

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

Service Tax Appeal No.40444 of 2021

(Arising out of Order-in-Appeal No. 84/2021 (CTA-IO dated 18.6.2021 passed by the Commissioner of GST & Central Excise (Appeals), Chennai)

M/s. Waymark Logistics

14, Jaffer Street
Chennai – 600 001.

Appellant

Vs.

**Principal Commissioner of GST &
Central Excise**

26/1, Mahatma Gandhi Road
Nungambakkam, Chennai – 600 034.

Respondent

APPEARANCE:

Dr. S. Krishnanandh, Advocate for the Appellant
Ms. Anandalakshmi Ganeshram, Superintendent for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Final Order No. **40008/2023**

Date of Hearing : 05.01.2023

Date of Decision: 05.01.2023

Brief facts are that the appellants are registered with the Service Tax Department for rendering CHA services. During audit of their accounts, it was noticed that though the appellant was registered with the Customs Department as a Custom House Agent, they had not issued any invoice in their name and had allowed another entity M/s. Trinity Clearing and Shipping Agencies, Chennai to use their CHA license and service registration number in the invoices issued by M/s. Trinity Clearing and Shipping Agencies, Chennai. Thus, the service tax from the customers was collected by M/s. Trinity Clearing and Shipping Agencies, Chennai and transferred to the appellant who in turn

deposited the same into the Government account. It was noticed that the appellant did not discharge service tax liability for the period April 2008 to December 2008 though M/s. Trinity Clearing and Shipping Agencies, Chennai had collected the service tax using the appellant's registration number. M/s. Trinity Clearing and Shipping Agencies, Chennai had registered themselves with the Service Tax Department for providing Business Support Service. On verification of accounts, it revealed that the appellant is liable to pay service tax to the tune of Rs.6,71,059/- which was collected from the customers through M/s. Trinity Clearing and Shipping Agencies, Chennai under the service provider registration number of the appellant. Show Cause Notice dated 12.4.2019 was issued to the appellant proposing to demand service tax of Rs.6,71,059/- along with interest for the period April 2008 to December 2008 and for imposing penalties. After due process of law, the original authority confirmed the demand of Rs.6,71,059/- with interest and imposed equal penalty on the finding that the appellant did not substantiate their claim that the service tax has been discharged by M/s. Trinity Clearing and Shipping Agencies, Chennai on behalf of the appellant. Against such order, appellant filed appeal before Commissioner (Appeals) who vide the order impugned herein upheld the confirmation of demand. Hence this appeal.

2. On behalf of appellant, learned counsel Dr. S. Krishnanandh appeared and argued the matter. He submitted that the appellant has been contending from the very beginning that the service tax in respect of the impugned services has been discharged by M/s. Trinity Clearing and Shipping Agencies, Chennai and therefore the amount cannot be further collected from the appellant. The appellant had furnished proof

of payment of the said amount vide their letter dated 21.10.2020 wherein it was stated as under:-

"With regard to Rs.6,71,059/- demanded from the assessee for the period from April 2008 to December 2008, the same was paid by M/s. Trinity directly to Government (vide Cheque No. 388751 dated 2.2.2009 for Rs.3,32,075/- for the period from April 2008 to July 2008 and vide Cheque No. 388762 dated 16.2.2009 for Rs.3,38,983/- for the period from August 2008 to December 2008) ledger account of M/s. Trinity is enclosed as proof of payment"

3. The appellant had produced the bank statements showing that an amount of Rs.3,86,829/- was debited from the account of M/s. Trinity Clearing and Shipping Agencies, Chennai towards payment of service tax. The department has admitted that an amount of Rs.3,86,829/- has been collected towards service tax. The total demand has been simply confirmed holding that the bank statement does not indicate that the balance amount of Rs.3,70,308/- was debited for payment of service tax to the Government. The appellant had produced the bank statement along with the covering letter issued by bank to show that these amounts have been paid by M/s. Trinity Clearing and Shipping Agencies, Chennai towards discharging the service tax liability. The liability of service tax on the impugned services having been discharged, department cannot collect the same from the appellant. He prayed that the appeal may be allowed.

4. The matter had come up for hearing on 25.11.2022. After hearing the submission made by the learned counsel for appellant that the service tax has been paid, the Tribunal passed an interim order directing the department to verify whether the amount has been

paid/collected by the Government towards service tax demand. The said interim order reads as under:-

"The dispute in this case is whether the appellant has discharged the service tax. It is the case of the department that M/s. Trinity Clearing and Shipping Agencies had paid the entire service tax. The appellant has produced bank statement showing that service tax was debited from account of M/s. Trinity Clearing and Shipping Agencies vide two cheques. The statement indicated that an amount of Rs.3,86,829/- was debited from the account towards payment of service tax. As there was no indication in the bank statement that Rs.3,70,308/- was debited for the payment of service tax to the Government, the authorities below confirmed the entire demand. The appellant has now produced the bank statement along with covering letter dated 22.9.2022 showing that the cheque for Rs.3,70,308/- was also collected for payment of service tax. The department is directed to verify the veracity of this bank statement produced by the appellant. Adjourned to 5.1.2023 for report of the department."

5. The learned AR Ms. Anandalakshmi Ganeshram submitted a letter dated 3.1.2023 issued by Deputy Commissioner (Review and Tribunal). In the said letter, it is stated that the disputed amount has been paid as service tax. However, the payment having been made by M/s. Trinity Clearing and Shipping Agencies, Chennai, the appellant cannot be absolved from the service tax liability towards impugned services. She therefore supported the findings in the impugned order.

6. Heard both sides.

7. From the narrations above, it can be seen that the entire dispute revolves around the question whether the service tax in regard to the disputed services has been discharged by the appellant. The appellant has been contending that M/s. Trinity Clearing and Shipping Agencies, Chennai had collected the tax from customers and discharged the service tax on behalf of the appellant. True that it may be, that the appellant cannot sublet their CHA license or allow M/s. Trinity Clearing

and Shipping Agencies, Chennai to use their service provider registration number, the facts reveal that service tax in regard to the impugned service has been already paid to the Government. The department cannot collect service tax again on the impugned service. From the letter dated 3.1.2023 issued by Deputy Commissioner (Review and Tribunal), it has been categorically stated that an amount of Rs.3,86,829/- and Rs.3,70,308/- has been paid by M/s. Trinity Clearing and Shipping Agencies, Chennai towards service tax on impugned service. The liability of service tax on the impugned services having been discharged, I am of the view that the demand cannot be confirmed. For these reasons, I hold that the impugned order cannot sustain. The same is set aside. The appeal is allowed with consequential relief, if any.

(Dictated and pronounced in open court)

(SULEKHA BEEVI C.S.)
Member (Judicial)