CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Service Tax Appeal No. 20233 of 2017

(Arising out of Order-in-Appeal No. COC-EXCUS-000-APP-035&036-16-17 dated 19.05.2016 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals - 1), Cochin.)

M/s. Flyjac Logistics Pvt. Ltd.
No. 55/3562, 1st Floor,
Soonoro Church Road,
Elamkulam,
Ernakulam,
Kerala – 682 020. .....**Appellant(s)**

VERSUS

Commissioner of Central Excise, Customs and Service Tax,
Cochin Commissionerate
C. R. Building, I.S. Press Road,
Cochin – 682 018. .....**Respondent(s)**

WITH

Service Tax Appeal No. 20234 of 2017

(Arising out of Order-in-Appeal No. COC-EXCUS-000-APP-035&036-16-17 dated 19.05.2016 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals - 1), Cochin.)

M/s. Flyjac Logistics Pvt. Ltd.
No. 55/3562, 1st Floor,
Soonoro Church Road,
Elamkulam,
Ernakulam,
Kerala – 682 020. .....**Appellant(s)**

VERSUS

Commissioner of Central Excise, Customs and Service Tax,
Cochin Commissionerate
C. R. Building, I.S. Press Road,
Cochin – 682 018. .....**Respondent(s)**

AND

Service Tax Appeal No. 21599 of 2017

(Arising out of Order-in-Appeal No. COC-EXCUS-000-APP-153-2017 dated 27.07.2017 passed by the Commissioner of Central Tax and Central Excise (Appeals), Cochin.)

M/s. Flyjac Logistics Pvt. Ltd.
No. 55/3562, 1st Floor,
Soonoro Church Road,
Elamkulam,
Ernakulam,
Kerala – 682 020. .....**Appellant(s)**

VERSUS

Commissioner of Central Tax
and Central Excise,
Cochin Commissionerate
C. R. Building, I.S. Press Road,
Cochin – 682 018. .....**Respondent(s)**

APPEARANCE:
Ms. R. Radhika Shriranjini, Advocate for the Appellant.

Mr. M. Sreekanth, Asst. Commr. (AR) for the Respondent.

CORAM:

HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)

HON'BLE SMT. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order Nos.20413-20415/2026

Date of Hearing: 28.11.2025

Date of Decision: 24.03.2026

PER: P.A. AUGUSTIAN

Appellant is providing various services and alleging short payment of service tax, proceedings were initiated. Details of the show cause notice and allegations regarding short payment are appended below:-

Sl. No.	Issues as per SCN dt. 22.10.2009	Service Tax	EDU CESS	SHE EDU CESS
01	Non-payment of service tax on excess amount collected as freight and other charges under CHA services	1381288	27626	5674
02	Non-payment of ST on exchange gain under CHA services	134242	2685	88
03	Non-payment of ST on income from SEZ under CHA services	340531	6811	3405
04	Non-payment of ST on the amount collected as various charges under CHA services	1501670	30033	7691
05	Non-payment of ST on the amount collected as various charges under C&F services	199668	3993	466
06	Non-payment of ST on the amount collected as transportation charges under GTA services	383727	7675	1619
07	Short payment of ST on the value received under CHA services	27217	2436	1748
08	Non - payment of ST collected in excess of the service tax paid by them in respect of CHA, C&F and GTA services and not paid	755327		

Issues as per SCN dated 19.10.2011				
01	Non-payment of service tax on excess amount collected as freight and other charges under CHA services	382418	7648	3824
02	Non-payment of ST on exchange gain under CHA services	249839	4997	2498
03	Non-payment of ST on the amount received as profit share from the foreign agents under BAS services	82394	1648	824

2. Two show cause notices were taken up for hearing and Adjudication Authority as per the common Order-in-Original No. 59/2012 dated 24.02.2012 dropped the demand on excess freight charge collected. But confirmed demand of service tax on exchange fluctuation gain. Aggrieved by said order, both Appellant and the Department filed appeal before the Commissioner (Appeals) and Commissioner (Appeals) as per the impugned order allowed the appeal filed by the Department and rejected the appeal filed by the Appellant. And in effect, the demand as per the show cause notice is restored. Details of the issues and the findings on the confirmed demands in OIO / OIA are given below:-

Sl. No.	**Issues as per SCN dt. 22.10.2009**	**Findings of Original Authority/ Learned Commissioner (Appeals)**
01	Non-payment of service tax on excess amount collected as freight and other charges under CHA services	OIA had dropped the demand. But the Learned AA vide OIA No. 035-036/2016-17 has confirmed the demand after finding that the excess amounts are received as consideration and the same is nothing but mark up or commission margin, hence includable in the value of service.
02	Non-payment of ST on exchange gain under CHA services	Demand dropped by Adjudication authority.
03	Non-payment of ST on income from SEZ under CHA services	No documentary evidence provided (Para 54 C page 23) to prove that the services provided to SEZ unit has been approved as Specified Service required in authorized operations and without such approval the appellants will not be eligible for exemption from service tax.
04	Non-payment of ST on the amount collected as various charges under CHA services	The appellants have not put forth any valid reasons and not submitted any documents to prove the said amount is eligible for exclusion under Rule 5 of the Service Tax (Determination of Value) Rules, 2006. Hence the inclusion of the excess amounts collected by the assessee is justified
05	Non-payment of ST on the amount collected as various charges under C&F services	Appellant has not given any explanation in this regard not refuted the allegation in the SCN and hence the demand needs to be confirmed
06	Non-payment of ST on the amount collected as transportation charges	Appellant has not given any explanation in this regard nor refuted the allegation in the SCN and hence the demand needs to be confirmed

	under GTA services	
07	Short payment of ST on the value received under CHA services	Appellant has not given any explanation in this regard nor refuted the allegation in the SCN and hence the demand needs to be confirmed
08	Non - payment of ST collected in excess of the service tax paid by them in respect of CHA, C&F and GTA services and not paid	Appellant has not given any explanation in this regard nor refuted the allegation in the SCN and hence the demand needs to be confirmed
	Issues as per SCN dated 19.10.2011	
01	Non-payment of service tax on excess amount collected as freight and other charges under CHA services	OA had dropped the demand. But the Learned AA vide OIA No.035-036/16-17 has confirmed the demand after finding that the excess amounts are received as consideration and the same is nothing but mark up or commission margin, hence Includable in the value of service.
02	Non-payment of ST on exchange gain under CHA services	Dropped
03	Non-payment of ST on the amount received as profit share from the foreign agents under BAS services	Confirmed under Business Auxiliary Services the activity of the appellants is in relation to promotion or marketing or sale of goods produced or services provided by or belongs to e client. In the instant case, services are provided by the Appellant to their overseas agents and the consideration is shared as profit.

3. Aggrieved by said orders, followings appeals are filed.

Sl. No.	Appeal Number	Amount involved (Rs.)	Period	OIO No and Date
1	ST/20234/2017	10,59,363/-	2004-2011	59/60/2012 ST
2	ST/20233/2017	2,57,334/-	2004-2011	59/60/2012 ST
3	ST/21599/2017	37,01,974/- and 4,78,756/-	2004-2011	59/60/2012 ST

4. As regarding non-payment of service tax on the excess amount collected as freight and other charges, Learned Counsel for the Appellant submits that service tax under Cargo Handling Service (CHS) is demanded on the difference between freight charges, i.e. what is charged from the client and what is paid to the carrier. The issue is no more res integra and it is covered by the decisions of this Tribunal in appellant's own case. As per the Final Order No. 20650/2024 dated 23.07.2024, it is held that freight margin is trading profit arising from sale of space and not service consideration under CHS. Further as regarding payment of service tax on the exchange gain under CHA services, Learned Counsel submits that said demand was dropped by the Adjudication authority and restored by the

first Appellate authority. Learned Counsel further submits it is purely a financial gain / loss incidental to forex conversion. Said issue is also covered as per the above final order of this Tribunal where it is held that exchange fluctuation gain is not all consideration for a service under Section 67 of the Finance Act, 1994.

5. As regarding demand of Rs. 3,50,747/- as service tax on the income from SEZ under CHA services, Learned Counsel submits that it was rejected on the ground that no documentary evidence submitted prove that the services provided to SEZ unit has been approved as Specified Service required in authorized operations and without such approval, the appellants will not be eligible for exemption from service tax. In this regard, Learned Counsel submits that the activities are carried out by appellant for M/s. Suzlon Wind International Ltd. Learned Counsel also draw our attention to the reply to SCN where it is specifically stated that SEZ unit is exempted from service tax provided the same are used for authorized operations. The Appellant had also draws our attention to order dated 24.09.2007 and attached list of authorized operations for Suzlon and as per Sr. No. 8 of said list, the activity of the appellant is also covered. However, in spite of making detail submission and producing the evidence as part of reply to SCN, Adjudication Authority has not considered the same while confirming the demand.

6. As regarding invoking the extended period of limitation, Learned Counsel submits that the appellant has always kept the Department informed about its activities right from October, 2003 and have in fact sought clarification from the Department and the said clarification came after a long lapse of time. It is no open to the Department to state at this stage that there has been suppression of facts.

7. As regarding the demand on other services, Learned Counsel submits that the Appellant had received the income by undertaking activities like booking of export cargo, enter into an insurance contract on behalf of the Customer arranged for transport of goods to and from the customs station…etc which have no nexus with the activities of CHA. The Appellant had collected these amounts in line with the industrial practice and are utilized to meet the expense on behalf of the customer. The Learned Counsel further submits that the issue is squarely covered by the judgment of Hon'ble Supreme Court in the matter of **Union of India Vs. M/s**

Intercontinental Consultants & Technocrats Pvt. Ltd (2018 (10) STL 401 (SC). As regarding demand of Rs.3,93,021/- on GTA services in Appeal No. ST/21599/2017, Learned Counsel submits that there was no justification to allege evasion of service tax on RCM basis, since it is a revenue neutral and appellant is eligible to claim the cenvat credit if such payment is made. Further abatement of service tax on RCM basis is also not considered by the Adjudication Authority. As regarding the finding on short payment of Rs.31,401/- under CHA service, Learned Counsel draw our attention to the chart showing the details of such payment reproduced from service tax returns submitted by them during the period from 2006-07 to 2008-09 and submits that there is no such liability as held by the Adjudication Authority. As regarding the finding that the appellant had collected Rs.7,55,327/- in excess than the amount paid as service tax, Learned Counsel submits that as per Rule 6 of the Service Tax Rules, 1994, service tax is payable by 5th of the month immediately following the calendar month in which payments were received towards the value of services and during the impugned period, service tax was payable on receipt basis. Accordingly, appellant had remitted all amounts which were collected from appellant's customers. However, finding is made merely on the basis of accrual entries in the books of account. This is evident from the heading "Credit in Trial Balance" in the first table of the SCN No.164/2009/ST dated October 22, 2009. In this regard, Learned Counsel submits that whenever an amount (including service tax) is due from a customer, the customer's account is debited and income / service tax payable accounts are credited. When the amount is realised from customers, bank account is debited and the customer's account is credited. When the realised service tax is remitted to the Government as per Service Tax Rules, the service tax payable account is debited. Learned Counsel further submits that though the above facts were brough to the notice of the respondent in the reply dated on 15.12.2009. But no finding is given and said demands is also unsustainable.

8. As regarding demand of Rs.54,866/- as service tax during the period from 2010-11 under BAS in Appeal No. ST/21599/ 2017, Learned Counsel submits that the appellant is not promoting anyone's business and the activities are carried out on principle-to-principle basis. The issue was considered in the matter of **C C, NEW DELHI Vs KARAM FREIGHT MOVERS (2017 (4) G.S.T.L. 215 (Tri. - Del.))** where it is held that:-

> "12. In the present case it was recorded that the respondent was already paying service tax on commission received from airlines/shipping lines under business auxiliary service since 10-9-2004. The original authority recorded that the show cause notice did not specify as to who is the client to whom the respondent is providing service. Original authority considered both the scenario, airline/shipping lines as a client or exporter/shipper as a client. In case the respondent is acting on behalf of airlines/shipping lines as client, it was held that they are covered by tax liability under BAS. Further, examining the issue the original authority viewed that commission amount is necessarily to be obtained out of transaction which is to be provided by the respondent on behalf of the client, that is, the exporters. The facts of the case indicated that the mark-up value collected by the respondent from the exporter is an element of profit in the transaction. The respondent when acting as agent on behalf of airlines/shipping lines was discharging service tax w.e.f. 10-9-2004. However, with reference to amount collected from exporters/shippers the original authority clearly recorded that it is not the case that this amount is a commission earned by the respondent while acting on behalf of the exporter and said mark-up value is of freight charges and are not to be considered as commission. Based on these findings the demand was dropped. We do not find any impropriety in the said finding. The grounds of appeal did not bring any contrary evidence to change such findings. Accordingly, we find no merit in the appeal by Revenue. The appeal is dismissed".

9. As regarding demand by invoking extended period of limitation and penalty, learned Counsel submits that there is no allegation regarding suppression of facts and further submits that taxability of most of the issues were subject matter of litigation over a period of time. Further submits that the Appellant had paid service tax on a Bonafide belief that the appellant is eligible to claim deductions from the amount as collected from the customers and there is intension to evade payment of service tax. Thus, impugned orders confirming demand by invoking extended period of limitation and penalty imposed on appellant are unsustainable.

10. Learned Authorized Representative (AR) for the revenue reiterated the finding in the impugned order and submits that the appellant has either not furnished the relevant details or has not produced documents to substantiate their contentions and/or, not refuted the allegations in the SCN. As regarding Profit Share from Foreign Agents, Learned AR submits that it is nothing but commission received for the BAS services provided in the name of Profit. As regarding non-payment of service tax by excluding the amounts collected by the appellants from the recipient of services, the Adjudication Authority / Appellate authority rightly confirmed the demand by including such amount in the transaction value in terms of Section 67 of the Finance Act, 1994 and Rule 5 of the Service Tax (Determination of Value) Rules, 2006. The Learned AR further submits that the modus operandi adopted by the appellant is that when an importer approaches the appellant for import of cargo, Appellant quotes a rate for the entire activity,

Appellant contacts the overseas counter partner, The exporter outside the country delivers the goods to the counterpart; The counterpart arranges the shipping, mostly on a pre-paid basis; Once the goods are imported, the Appellant prepares documents and hands over documents of title as well as delivery order to the importer.) The importer or the CHA appointed by them arranges for clearance; The Appellant recovers charges incurred by his counterpart from the importer apart from the expenses incurred by him in connection with the delivery of goods.

11. As regarding exclusion of reimbursable expenses and relying on the judgement of Hon'ble Supreme Court in the case **M/s. Intercontinental Consultants and Technocrats Pvt. Ltd** (supra), Learned AR submits that the ratio of the above decision is not applicable since the findings is not only about inclusion of reimbursable expenses in the value of services. The appellant has collected more than the actual expenses and they cannot be termed as pure agents, more so when the complete documentary evidence has not been provided. In this regard, Learned AR draw our attention to the findings of the Learned Commissioner (Appeals) in OIA NO.153/2017 dated 17.07.2017. Learned AR further submits that as per the findings in Para 12 of the OIA, the appellants have not attended the Personal Hearings granted on 27.04.2016, 30.05.2016, 21.09.2016, 15.12.2016, 29.03.2017 and 10.07.2017 and the case has been decided ex-parte based on the available records. Accordingly, impugned orders are sustainable.

12. Heard both sides and perused the records. As regarding Appeal No. ST/20233/2017 and Appeal No. ST/20234/2017, the issues are regarding service tax on freight margin, fluctuation gain due to forex conversion. Since, these issues are squarely covered by the decisions of this Tribunal in appellant’s own case vide Final Order No. 20650/2024 dated 23.07.2024 and 21361-21362/2025 dated 02.09.2025, demand against said impugned orders are unsustainable.

13. In Appeal No. ST/21599/2017, the issues are related to Reimbursable expenses, services to unit in SEZ (M/s. Suzlon India Energy Rs. 3,50,747/-), demand against short declaration of amount received under C&F (Rs. 2,04,127/-), Service Tax on GTA (Rs. 3,93,021/-) and CHA Services (Rs. 31,401/-).

14. As regarding the demand for services to unit in SEZ, we find that while submitting reply to SCN, Appellant produced order dated 24.09.2007 and attached list of authorized operations for Suzlon. As per Sr. No. 8 of said list, the activity of the CHA is also covered and SEZ unit is exempted from service tax. Accordingly, demand of Rs.3,50,747/- for services to unit in SEZ is unsustainable.

15. As regarding the GTA services Commissioner in the impugned order notes that the appellant had not refuted the contentions in the show cause notice and has failed to produce any documentary evidences as to why the differential amount of Rs. 3,93,021/- was not paid. However, the appellant claims there is no differential tax to be paid in as much as they have paid the entire tax on the transportation charges. However we find that the appellant has been paying the service tax regularly on transportation charges and filing their ST-3 returns hence, the question of suppression does not arise. Therefore, the demand can be sustained only for the normal period. Similarly with the case with regard to CHA services and C&F services where appellant has been regularly paying and the differential amount of Rs. 31,401/- and Rs. 2,04,127/- respectively cannot be sustained since there is no suppression of facts and the demand beyond the normal period of limitation. We also find that the differential service tax has been demanded on the differential value claimed as reimbursable expenses by the appellant. The commissioner has invoked Rule 5 of the Service Tax (Determination of Value) Rules, 2006 for demanding the differential tax. We find that this issue is no longer res-integra and as much as the Hon'ble Supreme Court in the case of **M/s. Intercontinental Consultants and Technocrats Pvt. Ltd (supra)** wherein the Hon'ble Supreme Court has held Rule 5(1) of Service Tax (Determination of Value) Rules, 2006 is not good law, since the power to make rules can never exceed or go beyond the section which provides further charge or collection of the Service Tax. In view of the above we do not find any reason to sustain the demands which are based on invoking Rule 5 as discussed above.

16. As regarding demand of Rs. 84,866/- as service tax under BAS during the period from 2010-11, we find that there is no finding the appellant is acting as a agent or promoting anyone's business to confirm demand under BAS. The activities are carried out on principle-to-principle basis. Considering the ratio of the decision in the matter of **Karam Freight**

Movers (Supra), demand of Rs.84,866/- as service tax under BAS in Appeal No. ST/21599/2017 for the period from 2010-11 is unsustainable.

17. As regarding Reimbursable expenses demand of Rs. 7,55,327/-, the Commissioner has observed that the appellant has not contested the allegation in the show cause notice hence confirmed the demand. However, the appellant before us has contested stating that the observation of the commission is incorrect in as much as they have contested the demand on the ground that the demand is based on trial balance however during the disputed period service tax was to be paid on accrual basis which has been undertaken by them. Therefore, it is submitted that there is no differential duty to be paid. Since this issue is not dealt by the commissioner in the impugned order where inclined to remand the same for necessary verification.

18. Accordingly, Appeal No. ST/20233/2017 and Appeal No. ST/20234/2017 are allowed. Appeal No. ST/21599/2017 is partially allowed by way of Remand.

(Order pronounced in Open Court on 24.03.2026)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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