

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE  
TRIBUNAL, MUMBAI  
REGIONAL BENCH  
Single Member Bench**

**Service Tax Appeal No. 87233 of 2019**

**And**

**ST/Cross/86003 of 2019**

(On behalf of Respondent)

(Arising out of Order-in-Appeal No. MKK/001/RGD APP/2019 dated 05.04.2019 passed by the Commissioner of CGST & Central Excise (Appeals), Navi Mumbai)

**Commissioner of CGST, Navi Mumbai**

10<sup>th</sup> Floor, Satra Plaza, Palm Beach Road,  
Sector 19D, Vashi, Navi Mumbai 400 705.

**Appellant**

Vs.

**M/s. Chemical Process Piping Pvt. Ltd.**

27D, 25 CPE House, Ground Floor,  
BSD Marg, Govandi, Mumbai 400 088.

**Respondent**

Appearance:

Shri Prabhakar Sharma, Superintendent, Authorised Representative for  
the Appellant

Shri Saurabh Dixit, Advocate, for the Respondent

**CORAM:**

**HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

Date of Hearing: 13.09.2022

Date of Decision: 13.09.2022

**FINAL ORDER NO. A/85850/2022**

This appeal has been filed by Revenue against Order-in-Appeal No. MKK/001/RGD APP/2019 dated 05.04.2019 of the Commissioner of CGST & Central Excise (Appeals), Navi Mumbai. By the impugned order, the Commissioner (Appeals) has set aside Order-in-Original No. 06/VVK/AC/2018-19 dated 14.08.2018 by which the adjudicating authority has held as follows:-

"ORDER

*a) I confirm the demand of service tax raised vide show cause notice de 29-3-2017 to the extent of Rs 42,16,001-(Rupees Forty two lacs sixteen thousand and one only) in terms of Sec 73 (2) of the Finance Act, 1994 and order the noticee to pay the same forthwith 1 also confirm the demand of service tax raised*

*vide periodic show cause notice dt 1-3-2018 to the extent of Rs 2381/- (Rupees Two thousand three hundred and eighty one only) in terms of Sec 73 (2) of the Finance Act, 1994 and order the notice to pay the same forthwith.*

*b) I order the noticee M/s Chemical Process Piping Pvt. Ltd to pay forthwith the interest u/s 75 of the Finance Act 1994 on the delayed payment of the aforesaid service tax of Rs 42,16,001/- and Rs 2,381/- from the due date of payment of tax till the actual date of payment of tax .*

*c) I impose penalty of Rs 42,16,001/- (Rupees Forty two lacs sixteen thousand and one only) u/s 78 of the Finance Act, 1994 in respect of the demand raised vide show cause notice dt 29-3-2017 & order the notice to pay the same forthwith. I do not impose any penalty u/s 76 in respect of the demand raised vide show cause notice dt 29-3-2017.*

*d) I impose penalty of Rs 200/- (Rupees Two hundred only) u/s 76 of the Finance Act, 1994, being penalty not more than 10% of the service tax demanded vide periodic show cause notice dt 1-3-2018 & order the noticee to pay the same forthwith.*

*e) I impose penalty of Rs 10,000/- (Rupees Ten thousand only) u/s 77 of the Finance Act, 1994.*

*f) This order is issued without prejudice to any other action that may be taken against Ms Chemical Process Piping Pvt. Ltd. under the Finance Act, 1994 or under the provisions of any other Act for the time being in force in India.”*

2.1 The respondent has filed cross objections in the matter.

2.2 The respondent was issued a show cause notice demanding service tax of Rs.42,16,001/- for the period October 2011 to March 2016 and for amount of Rs.2,381/- for the period April 2016 to June 2017.

2.3 The show cause notice alleged that the assessee was providing business auxiliary services for the period prior to July 2012 in terms of Section 63(19) of Chapter V of the Finance Act,

1994 and after July 2012 they were providing taxable services. The show cause notice alleged that the assessee on behalf of overseas clients facilitated in the process of transportation of consignment from taxable territory to final destination. They engaged freight forwarder/transporter as per their requirements, who provided the services of ocean freight, Customs clearance, THC, handling etc. For these services they raised invoices on the assessee. It is alleged that while doing so, the respondent/assessee charged huge mark-up i.e. the difference between the value of the services received by the service provider and charged by the respondent from their clients abroad. This mark-up being in nature of commission for providing the above referred services to the clients abroad, the respondent was required to discharge the service tax liability.

2.4 The show cause notice was adjudicated as per the order-in-original referred to in para 1 above. By the impugned order, the Commissioner (Appeals) has set aside the order-in-original. Hence this appeal by the Revenue.

3.1 I have heard Shri Prabhakar Sharma, Superintendent (Authorised Representative) for the Revenue and Shri Saurabh Dixit, Advocate, for the respondent.

3.2 Learned Authorised Representative reiterates the grounds taken in the appeal filed by the Revenue.

3.3 Learned counsel objects to the appeal, firstly stating that as the amount involved in the present appeal is less than Rs.50 lakhs and as per the litigation policy Circular F. No. 390/Misc/116/2017-JC dated 22.08.2019, this appeal is not maintainable. He further submits that on the merits also, the issue is squarely covered in favour of the respondent by various decisions of the Tribunal as follows:-

- Marinetrans India Pvt. Ltd. [2020 (33) GSTL 241 (Tri.-Hyd.)]
- Mas Logistics [2019 (21) GSTL 37 (Tri.-Chennai)]
- Phoenix International Freight Services Pvt. Ltd. [2017 (47) STR 129 (Tri.-Mumbai)]

- BVC Logistics Pvt. Ltd. [2017 (9) TMI 709-CESTAT New Delhi]
- DHL Logistics Pvt. Ltd. [2017 (6) GSTL 85 (Tri.-Mumbai)].

4.1 I have considered the impugned order along with the submissions made in appeal, cross objections and during the course of argument.

4.2 I find that the issue involved in the matter is no longer res integra and has been covered by the Board circular in favour of the respondent. In the case of BVC Logistics Pvt. Ltd. [2017 (9) TMI 709-CESTAT New Delhi], the following has been observed:-

*"6. We have heard both sides and gone through the material available on record. It may be mentioned that in the case of Greenwich Meridian Logistics (I) Pvt. Ltd. (supra), the Tribunal has observed that, in the shipping line there is possibility of trading in space or slots on vessels. It cannot be stated that such trading was figment and only freight was transacted. The Tribunal further observed that:*

*"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."*

*From the record, it also appears that the assessee-Appellants were never appointed by the airlines as "Commission Agent". They have purchased the space in bulk and paid to airlines if the space is vacant, and have also suffered the loss. When the assessee-Appellants are suffering with the transaction loss, then certainly they are not the agent.*

*7. Further, the Central Board of Excise & Customs (CBEC) vide Circular **No. 197/7/2016-ST** dated 12.08.2016 has clarified that:*

*"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 the account.*

*3. 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."*

*8. In the light of the clarification given in the Board's Circular (supra) as well as by following the ratio laid down in the case of Greenwich Meridian Logistics (I) Pvt. Ltd. (supra), we find no reason to sustain the impugned order and the same is hereby set aside."*

4.3 The other decisions referred to by the respondent also hold similarly in favour of the respondent.

5.1 Accordingly, following the above decisions, the impugned order is upheld and the appeal filed by the Revenue is dismissed. The cross objections filed by the respondent also disposed of accordingly.

(Order pronounced in the open court)

**(Sanjiv Srivastava)**  
**Member (Technical)**

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