
(2023) 07 CESTAT CK 0049

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 11531, 11532, 11533, 11534 Of 2013, 10376 Of 2014

Intermark Shipping Agencies Pvt Limited

APPELLANT

Vs

Commissioner Of Central Excise & ST, Rajkot

RESPONDENT

Date of Decision : 26-07-2023

Acts Referred:

Finance Act, 1994 — Section 65 (100), 73

Citation : (2023) 07 CESTAT CK 0049

Hon'ble Judges : Ramesh Nair, Member (J); C.L. Mahar, Member (T)

Bench : Division Bench

Advocate : Jigar Shah, Prakash Kumar Singh

Final Decision : Dismissed

Judgement

C.L. Mahar, Member (T)

1. The brief facts of the matter are that appellant are working as sub agent of Steamer Agent and providing services under the category of 'Business Auxiliary Services' and 'Business Support Services'. The appellant were appointed as sub-agent by M/s. Freight Connection India Pvt. Limited to perform various works under the category of Steamer Agency Service. M/s. Freight Connection India Pvt. Limited is the main Steamer Agent who provides service to various shipping lines i.e. Arc Lines, Bay Lines etc. In short, the scope of work performed by the appellant is of a sub-agent for M/s. Freight Connection India Pvt. Limited which included service of booking, advertising/ canvassing for cargo along with container feeder services. The appellant receive commission as a consideration for providing an agent service of booking, advertising/ canvassing for cargo and container feeder service from M/s. Freight Connection India Pvt. Limited on which the appellant have been discharging service tax liability since 03.04.2006. It has been the contention of the department that since no service tax has been paid by the appellant prior to 03.04.2006, the demand of service tax has been raised on the commission received by the appellant. It was observed by the

department that appellant had obtained registration on 03.04.2006 however, during the period from April 2004 to March 2011, the appellant had not paid service tax on the amount received on account of brokerage income of 2% of the freight amount. As a result, four periodical show cause notices came to be issued demanding service tax on brokerage income under the category of steamer agent service under Section 73 of Finance Act, 1994. The matter got adjudicated and the demand was raised by the Adjudicating Authority. The appeal was preferred by the appellant before Commissioner (Appeals) against the impugned order-in-original. The learned Commissioner (Appeals) vide its order dated 25.02.2013 rejected the appeal of the appellants and therefore they are before us against the orders-in-appeal dated 26.02.2013 and 31.10.2013.

2. Learned Advocate appearing for the appellant contended that the appellant have not provided service of the Steamer Agent to any shipping line. The department's contention that M/s. Freight Connection India Pvt. Limited is the principal and the appellants being termed as the steamer agent is legally incorrect. It has been argued that correct hierarchy in the business of shipping that various foreign shipping lines are principals who have appointed M/s. Freight Connection India Pvt. Limited as steamer agent by various shipping lines. The department has wrongly interpreted the provisions and considered M/s. Freight Connection India Pvt. Limited as principal and the appellant as its sub-agent.

2.1 With regard to brokerage received by the appellant, it is contended that the department is not understood the income, process and technicalities of the shipping business. As per their submission, the brokerage is neither an income of steamer agent i.e. M/s. Freight Connection India Pvt. Limited nor an income of sub agent i.e. the appellants. It is his submission that brokerage income does not appear in profit and loss account of the appellant as there is no rendition of service by the appellant for the receipt of brokerage from M/s. Freight Connection India Pvt. Limited. The learned Advocate taken shelter of CBIC Circular No. B43/1/97-TRU dated 06.06.1997 wherein it has been clarified that taxable service provided by the steamer agent to a shipping line was the service provided by a steamer agent in relation to a ship's husbandry or dispatch or any administrative work related thereto as well as booking, advertising or canvassing of cargo including container feeder services.

2.2 Learned advocate further submitted that as per the definition of steamer agent, under Section 65 (100) of the Finance Act, 1994 and as per the clarification issued by the board, it is clear that steamer agent performs any service in connection with the ships husbandry or dispatch, service like booking, advertising or canvassing or to provide container feeder service and work performed for or on behalf of shipping line by M/s. Freight Connection India Pvt. Limited and therefore, service tax on such service need to be discharged by the M/s. Freight Connection India Pvt. Limited. It is submitted that M/s. Freight Connection India Pvt. Limited has been paying service tax on the charges received by them from various shipping lines. It has further been submitted by

learned Advocate that had the tax been paid by the appellant the same would have been available as Cenvat credit to M/s. Freight Connection India Pvt. Limited and therefore, there is no revenue effect in the entire exercise and hence the matter is revenue neutrality. Therefore, there should not have any demand from them as entire amount of the service charges have been included by M/s. Freight Connection India Pvt. Limited with regard to payment of service tax. The learned advocate in support of his contention has relied upon several decisions which are as follows:-

(a) Indian National Ship Owners Association – 2009 (14) STR 289 (Bom.)

(b) Siti Cable Corporation – 2021 (44) GSTL 412 (Tri. Del.)

2.3 Learned advocate also submitted that appellant have never suppressed the activities carried out by them with intention to evade payment of service tax. The appellant were under the bonafide belief that since the principal agent M/s. Freight Connection India Pvt. Limited have been discharging service tax liability and therefore the appellants were not require to pay any service tax and therefore it is wrong on the part of the department to allege that the appellants have indulged in suppression of facts or willful misstatement with an intention to evade payment of service tax. Learned advocate relied on the decision of Hon'ble Supreme Court in the case of M/s. Anand Nishikawa Company Limited vs. CCE, Meerut – 2005-TIOL-118-SC-CX wherein it has been held that mere failure to declare does not amount to willful suppression and there must be some positive act from the side of the assessee to find willful suppression. The appellants have stated that they were under the bonafide belief that no service tax is payable by them as the service tax is being paid by the person to whom they provided the service. Learned Advocate also submitted that extended time proviso provided under Section 73 of Finance Act, 1994 cannot be invoked in their case as the issue involved was of interpretation of law wherein the trade was of the view that sub-contractor who has provided service to the main contractor are not required to pay any service tax.

3. We have heard both the sides in detail and are of the view that only question needs to be answered by us is whether the appellant are liable to pay service on the amount received by them as brokerage under the category of steamer agent service or not.

4. Before proceeding further, it will be relevant to reproduce the definition of Steamer Agent given under Section 65(100) of the Finance Act, 1994 which reads as follows:-

"Steamer Agent' means any person who undertakes either directly or indirectly.

(i) to perform any service in connection with the ship's husbandry or dispatch including the rendering of administrative work related thereto; or

(ii) to book, advertise or canvass for cargo for or on behalf of a shipping line; or

(iii) to provide container feeder services for or on behalf of a shipping line."

It can be seen from the definition given above that any person who undertakes directly or indirectly the work relating to booking, advertising or canvassing cargo on or on behalf shipping lines or providing container feeder service for on or on behalf of shipping lines will fall under the category of Steamer Agent. The factual position as emerged from the entire discussion is that appellant were engaged in booking, canvassing or advertising cargo as sub agent of various shipping lines. The work undertaken by the appellant is primarily on behalf of the steamer agent namely M/s. Freight Connection India Pvt. Limited and thus the work which was to be undertaken by the main steamer agent M/s. Freight Connection India Pvt. Limited was done by the appellant and for which certain brokerage was paid to them.

5. We are of the view that in reality the work of steamer agent was performed by the appellant as sub-agent of the main steamer agent. Therefore, we hold that the services rendered by the appellant will be rightly classifiable under the category of steamer agent. We also take note of the decision of the Larger Bench in the case of CST, New Delhi vs. Melange Developers Pvt. Limited – 2020 (33) GSTL 116 (Tri. LB) wherein it has been categorically held that it is not open to a sub-agent contend that he should subject to service tax liability in respect of service tax liability when the main contractor has paid service tax on the gross amount. Thus, we are of the view that since the appellant being a sub-contractor has provided the service of the steamer agent, they are liable to pay service tax.

6. As regards the invocation of extended period under proviso to Section 73 of Finance Act, 1994, we find that there has been a lot of confusion and misunderstanding in the trade whether the sub-agent need to pay service tax on the amount charged by them from the main contractor/ agent who has already discharged service tax liability on the gross amount. We find that appellant were under the bonafide belief that no service tax was payable on the brokerage received by them for providing steamer agent service being a sub-agent. We also take note of the fact that all the transactions between the appellant and M/s. Freight Connection India Pvt. Limited are recorded in the books of accounts and therefore, we are of the view that extended time to demand service tax under Section 73 is not invocable in this matter,

7. In view of entire discussions above, we hold that on merit the appellant are liable to pay service tax on the service provided by them as steamer agent however, the demand confirmed by invoking extended time proviso under Section 73 need to be set-aside. The show cause notices issued within normal period to demand service tax is sustainable and we upheld the impugned orders-in-original and orders-in-appeal to that extent. Accordingly, the appeal is partly allowed only with regard to not accepting the invocation of extended time proviso. For the appeals which are against the impugned show cause notice issued within the normal time period, in view of above discussion, the appeals stand dismissed.