CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI

S.No.	Appeal No.	Appellant	Respondent
1.	ST/57/2012	Professional Couriers	CGST & CE Chennai North
2.	ST/54/2012	CGST & CE Chennai North	Professional Couriers
Arising out of Order-in-Appeal No.186/2011 (MST) dt. 24.10.2011 passed by commissioner of Central Excise (Appeals), Chennai			

Appearance :

Shri T. Ramesh, Advocate
For the Assessee

Shri K. Veerabhadra Reddy, ADC (AR)
For the Revenue

CORAM :

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

Date of hearing / decision : 26.09.2018

FINAL ORDER No. 42489-42490 / 2018

Per Bench

M/s.The Professional Couriers (TPC) is an assessee engaged in courier activity and are registered with service tax department under the category of 'Courier Services'. Pursuant to investigation conducted by DGCEI, it emerged from the balance sheet that appellants were collecting certain charges as 'crossing over charges', raised on their sub-franchisee agencies located in other parts of Tamil Nadu for the purpose of enabling further movement of documents, which originated from their sub-franchisees' end. It appeared to the department that the activities of the assessees falls under "Business Auxiliary Services" (BAS) / Business Support Service (BSS). Hence a show cause notice

No.68/2008 dt. 03.07.2008 was issued to appellants *inter alia*, proposing demand of service tax liability on the crossing over charges for the period 10.09.2004 to 30.04.2006 under BAS and for the period 01.05.2005 to 30.09.2007 under BSS along with interest and imposition of penalties. In adjudication, original authority confirmed the demand of Rs.12,91,668/- for the period 10.09.2004 to 30.04.2006 under BAS and Rs.16,42,302/- for subsequent period under BSS with interest thereon. Equal penalty was imposed under Section 78 of the Finance Act, 1994. Penalty was also imposed under Section 77. On appeal, the Commissioner (Appeals) vide impugned order No.186/2011 dt. 24.10.2011 set aside the demand and interest in respect of BAS prior to 1.5.2006. Lower appellate authority however upheld the demand with interest under BSS. Penalties imposed under Section 77 & 78 were also set aside by the said authority. Aggrieved by the upholding of the demand under BSS, the assessee has filed Appeal ST/57/2012. The department has also filed an appeal against setting aside by the Commissioner (Appeals) of the demand under BAS for the period prior to 1.5.2006 as also against setting aside of penalties under Section 77 & 78 of Finance Act and have filed Appeal ST/54/2012.

2. When the matter came up for hearing, on behalf of the assessee, Ld. Advocate Shri T. Ramesh made oral and written submissions which can be broadly summarized as under :

i) As regards the assessee's Appeal, it is submitted that the demand confirmed under Business Supportive Service is also not sustainable. The activity involved in the present case is continuous service of Courier by single network. All the transactions are taking place only in the name TPC. In the circumstances, there is no service rendered to any third party and hence, there is no rendering of any Business Supportive Service. Moreover, admittedly, the entire activity is within TPC only.

ii) The definition of 'Business Auxiliary Service' cannot be applied in as much as the transaction is between the same network for the completion of the Courier Service and the Service for the self. There is no client and service provider relationship in the present case. Hence service provided by self to self only and the same cannot be exigible to service tax liability. Ld. Advocate placed reliance on Final Order No.42181/2018 dt. 01.08.2018 of CESTAT Chennai in the case of *Concord Express Logistics India Pvt. Ltd*.

iii) The activity of TPC is similar to Co-loader. This Hon'ble Tribunal in the case of *Concord Express Logistics India Pvt. Ltd., Vs. CST*. (supra) has held that the demand of service tax on the co-loader under Business Supportive Service is not sustainable. The said decision is squarely applicable to the facts of the present case.

iv) Further, during the disputed period there was a Board circular dated 01.11.1996 in operation, which clarified that no Service Tax can be demanded from the co-loader. In the said Final Order, this Hon'ble Tribunal was pleased to refer to the Board Circular dated 01.11.1996.

iv) The demand is barred by Limitation and Imposition of penalty under Section 78 is not sustainable.

v) As regards the submissions in Department's Appeal, the very same service cannot fall under two different heading. Further, the activity involved in the present case in any case cannot be brought under any of the Service Tax provisions.

3. On the other hand, on behalf of the department, Ld. A.R Shri K. Veerabhadra Reddy submits that there is no bar for the same activity performed by the appellant to fall under BAS prior to 1.5.2006 and BSS subsequent to that date. He submits that service category of BSS was carved out of BAS only. He placed reliance on the Tribunal decision in *DTDC Courier & Cargo Ltd. CCE & ST Bangalore* - 2012 (26) STR 365 (Tri.- Bang.). Ld. AR also submits that the Board's Circular No.341/43/96-TRU dt. 1.11.1996 has no relevance to the present case since that was a clarification in respect of co-loaders. However in the instant case, the assessee were collecting crossing charges from their sub-franchisee agencies located in other parts of Tamil Nadu. He drew our attention to para-6 of the SCN dt. 3.7.2008 giving narration of statement of A. Mohideen Gani, Authorized person of the assessee recorded on 3.10.2007, where he has *inter alia* stated that crossing over charges are being collected towards logistic support and other support activities provided to the franchisee. For example, a document is booked at Trichy for destination to Mumbai. The said document comes to Chennai and the same is transferred to Mumbai. The charges incurred for transferring document to Mumbai are collected as crossing over charges from the Professional Courier office at Trichy.

4. Heard both sides and have gone through facts.

5.1 One of the contentions of the Ld. Advocate is that activity of assessee is similar to co-loader and hence Board's circular dt. 01.11.96, which clarified that no service tax can be demanded from the co-loader will very much be applicable to their case. We are however unable to appreciate this argument. The Board's circular sought to cover cases where one courier agency utilizes services of another company for in-transit movement of documents etc. from one point to another; such co-loaders undertake to transport documents, goods etc. on behalf of courier agency and charge courier agency for such services. The facts on record shows that an assessee or their franchisee units are definitely not 'co-loaders' as envisaged in the Board's circular. Hence this argument does not carry merit.

5.2 However, we do find merit in the alternate argument of the Ld. Advocate that activity involved in the present case is a continuous service of courier by single network and the transaction is between the same network for the completion of courier service, hence the service is being given to self. We note that from para-13 of the order of original authority dt. 30.07.2009, that the assessee in their reply to SCN had clarified and confirmed that TPC centers spread across different stations are belonging to one network community called "TPC network"; that the charges for such enabling activity is exactly more or less to cover the expenditure involved in such re-routing by the center which is engaging such re-routing and the nomenclature is referred to as crossing charges; that the rate structure has been prescribed amongst the TPC network. It has also been submitted that as the TPC centers are to be considered as single network, they cannot be brought under the definition of "client", there is no third

party relationship to the same network, hence the aspect of both "service" and "client" ceases to exist.

5.2. Discernably, all the franchisees of the assessee operate under the TPC umbrella. In other words, all these outlets will function as defacto TPC offices. There is no allegation that the documents booked by TPC Madurai are not booked in the name of TPC but in the name of some other courier agency. Viewed in this light, it is but evident that the various franchisees spread over Tamil Nadu and the assessees based in Chennai, are operating in the hub-and-spoke business model. The documents from each of these TPC franchisees may be sent to the TPC hub at Chennai wherefrom they will be further sent onwards to various other TPC hubs in other parts of the country for further distribution. This being the case, crossing over charges are being collected only for the intra-movement of courier packages within the hub-and-spoke arrangement, namely with the TPC network in Tamil Nadu. We therefore find that in the present case the impugned services within the TPC network is nothing but a continuation or culmination of courier services only. It then cannot be alleged that TPC receiving or giving of services within its own network of the assessee will render them liable to service tax levy. In the event, upholding of the demand under BSS by the lower appellate authority cannot be sustained and is therefore set aside. Appeal No.ST/57/2012 of the assessee succeeds and is allowed, with consequential benefits, if any, as per law.

5.3 Coming to the department appeal, for the same reasons discussed herein above, we hold that impugned services cannot also fall under BAS for the period

prior to 1.5.2006. We therefore find no merit in department appeal. In consequence Appeal ST/54/2012 is dismissed.

6. To sum up —

Assessee appeal ST/57/2012 is allowed

Department appeal ST/54/2012 is dismissed.

(operative part of the order pronounced in court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi, C.S)
Member (Judicial)

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