

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD
REGIONAL BENCH - COURT NO. 3**

SERVICE TAX Appeal No. 13180 of 2013-DB

[Arising out of Order-in-Original/Appeal No 115-116-2013-STC--SKS-COMMR-A--AHD dated 14.06.2013 passed by Commissioner of Service Tax-AHMEDABAD-I(Appeal)]

A K Biswas

319, Soham Tower, Near Sandesh Press,
Vastrapur, AHMEDABAD, GUJARAT

.... Appellant

VERSUS

Commissioner of Central Excise & ST, Ahmedabad

7 th Floor, Central Excise Bhawan, Nr. Polytechnic
CENTRAL EXCISE BHAVAN, AMBAWADI,
AHMEDABAD, GUJARAT -380015

.... Respondent

APPEARANCE :

Shri NK Tiwari, Consultant for the Appellant
Shri AR Kanani, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)**

DATE OF HEARING : 13.08.2024

DATE OF DECISION: 06.09.2024

FINAL ORDER NO. 11949/2024

RAMESH NAIR :

The brief facts of the case are that the appellant was engaged in providing Custom House Agent (CHA) service. The premises of the appellant was searched on 09.09.2008. Statement of Shri A.K. Biswas was recorded on 12.09.2008, wherein it was stated by him that he was registered with the service tax department and was filing the returns regularly. It was also stated by him that he was raising two sets of invoice, one for agency charges and other for reimbursement of expenses. It was also stated by him that from April, 2007 onwards, the service tax was paid on the total value realized.

2. After investigation, show cause notice dated 21.04.2009 was issued demanding service tax of Rs. 6,13,526/- (Rs. 5,61,785/- towards CHA and Rs. 51,741/- towards BAS), and imposition of penalty including recovery of interest. The appellant submitted the reply vide its letter dated 18.07.2010. In the said submissions the appellant had assailed the allegations both on

merits as well as on limitation. After hearing, the Adjudicating Authority, confirmed the demand of Rs. 6,13,526/-, imposed penalty under section 76, 77 and 78 and ordered for recovery of interest. The appellant preferred an appeal, whereby, the appellate authority has held that the appellant having failed to satisfy the conditions of Rule 5 (2) of the Valuation Rules, 2006, confirmed the demand of service tax and corresponding interest and penalty for the period from 18.04.2006 to 10.05.2007. The appellate authority has upheld the demand of service tax under BAS amounting to Rs. 51,741/- and has allowed the appeal of the department for imposition of penalty under section 77 amounting to Rs. 5,000/-. Therefore the present appeal is filed by the appellant.

3. Shri N.K. Tiwari, learned Consultant appearing on behalf of the appellant submits that appellant are paying service tax regularly and correctly on the CHA service however on the reimbursement of actual expenses incurred such as port operation etc. the appellant is taking reimbursement of the actual amount by raising separate bills and the same is not liable for service tax under the CHA Service. He placed reliance on the following judgments-

- (a) Boeing India Defense Pvt Limited – 2024 (388) ELT 37 (SC).
- (b) Saurin Investments Pvt Limited – 2009 (16) STR 446 (Tri. Ahmd.)
- (c) Bax Global India Limited – 2009 (9) STR 412 (Tri. Bang.)
- (d) Bhuvneshwari Agencies (P) Limited – 2007 (8) STR 167 (Tri. Bang.)

He further submits that as regards the service tax demand of Rs. 51,741/- on Business Auxiliary Service as commission, the same is not taxable during the period 01.20.2003 to 31.03.2004 under Notification No. 13/2003-ST dated 20.06.2003 therefore, the demand of Rs. 31,859/- is not sustainable as covered under the said notification. He place reliance on the following judgments-

- (a) Inter Continental Consultant and Technocrats Pvt Limited – 2018 (10) GSTL 401 (SC).
- (b) Linde Engineering India Pvt Ltd. – 2024-TIOL-1151-HC-AHM-ST.

(c) Final Order No. A/11238/2023 dated 12.06.2023 in the case of Liladhar Pasoo Forwarders Pvt Limited.

(d) Bax Global India Limited – 2009 (9) STR 412 (Tri. Bang.)

4. Shri AR Kanani, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

5. On careful consideration of the submissions made by both the sides and perusal of record we find that demand is on two counts one is for reimbursement of port charges during provisioning of CHA service and the second one is on the commission under Business Auxiliary Service. As regards the demand under CHA service, on the amount received as forklift expenses and various other charges is reimbursable, we find that it is settled that other than service charge of service of CHA any reimbursable expenses incurred on behalf of the clients is not liable to service tax. As held by Hon'ble Supreme Court in the case of Inter Continental Consultant and Technocrats Pvt. Limited – 2018 (10) GSTL 401 (SC) and various other judgments relied upon by the appellant. Hence the demand on such reimbursable expenses is set-aside. As regards the demand of service tax on Business Auxiliary Service (commission), we agree with the learned consultant that demand of Rs. 31,859/- for the period 01.10.2003 to 31.03.2004 is not sustainable as the same is covered under general exemption Notification No. 13/2003-ST dated 20.06.2003. Therefore, this demand of Rs. 31,859/- is set-aside and the remaining demand on Commission is upheld.

6. With our above observations, the impugned order stand modified to the above extent and the appeal is partly allowed in the above terms.

(Pronounced in the open court on 06.09.2024)

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

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