CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH – COURT NO.3

Service Tax Appeal No. 50668 Of 2019

[Arising out of Order-in-Appeal No. 213-14VCST/JPR-1/2013 dated 17.12.2013 passed by the Commissioner of Customs & Central Excise (Appeals-I) Jaipur]

Unique Cargo Movers **: Appellant**
(102, 1st Floor, Kristuri Palace, KGV
KA Rasta Johari Bazar, Jaipur, Rajasthan)

Vs

Commissioner of Central Goods and Service Tax, Customs and Central Excise, Jaipur-I **: Respondent**
NCR Building, Statute Circle, C-Scheme,
Jaipur-Rajasthan-302005

with

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NCR Building, Statute Circle, C-Scheme,
Jaipur-Rajasthan-302005

APPEARANCE:
Ms. J. Kainaat, Advocate for the Appellant
Shri Aejaz Ahmad, Authorised Representative for the Respondent

CORAM :

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER No. 50561-50562/2025

Date of Hearing:29.04.2025

Date of Decision:29.04.2025

BINU TAMTA

M/s New Globe Logistik Private Limited (in short M/s New Globe) is an authorized IATA agent of all international airlines, who also engaged sub-agents to book maximum cargo on airlines. The appellant is a sub-agent of M/s New Globe and has been booking cargo on international airlines for carriage to foreign destinations. M/s New Globe gets commission on the freight amount and pays service tax thereon. The appellant is also getting commission from M/s New Globe and paying service tax. IATA agents also gets incentives/discounts from bulk cargo depending upon the weight/volume/density of the cargo occupying lesser space in the aircraft. M/s New Glob also share part of the incentive/discount to the appellant. On the basis of the audit in the year 2011 for the period 2006-07 to 2009-10, the Department was of the view that the appellant was liable to pay service tax on the amount of incentive/discount received from M/s New Globe. Show cause notice dated 31.01.2011 raising the demand of Rs. 1,63,416/- was confirmed by the adjudicating authority and also by the Order-in-Appeal No. 213-14VCST/JPR-1/2013 dated 17.12.2013 passed by the Commissioner (Appeals). Aggrieved by the impugned order, the appellant has filed the present appeal.

2. The main submission of the learned counsel is that the issue whether the incentive received from the airline companies under the category of 'Business Auxiliary Service' is chargeable to service tax has been settled in favour of the assessee by the deicision of the Tribunal in the case of **DHL Logistics Private Limited vs.**

Commissioner of Central Excise, Mumbai-II[1]. The observations of the Tribunal is as under:-

> "4.3. The next issue relates to the income under the head of airline commission and airline incentive sought to be text under BAS. It is seen that the said income is generated during the course of booking of bulk cargo by the appellant with the airline. The appellant have received the incentive and commission from the airline. The appellants are engaged in buying and selling of space in the airline and depending on the volume of the space bought by the appellant from the airlines they received the commission/incentive. The appellants are not buying and selling space on the airline on behalf of their client but on their own behalf. To consider the activity of buying and selling the taxable activity under the head of BAS, the same should be done on behalf of the client. Thus, if the appellants were selling the space on carrier from the airline directly to the exporters without themselves purchasing the space then it could have been considered as an activity involving promotion of sales. In the instant case the appellant are directly buying themselves and thereafter selling the same to the exporters. In this activity they are receiving incentive and commission based on the total space purchased by them from the airline. This activities can by no stretch of imagination be considered as BAS as for any service to statute the BAS atleast three parties should be involved in the transaction namely the service provider, service recipient and the client. In the instant case there are only two parties in the transaction, the seller of space and the buyer of space. Any commission/incentive received, as a result of this transaction of sale cannot be considered as supply of BAS. In view of above, the demand under the head of BAS for the Revenue generated as airline/airline incentive is set aside."

3. Learned counsel also placed on record the decision in the case of **Wig Air Freight Private Limited vs. Commissioner of Central Goods and Service Tax, New Delhi[2],** where the issue under consideration was regarding imposition of service tax on incentives under the category of 'Business Auxiliary Service'. In the light of the decision of the Larger Bench in **Kafila Hospitality & Travel Private Limited vs. Commissioner of Service Tax, Delhi[3],** it was held that no service tax can be levied on 'incentive'. The relevant paragraph of the decision is quoted below:-

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1 2017 (6) GSTL (Tri.-Bom.)
2 2024 (3) TMI 596-CESTAT NEW DELHI
3 2021 (470 GSTL 140 (Tri.-LB)

> "9. The amount received as 'Commission' is distinguishable from the amount received as "Incentive' for the simple reason that 'Commission' has direct nexus to the service which the appellant is providing, i.e booking of space with the airlines whereas 'Incentive' as explained by the appellant is the profit which they earn from the difference in the amount which they generally charge from their clients which is higher than the price they have negotiated with the airlines. Therefore, the amount received by way of incentive is not on account of rendering any services but on account of trading activity which is not taxable under the Act. Section 66 which is the charging section provides for levy of tax at the rate of 12% on the value of taxable services referred on therein. Therefore, what is relevant for levy of service tax is the rendering of services. The Larger Bench in Kafila Hospitality, (supra) dealt with the issue whether the incentives paid by the airlines to the travel agents or sub agents for achieving targets was for promoting and marketing the business of the airlines and were liable to service tax under the category of BAS and concluded that under Section 67 of the Act Service tax is leviable on 'consideration and incentives cannot be construed as consideration and therefore cannot be subjected to levy of service tax. We are guided by the observations of the Larger Bench that incentives are not to be construed as 'consideration' and applying the said logic, the inevitable conclusion is that no service tax can be levied on incentives received by the appellant, coupled with the fact that incentive in the present case is a form of profit earned by the appellant as a result of a trading activity. The findings of the adjudicating authority that 'incentive received by the appellant is also another form of 'consideration' given by the airlines for providing the service for promotion of their business needs to be set aside in view of the decision of the Larger Bench, where it was specifically concluded that by booking air tickets the air travel agent is promoting its own business and is not promoting the business of the airlines."

4. The issue raised in the present case is squarely covered by the aforesaid decisions and following the same, we set-aside the impugned order. The appeals are, accordingly, allowed.

(Dictated & pronounced in the open Court)

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

G.Y.