

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 40493 of 2014

(Arising out of Order-in-Appeal No. 36/2014 (M-III) ST dated 18.02.2014 passed by the Commissioner of Central Excise and Service Tax (Appeals), 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

M/s. Jetway Forwarders Private Limited

: Appellant

No. 644, 1st Floor, GST Road (Opp. MEPZ),
Tambaram, Chennai – 600 045

VERSUS

Commissioner of Central Excise

: Respondent

Chennai-III Commissionerate
No. 26/1, Mahatma Gandhi Marg, Nungambakkam,
Chennai – 600 034

APPEARANCE:

Smt. J. Ragini, Advocate for the Appellant

Smt. Anandalakshmi Ganeshram, Superintendent for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 40695 / 2023

DATE OF HEARING: 17.08.2023

DATE OF DECISION: 18.08.2023

Order : [Per Hon'ble Mr. P. Dinesha]

The undisputed facts, as could be gathered from the Order-in-Original as well as the impugned Order-in-Appeal are that the appellant is registered and rendering services as a Custom House Agent (CHA). It appeared to the Revenue that the appellant had collected freight charges for transportation of goods by road which, after exchange of a few letters, resulted in the issuance of a Show Cause Notice dated 16.06.2011 wherein it was proposed, *inter*

alia, to demand Service Tax on the GTA services allegedly rendered by the appellant.

2. It appears that the appellant filed a detailed reply rebutting the allegations levelled against it and also by contending that the invocation of extended period of limitation was bad; but however, during adjudication, the Additional Commissioner observed that as a Custom House Agent, the appellant was bound to render services with the primary objective of taking out the goods from the factory premises of their customers for onward clearances of the goods for export, or vice versa in the case of imports, which amounted to the services under Goods Transport Agency (GTA) within the meaning of Section 65(105)(zzp) of the Finance Act, 1994. Thus, vide Order-in-Original No. 48/2012 dated 21.06.2012, the Additional Commissioner proceeded to confirm the demand, as proposed, along with appropriate interest under Section 75 *ibid.* and penalties under Sections 77 and 78 *ibid.*

3. The appellant appears to have approached the Commissioner (Appeals) against the above demand, but however, even the first appellate authority having rejected their appeal vide Order-in-Appeal No. 36/2014 (M-III) ST dated 18.02.2014, the present appeal has been filed before this forum.

4. Heard Smt. J. Ragini, Ld. Advocate and Smt. Anandalakshmi Ganeshram, Ld. Superintendent.

5.1 Ld. Advocate would submit at the outset that the appellant has rendered only the services of a CHA and, in some cases, only undertook transportation of goods as an agent, for which it only collected the transportation charges without any mark-up; moreover, such transportation charges which were collected, which were on actuals, were only in the nature of reimbursement which were ultimately borne by the exporter or importer, as the case may be.

5.2 She would also contend that the entire demand was nothing but the expenses incurred by the appellant on behalf of their customers as pure agents and that such expenses were costs incurred by the appellant which were not in connection with the CHA service.

5.3 She would also invite our attention to the order of the Commissioner (Appeals)-first appellate authority in Order-in-Appeal No. 159/2017 (STA-I) dated 28.03.2017 for the period from 2011-12 to 2012-13 wherein their appeal against similar demand came to be allowed in their favour by the first appellate authority. She would invite our attention to the relevant observations / findings in the said order and further contended that the Revenue has accepted the above order wherein the demand as well as the impugned Order-in-Original therein came to be set aside by the first appellate authority; that the facts being more or less similar, the Revenue cannot take an inconsistent stand and hence, prayed for setting aside the impugned demand here in the case on hand.

6. *Per contra*, Ld. Superintendent supported the findings in the impugned order. She would also specifically invite our attention to the findings of the lower authorities where, apparently, they have not accepted the contentions of the appellant.

7. After hearing both sides, we find that the only issue to be decided by us is: whether the Department was right in demanding Service Tax on the alleged GTA services from the appellant?

8.1 Admittedly, for the subsequent period, vide in Order-in-Appeal No. 159/2017 (STA-I) dated 28.03.2017, the first appellate authority has accepted the fact that the appellant had only collected the freight charges which were merely reimbursement and without any margin. Here also, in the case on hand, admittedly, the appellant has not collected anything other than the actuals, which is clear

from the invoices placed along with the appeal memorandum.

8.2 Even from the Show Cause Notice we do not find any allegations against the appellant as to the collection of any charges over and above the actuals.

9. In view of the above discussions and also in view of the fact that a similar demand has been dropped by the first appellate authority although for a different period, we set aside the impugned order and allow the appeal with consequential benefits, if any, as per law.

(Order pronounced in the open court on **18.08.2023**)

Sd/-
(M. AJIT KUMAR)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd