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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NO.26, Sashtri Bhavan Annexe Building, Haddows Road, Chennai-600006

Order Forwarding Letter

Final Order No. 43168 / 2018

CROSS Application No. : ST/CROSS/34/2012
Appeal No. : ST/195/2012-DB

Appellant :
C H Robinson Worldwide Freight

Respondent :
Commissioner of GST & CCE (Chennai North)

I am directed to send herewith a certified copy of the **Final Order No. 43168 / 2018** dated **17/12/2018**, passed by the Tribunal under Section 129 B of the Customs Act 1962/Section 35C of the Central Excise Act 1944/Section 86 (7) of the Finance Act 1994.

Dated: 03/01/2019

To:

J. S. Ramya
Deputy Registrar
CESTAT - Chennai

C H Robinson Worldwide Freight
18, Lokesh Towers, 2nd Floor
No. 4, Kodambakkam High Road
Chennai - 600034
Tamil Nadu

← **Swamy Associates**
No. 18, Ram Flats
Ashoka Avenue, Director's Colony,
Kodambakkam
Chennai - 600024
Tamil Nadu

Copy forwarded to :

- Commissioner of GST & Central Excise (Chennai North)
- The Commissioner (AR) , CESTAT Chennai.
- Indirect Tax Bar Association CESTAT, Chennai
- 1) M/s. Centax Publications (P) Ltd.
 - 2) M/s. Company Law Institute of India (P) Ltd.
 - 3) M/s. Tax Man Allied Services Ltd New Delhi.
 - 4) M/s. Lawcruz Advisors (P) Ltd. Faridabad.
 - 5) M/s. The ICFAI Society, Hyderabad
 - 6) M/s. Knowledge Processing Pvt Ltd., Delhi
 - 7) M/s. Taxongo Pvt Ltd.
 - 8) Guard File.

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

ST/195/2012 and ST/CO/34/2012

Arising out of Order-in-Original No.130/2011, dated 28.12.2011
passed by the Commissioner of Central Excise, Chennai – III Commissionerate

M/S.C.H.ROBINSON WORLDWIDE
FREIGHT INDIA PVT. LTD

APPELLANT

Versus

Goods & CCE,
COMMISSIONER OF SERVICE TAX / CHENNAI [WORTH] RESPONDENT

Appearance:

For the Appellant Shri G.Natarajan, Adv.
For the Respondent Shri A.Cletus, ADC (AR)

CORAM:

Hon'ble Smt. Sulekha Beevi C.S, Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing/decision **17-12-2018**

FINAL ORDER NO. 43168/2018

Per Bench:

Brief facts are that the appellants are providing logistics support for the exporters and importers in transport and cargo from their branches situated at various places. During the course of audit of accounts, it was noticed that the appellants had raised invoices on their customers on the following charges-



Sl.No.	Charges
01	Bill of Lading
02	Terminal Handling Charges
03	Agency Charges
04	Transport Cost
05	Loading and Unloading Charges
06	Measurement Charges
07	Striping Charges
08	Palatization Charges
09	Customs Clearance Charges
10	Wharfage Charges
11	Cargo Shifting Charges
12	Survey Charges
13	Stuffing Charges
14	Handling Charges
15	CMC-EDI Charges
16	Fumigation Charges
17	AAI Charges
18	Insurance Charges
19	Demurrage Charges
20	Fort Lift Charges
21	Bond Charges

2. It was noticed that they did not include these charges in the taxable value for discharging service tax. Further, it was noticed that appellants had collected Ocean Freight Charges, at rates higher than the actual amount charged by Shipping Lines/Steamer Agents, who did not include the same in the taxable value. Show-cause notice was issued, *inter alia*, raising the above allegations, alleging short-payment of service tax and proposing to demand the service tax under Business Support Service along with interest and also for imposing penalties. After due process of law, the original authority confirmed the service tax under Business Auxiliary Services and imposed penalties. Hence this appeal.

3. On behalf of the appellants, the learned counsel Shri G. Natarajan submitted that out of the 21 services listed above, the appellants have discharged service tax for all services from Sl.Nos.1 to 14 under the category of Business Support Services. From Sl.Nos. 15 to 21 all the charges are in the nature of Reimbursable Expenses and,



therefore, not subject to levy of service tax as per the decision of the Hon'ble Apex Court in the case of *M/s. Inter-continental Consultants and Technocrats. Pvt.Ltd., Vs Union of India reported in 2013 (29) S.T.R.9 (Del.)*. With regard to the demand of Ocean Freight Charges, he submitted that the said demand is raised under Business Support Service in show-cause notice, whereas, the Commissioner has confirmed it under Business Auxiliary Service. Further, the said issue, whether Ocean Freight Charges are subject to levy of service tax is decided by Tribunal in various judgments as under:-

- (i) *M/s. DHL Lemur Logistics PVT. Ltd., Vs Commissioner of Service Tax, Bangalore* reported in 2010 (17) S.T.R.266 (Tri.-Bang.).
- (ii) *M/s. Agility Logistics Pvt. Ltd., Vs Commissioner of Service Tax, Chennai* reported in 2014 (35) S.T.R. 858 (Tri.-Chennai).
- (iii) *M/s. APL Logistics (India) Pvt. Ltd., Vs Commissioner of Central Excise, Chennai-III* reported in 2014 (36) S.T.R.1310 (Tri.-Chennai).
- (iv) *M/s. Greenwich Meridian Logictics (I) Pvt. Ltd. Vs Commissioner of Service Tax, Mumbai* reported in 2016 (43) S.T.R.215 (Tri.-Mum.).

He, therefore, prayed to set aside the demand.

4. The learned Authorised Representative Shri A. Cletus, ADC (AR) for the Revenue supported the findings in the impugned order. With regard to the contention of the appellants that though in the show-cause notice, the demand is made under Business Support Service and the Commissioner has confirmed the demand under Business Auxiliary Service and thus has travelled beyond the show-cause notice, the learned Authorised Representative submitted that the department has filed a cross objection against this conclusion of

the Commissioner. He prayed that the said contention raised by the department in the cross objection may be considered.

5. Heard both sides.

6. In the list given above, the appellants have already discharged service tax on charges collected from Sl.Nos.1 to 14. With regard to Sl.Nos.15 to 21, the learned counsel has submitted that these are not confirmed on Reimbursable Expenses. It can be seen that the charges are in the nature of CMS/EDI Charges, Insurance Charges, Demurrage Charges etc. Being actuals in the nature of Reimbursable Expenses, the decision of the Hon'ble Apex Court in the case of *M/s. Inter-continental Technocrats and Consultants* (supra) would squarely apply and the demand of service tax on these charges cannot be sustained. We, therefore, set aside the demand on these charges.

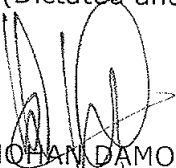
7. In addition to the above, the show-cause notice has demanded service tax on Ocean Freight Charges. This Tribunal, in the decisions relied upon by the learned counsel for the appellants has considered the very same issue in detail and has held that Ocean Freight Charges are not liable to service tax. Following the said decisions, we are of the view that the demand on Ocean Freight Charges cannot be sustained and require to be set aside, which we hereby do.

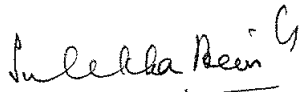
8. In addition, we have to say that though the demand in the show-cause notice is made under Business Support Service, the Commissioner has travelled beyond the show-cause notice and confirmed the demand under Business Auxiliary Service. For this reason also, the impugned order cannot sustain. From the discussions made above, we hold that the impugned order is set aside. The



appeal is allowed with consequential reliefs, if any. The cross objection filed by the department is disposed of accordingly.

(Dictated and pronounced in open court)

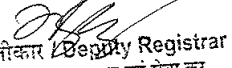

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)


(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

ksr
21-12-2018



प्रमाणित प्रतिलिपि / CERTIFIED TRUE COPY


उप - पंजीकार / Deputy Registrar
सूचना केंद्र, उत्पाद शुल्क एवं सेवा कर
अपील अधिकारी / (CESTAT)
चेन्नई / CHENNAI

08 JAN 2019