# IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI COURT HALL – III

## Service Tax Appeal No. 42000/2015

(Arising out of Order in Original No. 06/ST/COMMR/2015 dated 29.5.2015 passed by the Commissioner of Central Excise, Tirunelveli)

**M/s. Seamax Shipping India Pvt. Ltd.** **Appellant**
258D, I Floor, Raj Complex
Behind Vasan Eye Care Hospital
V.E. Road, Tuticorin – 628 002.

Vs.

**Commissioner of GST & Central Excise** **Respondent**
Central Revenue Building
No. 4, Lal Bahadur Shastri Marg
Bibikuklam, Madurai – 625 002.

**APPEARANCE:**

Shri G. Natarajan, Advocate for the Appellant
Shri N. Satyanarayanan, Authorized Representative for the Respondent

**CORAM**

**Hon'ble Shri P. Dinesha, Member (Judicial)**
**Hon'ble Shri M. Anjani Kumar, Member (Technical)**

## FINAL ORDER NO. 40575/2025

Date of Hearing: 03.06.2025
Date of Decision:04.06.2025

**Per P. Anjani Kumar,**

M/s. Seamax Shipping India Pvt. Ltd., the appellants are engaged in providing clearing and forwarding agency service. On scrutiny of the financial records of the appellants for the period 2007 – 08 to 2010 – 11, Revenue noticed that they have not included certain incomes relating to service charges receipts, drawback commission, exchange rate fluctuation income and brokerage in the value of their taxable service; an investigation was initiated and statements of different persons were recorded. On conclusion of the investigation, a

Show Cause Notice dated 16.10.2012 was issued to the appellants demanding service tax of Rs.96,62,307/- along with interest and penalties. The Show Cause Notice was adjudicated by the learned Commissioner confirming the service tax of Rs.83,70,488/- under the head 'Clearing and Forwarding Agency Service', 'Business Auxiliary Service', 'Goods Transport Agency Service'; dropping service tax demand of Rs.12,91,819/- on account of Commission and Rebate. Hence this appeal.

2. Shri G. Natarajan, ld. Counsel for the appellant submits that the demand was originally raised on 11 heads on reimbursements of various expenses claimed by the appellant from the service recipient; the demand in respect of 9 heads have been dropped on the ground that the conditions prescribed under Rule 5 of Service Tax (Determination of Value) Rules, 2000 have not been satisfied; however, the demand in respect of five claims and reimbursements of transport / weighment charges have been confirmed on the ground that the amounts spent on these heads and the amount recovered from the customers are not equal and in some cases the expenditure is more than the income. Ld. Counsel for the appellant relies on the judgment of the Hon'ble Supreme Court in the case of Union of India Vs. Intercontinental Consultants and Technocrats Pvt. Ltd. – 2018 (10) GSTL 401 (SC) holding that Rule 5 of the Service Tax (Determination of Value) Rules, 2000 as being ultra vires, section 67 of the Finance Act, 1994. He submits that the demand cannot be sustained on this ground alone.

2.1 Ld. Counsel submits further that in respect of brokerage income and drawback commission, the amount was received by the appellant

from their exporter-customers, for processing and follow up of their drawback claims. The said service cannot fall under BAS and at best it may fall under any of the support services. He takes us through the definitions of Business Auxiliary Service and Business Support Services. With respect to demand on brokerage, learned counsel for the appellant submits that this is an incentive given by the shipping lines for the packing of cargo with their respective shipping lines. This is in fact a reduction of freight charges payable to the shipping lines by the appellants on behalf of their clients. It cannot be considered as a Business Auxiliary Service provided by the appellant.

2.2 In respect of demand raised under GTA service, learned counsel submits that the appellant as part of their clearing and forwarding operations also arranged to transport the goods from the customers' place to the port and vice versa and paid freight to the transporter; they claimed the reimbursements of such freight paid from the customers; and the service tax on the reimbursements by the customers have been demanded wrongly by the Revenue; it is an admitted fact that thee are reimbursements received by the appellant as their pure agent and not towards any services. The appellant has not received any GTA service but has only paid to the transporters and was reimbursed by the customers. The GTA under reverse charge would be leviable on the customers who availed the services of the goods transport agency on reverse charge mechanism. However, during the relevant period, Rule 5 of Service Tax (Determination of Value) Rules, 2000 have been held to be ultra vires by the Hon'ble Supreme Court and therefore the demand cannot survive.

3. Shri N. Satyanarayanan, Ld. Authorized Representative for the Revenue reiterates the findings of the impugned order and submits that the learned Commissioner has given elaborate reasoning as to why it was held that condition prescribed under Rule 5 of the said Rules have not been satisfied in this case.

4. Heard both sides and perused the records of the case.

5. We find that the learned Commissioner has confirmed the demands on port / freight payments and reimbursements on transport and weighment charges for the following reasons:-

> "28.03. In respect of Reimbursement of Transport & Weighment Charges, they have shown a higher expense than the amount received during the period 2007-08 and 2009-10, I also observe from the Profit & Loss account for the period from 2007-08 to 2010-11 that the service provider shown the income and expense of the above heads under the Heads of "Operating Income" and "Operating Expenses respectively. In view of the difference between amount paid and amount received, the element of Profit or Loss is having direct impact in their financial accounts. And hence the amount received under the head of 'Port Payments/Freight Payments and "Reimbursement of Transport & Weighment Charges have to be treated as "Income" of the I service provider consequently these charges are falling under the definition of "Gross Amount as defined under Section 67(4)(c) of Chapter V of Finance Act, 1994, Also the service provider has not fumished the documents evidencing the payment of Ocean Freight or Transport Charges to the third party which are vital documents for claiming the exemption under the category of "Pure Agent. Hence I hold that the service tax is liable to be paid on the gross amount received by Mis Seamax Shipping India Pvt. Ltd."

5.1 In respect of service tax on charges like brokerage, income due to exchange rate fluctuation, drawback commission, he held as follows:-

> "29.01. Then coming to the demand of service tax under the category of Business Auxiliary service for the charges collected under the heads such as 1. Brokerage, 2. Income due to exchange rate fluctuation, 3 Drawback commission, 4. Rebate received, it is contended by the assessee that exchange rate fluctuation is not an income from service and sometimes, they are also loser. The income shown as drawback commission is the gross amount of drawback which is due to various constituents and they are mere filing agents and for their services in enabling them to get their drawback dues for which they are charging and raising bills on their customers which

are included in their service tax returns and service tax is paid by them and requested to delete the amount of Rs.38,33,145/- In this connection, I find that the contention of the assessee is not correct since it is stated by them that they have acted as filing agents to their customers. In such case, the applicant only, would get the drawback amount as credited in their account but not the service provider. The service provider as stated by them, charged commission for such services which were escaped assessment. Further, they have not produced any evidence in support of their claim that the drawback commission received is equal to the drawback amount paid to their customers if it is the case, the Chartered Accountant in his certificate would have stated the disbursement of drawback commission amount to their customers, but this aspect is silent in the certificate. Hence, I conclude that this drawback commission is an income earned for their service and escaped assessment and hence the service tax payable by the assessee and the same is recoverable. And with regard to rebate received, I find that the rebate amount received is not taxable as per the Board's instruction vide F.No.B-43/1/97-TRU dt.06.06.1997 as mentioned earlier.

5.2 In respect of amounts received as reimbursements for goods transport agency services, Commissioner holds as follows:-

"30.04 The contention of the assessee that the total transportation charges received from the customers was already been treated as service receipts as per table I of the SCN and again the payment made to the transporters were taxable under GTA service and the service tax was demanded from them amounts to double taxation is not correct on the following reasons.

i. The receipt of amount is taxable under the category of Clearing & Forwarding Agency services as discussed earlier.

ii. The freight paid by the assessee in the capacity of "body corporate" is taxable under the Goods Transport Agency Services.

Inasmuch as the service tax is payable under the provisions of law contention of the assessee is not tenable.

31.01 In view of the above I hold that M/s. Seamax Shipping India Pvt. Ltd. are liable to pay the service tax of Rs.83,70,488/- (ST Rs.81,26,688/- E.Cess: 1,62,533/- & SHE Cess: Rs.81,267/-) being the service tax of Rs 70,52,738/- under the category of Clearing & Forwarding Agent's Category, service tax of Rs.6,02,557/- under the category of Business Auxiliary Services and service tax of Rs.7.15,193/- under the category of Goods Transport Agent's services as detailed below:

| Name of the service | ST confirmed | E Cess confirmed | SHE cess confirmed | Total ST confirmed |
|---|---|---|---|---|
| Clearing & forwarding agent's service | 6847319 | 136946 | 68473 | 7052738 |
| Business Auxiliary Service | 585006 | 11700 | 5851 | 602557 |
| Goods Transport Agent's Services | 694363 | 13887 | 6943 | 715193 |
| | 8126688 | 162533 | 81267 | 8370488 |

6. However, we find that the above conditions of the impugned order is in view of Rule 5 of the Service Tax (Determination of Value) Rules, 2000. We find that the Hon'ble Supreme Court has struck down the said Rule in the case of Intercontinental Consultants and Technocrats Pvt. Ltd. (supra). The Hon'ble Court has held as under:-

> 21. Undoubtedly, Rule 5 of the Rules, 2006 brings within its sweep the expenses which are incurred while rendering the service and are reimbursed, that is, for which the service receiver has made the payments to the assessees. As per these Rules, these reimbursable expenses also form part of 'gross amount charged'. Therefore, the core issue is as to whether Section 67 of the Act permits the subordinate legislation to be enacted in the said manner, as done by Rule 5. As noted above, prior to April 19, 2006, i.e., in the absence of any such Rule, the valuation was to be done as per the provisions of Section 67 of the Act.
>
> 22. Section 66 of the Act is the charging Section which reads as under:
>
> "there shall be levy of tax (hereinafter referred to as the service tax) @ 12% of the value of taxable services referred to in sub-clauses of Section 65 and collected in such manner as may be prescribed."
>
> 23. Obviously, this Section refers to service tax, i.e., in respect of those services which are taxable and specifically referred to in various sub-clauses of Section 65. Further, it also specifically mentions that the service tax will be @ 12% of the 'value of taxable services'. Thus, service tax is reference to the value of service. As a necessary corollary, it is the value of the services which are actually rendered, the value whereof is to be ascertained for the purpose of calculating the service tax payable thereupon.
>
> 24. In this hue, the expression 'such' occurring in Section 67 of the Act assumes importance. In other words, valuation of taxable services for charging service tax, the authorities are to find what is the gross amount charged for providing 'such' taxable services. As a fortiori, any other amount which is calculated not for providing such taxable service cannot a part of that valuation as that amount is not calculated for providing such 'taxable service'. That according to us is the plain meaning which is to be attached to Section 67 (unamended, i.e., prior to May 1, 2006) or after its amendment, with effect from, May 1, 2006. Once this interpretation is to be given to Section 67, it hardly needs to be emphasised that Rule 5 of the Rules went much beyond the mandate of Section 67. We, therefore, find that High Court was right in interpreting Sections 66 and 67 to say that in the valuation of taxable service, the value of taxable service shall be the gross amount charged by the service provider 'for such service' and the valuation of tax service cannot be anything more or less than the consideration paid as *quid pro qua* for rendering such a service.

> 25. This position did not change even in the amended Section 67 which was inserted on May 1, 2006. Sub-section (4) of Section 67 empowers the rule making authority to lay down the manner in which value of taxable service is to be determined. However, Section 67(4) is expressly made subject to the provisions of sub-section (1). Mandate of sub-section (1) of Section 67 is manifest, as noted above, viz., the service tax is to be paid only on the services actually provided by the service provider."

7. In view of the above, we find that the reimbursements received by the appellant from their customers is not in respect of any service rendered by them but it is the reimbursements given to them as a pure agent and therefore in view of the decision of the Hon'ble Supreme Court, we are of the considered opinion that such reimbursements are not taxable service as by no way of imagination they can be linked to any conservation for such service rendered.

8. In the result, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Order pronounced in open court on 04.06.2025)

(**P. ANJANI KUMAR**)
Member (Technical)

(**P. DINESHA**)
Member (Judicial)

Rex