CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. I

Service Tax Appeal No.41329 of 2017

(Arising out of Order in Original No. CHN-SVTAX – 002 – COM – 26 – 2016-17, dated 01.03.2017 passed by the Commissioner of Service Tax – II, Newry Towers, No.2054 – 1, II Avenue, Anna Nagar, Chennai 600 040)

M/s. Balmer Lawrie and Co. Ltd. **...Appellant**
Logistics Service Division
Balmer Lawrie House
628 Anna Salai, Chennai 600 018

Versus

Commissioner of GST & Central Excise **...Respondent**
Newry Towers, No.2054-I
II Avenue, Anna Nagar, Chennai 600 040

APPEARANCE:

Shri S. Muthu Venkatraman, Advocate for the Appellant
Shri Anoop Singh, Authorised Representative for the Respondent

CORAM :
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V. MEMBER (JUDICIAL)

FINAL ORDER No.40969/2026

DATE OF HEARING : 18.03.2026
DATE OF DECISION: 28.08.2026

Per AJAYAN T.V.

Balmer Lawrie and Company Ltd., the appellant herein, is challenging the Order in Original No. CHN-SVTAX – 002 – COM – 26 – 2016-17, (impugned order), dated 01.03.2017, passed by the Adjudicating Authority classifying the services rendered by the appellant as 'support service of business or commerce' till 30.06.2012 and as a taxable service thereafter, duly confirming the demand of service tax along with applicable interest and imposing an equivalent penalty under Section 78(1) of the Finance Act, 1994 (Act).

2. The relevant facts are that the appellant is a provider of Custom House agent services, business support services, business auxiliary services, renting of immovable property services and transportation of goods by road services under reverse charge. During the course of verification of

the appellant's records, the department noticed that in addition to providing CHA services, the appellant also arranges for the transportation of export cargo and import cargo by sea through shipping agencies. The department was of the view that the appellant is providing services to their customers by agreeing to take responsibility for moving the containers to the agreed destinations at a specific rate. The appellant fulfils its obligation by booking the containers with the liners/shipping companies/agencies and arranges for the movement of the customer's cargo to the desired destination located outside India. The charges for the movement of the containers are fixed as mutually agreed by the appellant and the shipping companies/agencies based on the destination and the size of the containers. The appellant also makes arrangements with the shipping companies/agencies for the provision of international freight services for the transportation of containers on their own account. Further, the appellant also arranges for the transportation of goods from outside India to ports in India and thereafter to destinations in India based on the customer's request. In this case, the appellant pays the freight charges to the shipping companies/agencies who transport the goods in the ships to the ports in India.

3. The department further noticed that various charges, namely, freight charges, LCL charges, delivery order charges, documentation charges, VL fees and terminal handling charges, are included in the bills raised by the appellant on their customers, and service tax is discharged on all these charges except the freight charges (ocean/air freight). The freight charges are paid by the appellant to the shipping companies/agencies directly, both in the case of exports and imports. The appellant charges its customers the freight component with a mark-up, i.e., higher than the charges which the appellant paid to the liners/shipping companies/agencies, and receives payment thereafter on the strength of the invoices raised. The department was of the view that this activity amounts to distribution, management and logistics, and constitutes "support service of business or commerce" as defined under Section 65(104c) of the Act.

4. A Show Cause Notice dated 07.10.2015 was accordingly issued, invoking Rule 5(1) read with Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006 (Valuation Rules), and Section 67 of the Act, alleging that the appellant could not be treated as a 'pure agent' under Rule 5(2) and

demanding service tax on the gross/mark-up amount charged as 'ocean freight' for the period 2010-11 to June 2012. It was further alleged that from 01.07.2012, the activity was leviable to service tax under Section 68 read with Section 66B, not being covered by the negative list under Notification No. 19/2012-ST dated 05.06.2012, and not being an exempted service; and that since customers were unaware of the actual freight paid by the appellant, the appellant could not be treated as an intermediary, and tax was accordingly demanded up to March 2015 as well. The extended period of limitation under the proviso to Section 73(1) was invoked on the allegation that the appellant had not disclosed the true nature of the service and the income earned, this having come to light only during audit, and that in the self-assessment regime it was incumbent on the appellant to correctly assess and disclose the tax payable in its ST-3 returns. After due process, the Adjudicating Authority, by the impugned order, confirmed the demand along with equivalent penalty under Section 78. Aggrieved, the appellant is in appeal.

5. Shri S. Muthu Venkatraman, Ld. Advocate for the appellant, submitted that the appellant, a Government of India enterprise engaged in logistics and CHA activities, arranges international and domestic transportation of export and import cargo by sea and air; that in the course of business it undertakes transportation of goods by contracting with customers in India and correspondingly engaging shipping lines/airlines/overseas agencies for execution of the transportation; that invoices raised on customers include the freight component (ocean/air) with a mark-up, along with ancillary charges such as LCL, documentation, terminal handling and delivery order charges, on all of which service tax has been duly discharged, but not on the ocean/air freight, in the bona fide belief that the same was not taxable/exempt during the relevant period. It was contended that the activity, being purely transportation of goods by sea/air, cannot be re-classified as 'business support service'; that classification must follow the nature of the service actually rendered and the contractual terms, and re-characterisation otherwise is impermissible; that prior to 01.07.2012, transportation of goods by vessel/aircraft from outside India to India did not fall within the definition of taxable service under Section 65(105); and that from 01.07.2012, such transportation stood specifically placed in the negative list under Section 66D(p)(ii), continuing until 31.05.2016. It was submitted that international ocean/air freight thus remained outside the service tax net

for the entire disputed period, April 2010 to March 2015, and that what the Show Cause Notice sought to tax as 'support service of business or commerce' was, in substance, the value of international freight and the margin thereon, which by legislative design was not exigible to service tax; that ancillary activities such as tracking and documentation were merely incidental to the principal transportation service rendered on a principal-to-principal basis and not as an intermediary; that the commercial mark-up on freight could not be artificially carved out as separate taxable consideration, more so since the statutory inclusion of 'reimbursable expenses' in valuation under Section 67 was introduced only prospectively, in May 2015; and that once the underlying activity (ocean/air freight) is non-taxable, any margin earned thereon cannot independently be brought to tax. Reliance was placed on the appellant's own case, ***M/s. Balmer Lawrie and Co. Ltd. Vs. Commissioner of Service Tax, Delhi-II, 2023 (5) TMI 100 – CESTAT, New Delhi, Ceva Freight (India) Private Ltd v CST-V, Mumbai, 2025 (11) TMI 1553-CESTAT Mumbai, M/s. North Star Shipping Services Pvt LTd v. Commissioner of GST and Central Excise, Chennai, 2025 (9) TMI 754-CESTAT Chennai, United Shippers Ltd v. CCE, Thane-III, 2015 (37) STR 1043 (Tri-Mumbai), Gudwin Logistics Vs. CCE, Vadodara, 2010 (18) STR 348 (Tri.-Ahmd.); Agility Logistics Pvt. Ltd. Vs. CST, Chennai, 2014 (35) STR 858 (Tri.-Chennai); APL Logistics (India) Pvt. Ltd. Vs. CCE, Chennai-III, 2014 (36) STR 1310 (Tri.-Chennai); Greenwich Meridian Logistics (India) Pvt. Ltd. Vs. CST, Mumbai, 2016-TIOL-869-CESTAT-Mumbai; Interfreight Services Pvt. Ltd. Vs. CST, Chennai, 2018-TIOL-1565-CESTAT-Mad.; M/s. PVGT Freight Forwarders and Logistics Pvt. Ltd. Vs. CST, Chennai-II, 2018-TIOL-3311-CESTAT-Mad.; M/s. LA Freight Pvt. Ltd. Vs. Commissioner of Service Tax, Chennai, 2018 (3) TMI 113 – CESTAT, Chennai; Seamax Logistics Ltd. Vs. CCE & ST, Tirunelveli, 2018 (7) TMI 262 – CESTAT, Chennai;*** and ***K. Steamship Agencies Pvt. Ltd. Vs. CCE, Chennai-II, 2019 (1) TMI 440 – CESTAT, Chennai***. On limitation, it was contended that being an interpretational dispute, the extended period could not be invoked, relying on ***Star Freight Pvt. Ltd. Vs. CST, Ahmedabad, 2023 (9) TMI 71***, and ***M/s. International Clearing and Shipping Agency Vs. Commr. of GST & CE, Chennai North, 2025 (2) TMI 615 – CESTAT, Chennai***.

6. Shri Anoop Singh, Ld. Authorised Representative, fairly submitted that the issue is no longer res integra and stands settled in the appellant's favour, and furnished two more decisions ***M/s. Fairmacs Shipping and Transport Services Pvt. Ltd. Vs. Commr. of GST & CE, Chennai, 2024 (9) TMI 1828 – CESTAT, Chennai,*** and ***M/s. Team Global Logistics Pvt. Ltd. Vs. Commr. of GST and CE, Chennai, 2023 (12) TMI 568 – CESTAT, Chennai***.

7. We have heard both sides and perused the materials available on record.

8. We find that the dispute falls to be examined across two distinct statutory regimes, the period up to 30.06.2012, governed by the positive-list scheme of taxable services under Section 65(105), and the period thereafter, governed by Section 66B read with the negative list under Section 66D. It is seen that in neither regime was the transportation of goods by vessel or aircraft from a place outside India to a customs station in India brought within the charge of service tax as an independent taxable event for the disputed period. Prior to 01.07.2012, no entry in Section 65(105) taxed such international transportation. With effect from 01.07.2012, the activity stood expressly excluded by Section 66D(p)(ii) of the negative list, an exclusion that continued until its omission with effect from 01.06.2016. So to our mind, the freight component paid by the appellant to the shipping lines and airlines, and recovered from its customers, therefore represents consideration for an activity which the statute itself has by deliberate design, kept outside the tax net throughout the period in question.

9. We notice that the Adjudicating Authority's approach proceeds on the premise that because the appellant recovered the freight with a commercial mark-up, and did not satisfy the conditions of a 'pure agent' under Rule 5(2) of the Valuation Rules, the mark-up must be treated as consideration for an independent taxable service, namely 'support service of business or commerce'. This, to our mind, inverts the correct order of enquiry. Rule 5 of the Valuation Rules, read with Section 67 of the Act, governs what is includible in the value of a service that is otherwise taxable; it cannot itself be the source of taxability, nor can it convert a non-taxable transaction into a taxable one merely because the person recovering the amount fails to qualify as a pure agent. The classification and taxability of an activity must be determined with reference to its substance and the charging provisions applicable to it, not with reference

to the manner of billing or the presence of a margin. The appellant's arrangement with its customers, on the material on record, is one of a principal engaging shipping lines and airlines for the movement of cargo and recovering the cost of that movement, together with a commercial margin, from its customers on a principal-to-principal basis. It is beyond cavil that the ancillary charges concededly connected with documentation, terminal handling and delivery orders have already suffered tax, the SCN itself acknowledges this fact. It is only the freight component, and the margin embedded in it, that has been sought to be re-characterised as an independent 'business support service'. Where the principal activity is non-taxable by legislative design, the profit or margin earned in the course of that very activity cannot be severed and taxed as if it were consideration for a distinct service.

10. This view is not one of first impression. It has been consistently taken by this Tribunal on materially identical facts, including in the appellant's own case in ***M/s. Balmer Lawrie and Co. Ltd. Vs. Commissioner of Service Tax, Delhi-II, 2023 (5) TMI 100 – CESTAT, New Delhi, and in Gudwin Logistics, Agility Logistics, APL Logistics, Greenwich Meridian Logistics, Interfreight Services, PVGT Freight Forwarders and Logistics, LA Freight, Seamax Logistics, K. Steamship Agencies*** and ***United Shippers***, all cited supra, each holding that the mark-up earned by a CHA or freight forwarder on ocean or air freight, recovered on a principal-to-principal basis, does not constitute consideration for 'business support service'. The Ld. Authorised Representative has, with characteristic fairness, not sought to distinguish this line of authority and has himself placed on record two further coordinate Bench decisions, ***M/s. Fairmacs Shipping and Transport Services Pvt. Ltd. Vs. Commr. of GST & CE, Chennai, 2024 (9) TMI 1828 – CESTAT, Chennai,*** and ***M/s. Team Global Logistics Pvt. Ltd. Vs. Commr. of GST and CE, Chennai, 2023 (12) TMI 568 – CESTAT, Chennai,*** affirming the identical position on identical facts.

11. We further notice that a coordinate bench of this Tribunal in ***Ceva Freight (India) Private Ltd v CST-V, Mumbai, 2025 (11) TMI 1553-CESTAT Mumbai,*** where the period of dispute covered both the pre-negative list period prior to 01.07.2012 and post negative list regime after 01.07.2012, as is evident from para 2.3 read with para 6 of the said decision, then went on to examine the relevant legal provisions contained

in chapter V of the Finance act, 1994 as it existed during the disputed period in respect of the taxable service under dispute and after reproducing the relevant extracts from a CBEC Circular No.197/7/2016-Service Tax dated 12.08.2016; which explained the distinction between person acting as a simple booking agent and those who negotiate the terms of freight with airline/shipping line/ocean carrier or liner as well as the actual rate with exporter/importer; found that the said Circular clarifies that the latter category who undertake the risks associated with the voyage and issues document for transportation, undertaking the legal responsibility for transportation is not exposed with the liability to service tax as the transactions are on principal to principal basis. It was then held that a plain reading of the Circular, particularly the clarification at paragraph 3 along with the facts of the case, establish that relationship in the contractual agreement in providing the services by the appellants are on principal-to-principal basis and therefore would qualify for not being liable to pay service tax as clarified therein. The facts of the instant case are not dissimilar. We therefore, see no warrant, on the record before us, to depart from this settled line of reasoning. The demand of service tax on the freight/mark-up amount for the entire period, April 2010 to March 2015 along with attendant interest, is accordingly unsustainable and cannot be upheld and is therefore liable to be set aside *in toto*.

12. Since the demand itself fails on merits for the entire disputed period, the question of the invokability of the extended period of limitation under the proviso to Section 73(1) does not strictly call for determination. We nonetheless observe, without intending any final pronouncement on the point, that the issue involved the classification and taxability of the freight component in circumstances where a bona fide and substantial body of judicial opinion, including a decision in the appellant’s own case, favoured non-taxability, would dispel any notion that the dispute was anything other than interpretational. The ingredients of fraud, collusion, wilful mis-statement, suppression of facts, or contravention with intent to evade tax, which alone would justify invocation of the extended period, are therefore not made out on this record. The appellant’s reliance on ***Star Freight Pvt. Ltd. Vs. CST, Ahmedabad, 2023 (9) TMI 71***, and ***International Clearing and Shipping Agency Vs. Commr. of GST & CE, Chennai North, 2025 (2) TMI 615 – CESTAT, Chennai***, is well founded in this regard. It follows that the penalty imposed under Section

78(1) of the Act, being consequential upon a demand that does not survive, also cannot be sustained.

13. For the foregoing reasons, the impugned Order-in-Original No. CHN-SVTAX – 002 – COM – 26 – 2016-17 dated 01.03.2017 is set aside, and the appeal is allowed with consequential relief, in law, if any.

(Order pronounced in the open court on 28.08.2026)

(AJAYAN T.V.)
Member (Judicial)

(VASA SESHAGIRI RAO)
Member (Technical)

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