmedabad.

By R.P.A.D/Speed Post.

M/s Exim Logistics,
20, Nirmal Soccity,
Ishwarnagar Garden Road,
Maninagar, Ahmedabad.

Copy to :

1. The Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Principal Commissioner, CGST and Central Excise, Ahmedabad-South.
3. The Deputy /Asstt. Commissioner, Central Excise, Division-I, Ahmedabad-South.
4. The Deputy/Asstt. Commissioner (HQ Systems), Central Excise, Ahmedabad-South.
(for uploading the OIA)
5. Guard file
6. PA File

