IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Service Tax Appeal No. 41944 of 2016

(Arising out of Order in Appeal No.86/2016 dated 12.7.2016 passed by the Commissioner of Central Excise (Appeals – I), Madurai)

GAC Shipping (India) Pvt. Ltd. **Appellant**
No. 4/143, CGE Colony
Tiruchendur Road
Levinjipuram, New Colony
Tuticorin – 628 003.

Vs.

Commissioner of GST & Central Excise **Respondent**
Central Revenue Building
Lal Bahadur Shastri Marg
Madurai – 625 002.

APPEARANCE:

None (Written Submissions filed) for the Appellant
Smt. G. Krupa, Authorised Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NO. 40708/2026

Date of Hearing: 13.02.2026
Date of Decision: 10.06.2026

Per M. Ajit Kumar,

This appeal is filed by the appellant against Order in Appeal No.86/2016 dated 12.7.2014 passed by the Commissioner of Central Excise (Appeals – I), Madurai (impugned order).

Factual Matrix

2. Brief facts of the case are that the appellant is registered under Custom House Agent Service, Transport of Goods by Road Service and Business Auxiliary Service. During the course of audit of the accounts of the appellant, it was noticed by the department that the appellant

had paid ocean freight charges to their principals. It is found that the appellant had added some mark-up value / margin on the ocean freight in their bills raised on their customers during the period from October 2012 to September 2013 and collected the same from their clients. It was also found that the appellant collected share profits from their clients. It appeared that the aforesaid mark up value in ocean freight and share profit collected from their clients are liable to service tax under 'Steamer Agent Services'. The appellant did not obtain service tax registration for Steam Agent Services. Hence a Show Cause Notice dated 27.2.2014 was issued to demand service tax of Rs.27,599/- along with interest and to impose penalty. After due process of law, the Ld. Adjudicating Authority confirmed the demand of Service Tax of Rs.27,599/- under sec. 73(1) of the Finance Act, 1994 along with interest and imposed penalties under sections 76 and 77 of the Finance Act, 1994. Aggrieved by the said order, the appellant preferred an appeal to the Commissioner (Appeals), which was rejected. Hence the present appeal.

3. None appeared for the appellant. However, Shri Abraham Joseph Markos, Ld. Advocate has filed written submissions on behalf of the appellant. Ld. Authorized Representative Smt. G. Krupa appeared for the respondent.

Submissions made by the Appellant in writing

3.1 The Ld. Counsel Shri Abraham Joseph Markos by letter dated 11.02.2026, submitted on behalf of the appellant that their written submissions may be taken on record and that orders may be passed

on merits in their absence. The following submissions were made in writing:

A. The issue involved is with respect to service tax liability on the mark-up /profit made on ocean freight, i.e., the difference of actual ocean freight charges paid to the shipping line and the freight charges collected from the customer of the Appellant.

B. In the Appellant's own case for the immediate preceding period (January 2012 to September 2012) on the same issue, this Tribunal vide Final Order No.40854/2024 dated 12.07.2024 had allowed the Appeal and set aside the impugned Order.

C. CESTAT, Ahmedabad in the case of **Gudwin Logistics**, (2010) 18 STR 348 (Tri.-Ahmd) had held that Ocean Freight is not liable to service tax. The Hon'ble Supreme Court in the case of **Baroda Electric Meters**, 1997 (94) ELT 13 (SC) had also held that when ocean freight actually paid is less than the amount collected, the differential amount cannot be included in the assessable value as the same is profit. The above decisions were also taken note of by this Hon'ble Tribunal while passing Final Order in the Appellant's case for the previous period.

D. This Tribunal in a recent decision in the case of **A.G.X Logistics Pvt. Ltd.** had vide Final Order Nos. 41104-41106/2023 dated 12.12.2023 on the very same issue held that ocean freight or the mark-up on the same received by the Appellant cannot be subject to levy of service tax and set aside the impugned Orders. It relied on the decisions of CESTAT Delhi in the case of **Tiger Logistics Ltd** - 2022 (63) G.S.T.L 337 (Tri-Del), and of CESTAT, Mumbai in the case of **EMU Lines Pvt. Ltd.** - 2023 (4) CENTAX 122 (Tri-Bom), which was affirmed

by the Hon'ble Supreme Court as reported in 2023 (72) G.S.T.L 443 (SC).

E. Further on the very same issue in the Appellant's own case for the previous periods, the Appellate Commissioner at Madurai had vide various Orders in Appeal including Order-in-Appeal No.16/2014 dated 24.02.2014 allowed the Appeals and dropped the demands. Despite the same, the impugned Order has been issued which is inconsistent with the stand taken for the previous periods.

F. It was prayed that the written submission may be accepted and the appeal may be considered on merits in our absence.

Submissions made by the Respondent-Revenue

3.2 Smt. G. Krupa Ld. Authorized Representative appeared for the respondent. She took us through the impugned order and submitted that:

A. The issue is whether the appellants are liable to pay service tax on the mark-up collected from customers. Although the earlier Order-in-Appeal No. 16/2014 dated 24.02.2014 had set aside a similar demand, that order was accepted only on account of low revenue implications under the Government’s litigation policy. In terms of Section 35R of the Central Excise Act, 1944, as made applicable to service tax by Section 83 of the Finance Act, 1994, such acceptance does not have precedential value. Therefore, the issue must be decided independently on merits.

B. With effect from 01.07.2012, service tax is leviable on all services other than those covered by the negative list or specific exemptions. Under Section 65B(44), “service” means any activity

carried out by one person for another for consideration, and under Sections 65B(51) and 66B, such activity is taxable unless specifically excluded. The appellants' activity has been rightly classified as freight forwarding. Even if they are not liable under "Steamer Agent Services," their activity remains a taxable service from October 2012 to September 2013.

C. The appellants received consideration in the form of mark-up from their clients, and such amount forms part of the gross value taxable under Section 67. Since the activity is not covered by any exclusion under Section 65B(44), does not fall within the negative list under Section 66D, and is not exempt under Notification No. 25/2012-ST dated 20.06.2012, the mark-up value is clearly exigible to service tax. The findings of the adjudicating authority are correct, the impugned order suffers from no infirmity, and the demand deserves to be sustained.

D. She prayed that the appeal may be dismissed.

4. Perused the appeals along with written submissions submitted by the Appellant and have heard the Respondent. The only issue that arises for our consideration is whether the mark-up received by the Appellant on the difference between the freight charges collected and paid to the shipping liners are amenable to Service Tax.

5. We find that the dispute pertaining to the extra amounts collected by the appellants from their clients in excess of the freight charges for the period January 2012 to September 2012 has been examined by this Tribunal in Final Order No. 40854/2024, Dated

12.07.2024 and decided in the Appellants favour. Relevant paragraphs are reproduced below:

> "4. We have heard the rival submissions. We find that the issue pertains to the appellant having added some markup value/ margin on the ocean freight charges and collected the same from their clients. Revenue is of the opinion that the mark up value in ocean freight is liable for service tax under Steamer Agent Service.
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> 5. We find that the issue is no longer res integra. The Hon'ble Supreme Court in the case of Baroda Electric Meters Ltd. v. Collector [1997 (94) E.L.T. 13 (S.C.)] held as under;
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> *"The Tribunal accepted the position that equalised freight was charged by the appellant from everyone, but proceeded to say that even though freight cannot be a part of the assessable value that wherever freight actually paid was less than the amount collected by way of freight and transportation charges the difference was appropriated by the appellant and, therefore, the same would be a part of the assessable value. In our opinion, the Tribunal proceeded on an incorrect premise. It was clearly held in Indian Oxygen Ltd. v. Collector of Central Excise - 1988 (36) E.L.T. 723 (S.C.) = 1988 (Supp.) SCC 658, that the duty of excise is a tax on the manufacturer and not a tax on the profits made by a dealer on transportation. In view of that decision, the view taken by the Tribunal cannot be sustained."*
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> **The above judgment of the Hon'ble Supreme Court and the judgments cited by the appellant above, including those in their own case makes it clear that the profit made by the appellant by markup of transport charges which has nothing to do with the activity of Steamer Agent Service would not be liable to Service Tax by adding it to the value of the said taxable service.**
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> 6. The impugned order is hence set aside, and appeal is allowed. The appellant is eligible for consequential relief, if any, as per law. The appeal is disposed of accordingly."
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> (emphasis added)

6. The decisions of this Tribunal relied upon by the Appellant on the issue in dispute lend further support to the view taken by us. We find that the Revenue has not been able to demonstrate that the Final Order dated 12.07.2024 passed by this Tribunal in the Appellant's own

case, or any of the decisions cited by the Appellant on the issue of freight mark-up in support of its submissions, has been stayed, set aside, or modified by any higher judicial forum. Accordingly, following the settled principles of judicial discipline, comity, propriety, and consistency, which require due regard to be accorded to earlier coordinate Bench decisions, we respectfully follow the same and hold that the impugned order is unsustainable and liable to be set aside. Since the issue on merits stands decided in favour of the Appellant, the questions relating to interest and penalty do not survive for consideration.

Conclusion

7. In view of the foregoing, the impugned order is set aside. The Appellant shall be entitled to consequential relief, if any, in accordance with law. The appeal stands disposed of in the above terms.

(Order pronounced in open court on 10.6.2026)

Sd/-	Sd/-
(**AJAYAN T.V.**)	(**M. AJIT KUMAR**)
Member (Judicial)	Member (Technical)

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