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

SERVICE TAX APPEAL NO. 51079 OF 2022

[Arising out of Order in Original No. 27-31/TPS/PC/CGST/DSC/2020-21 dated 27.10.2020 passed by the Principal Commissioner of Central Goods and Service Tax, New Delhi]

SHINE TRAVELS & CARGO PVT LTD .....**APPELLANT**
CB-173, Ring Road
Naraina, New Delhi-110028

Vs.

PRINCIPAL COMMISSIONER, CGST-DELHI SOUTH .....**RESPONDENT**
Plot No. 2-B, 3rd Floor, EIL Annexe, Bhikaji
Cama Place, Delhi South, New Delhi-110066

Appearance:

Shri A.K. Batra and Ms. Sakshi Khanna, Chartered Accountants for the Appellant

Shri S.K. Meena, Authorised Representative for the Respondent

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51373 /2025

DATE OF HEARING : 16/09/2025
DATE OF DECISION: 26/09/2025

P.V. SUBBA RAO

1. M/s. Shine Travels and cargo Private Ltd filed this appeal to assail the Order in Original dated 7.10. 2020 passed by the principal Commissioner CGST Delhi wherein he decided the proposals made in five Show Cause notices, confirmed demands of service tax under section 73 of the Finance Act, 1994[1] with interest under section 75 of the Act and imposed penalties under sections 76,77 and 78 of the Act as follows:

[1] Act

SCN	Period	Service tax	Penalties
SCN 1 dated 19.10.2012	2007-08 to 2011-12	Rs. 15,23,06,723	Rs. 13,78,29,636 (section78) Rs. 10,000 (section 77)
SCN 2 dated27.10.2014	2012-13	Rs. 1,27,36,786	Rs. 12,73,678 (section 76) Rs. 10,000 (section 77)
SCN 3 dated 17.4.2015	2013-14	Rs. 2,71,77,210	Rs. 27,17,721 (section 76) Rs. 10,000 (section 77)
SCN 4 dated 7.4.2016	2014-15	Rs. 2,28,80,635	Rs. 22,88,063 (section 76) Rs. 10,000 (section 77)
SCN 5 dated 7.9.2018	2015-16	Rs. 1,65,28,234	Rs. 16,52,823 (section 76) Rs. 10,000 (section 77)

2. The appellant works as an agent for local exporters and importers and for international agents and facilitates export or import shipments. It is registered with the service tax department and pays service tax. Acting on the intelligence that the appellant had not discharged the full service tax liability, anti-evasion branch of the Commissionerate investigated and felt that the appellant had not discharged the full tax liability. Accordingly, SCN 1 dated 19.10.2012 was issued proposing recovery of service tax under the proviso to section 73(1) of the Act invoking extended period of limitation along with interest under section 75 of the Act. Penalties were also proposed under sections 77 and 78 of the Act. This was followed by four periodical SCNs for successive years proposing recovery of service tax under section 73 of the Act along with interest under section 75 of the Act and penalties under section 76 and 77 of the Act.

3. The demand of service tax was worked out considering the income received by the appellant under six heads considering them as taxable services provided and the service tax paid was deducted and the difference was taken as service tax to be paid.

4. We have heard learned counsel for the appellant and learned authorized representative for the Revenue and perused the records.

Submissions of the appellant

5. Learned counsel for the appellant made the following submissions.

5.1 For the period 2007-08 up to 30.6.2012 demand of Rs.14,10,23,833/- has been confirmed in the impugned order. This demand has been worked out by considering the income under the following as taxable income.

a) Freight and other incidental charges billed;
b) Commission;
c) Prior period items; and
d) Other income

5.2 Of the above, the appellant had already paid service tax on the Commission which has been considered while computing the demand.

5.3. The income under freight and other incidental charges is not exigible to service tax because this was not income received for rendering any taxable service. The Commissioner wrongly considered this income, which mainly came from buying space on aircrafts or ships and selling it to the exporters by the appellant on its own account. The appellant buys space on the aircrafts and ships and in turn, acts as an aggregator and sells the space to exporters. The airline, for instance, issues a Master Airway Bill in the name of the appellant for the entire space which it had brought and in turn, the appellant issues house airway bills to several exporters whose goods he aggregates and exports through the airline under the cover of the Master Airway Bill. As a sample, he showed us a set of the Master Airway Bill issued by

Emirates Airways and the corresponding house airway bill issued by the appellant to the exporter M/s. Volkswagen.

5.4. In buying space on the aircrafts or ships, the appellant acts on principal to principal basis. If the appellant is able to sell the space for a higher amount than what it paid to the airlines, it earns profit and if it fails to sell the space, the appellant will lose money. Such sale and purchase does not amount to providing any service as has been decided by a bench of this Tribunal in **Greenwich Meridian Logistics (India) Pvt. Ltd.** vs. **Commissioner of Service Tax, Mumbai[2].** This decision was then followed in several decisions by the tribunal.

5.5 The appellant also had rendered some services to overseas clients and issued export invoices and submitted Foreign Inward Remittance Certificates (FIRCs) which shows that place of provision of service is outside India. Therefore, it is covered by Rule 3 of the Export of Service Rules, 2005 (up to 30.6.2012) and for the period after 30.6.2012, the place of provision of service falls outside India as per the Place of Provision of Service Rules because the service recipients were outside India.

5.6 The other income on which the demand was not income for providing any taxable service at all. There is no evidence in the SCN or the impugned order that the income was earned for providing any taxable service.

5.7 The entire demand may be set aside along with interest and penalties.

Submissions of the Revenue

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[2] **2016(4) TMI 547-CESTAT Mumbai**

6. Learned authorized representative for the Revenue vehemently supported the impugned order and asserted that it calls for no interreference.

Findings

7. We have considered the submissions advanced by both sides and perused the records. The income on which service tax has been demanded in the impugned order for different periods is as follows:

SCN	**Period**	**Tax paid on**	**Tax not paid on**
SCN-1	2007-08 to 2011-12	1. Commission	1. Freight and other incidental charges 2. Prior period items 3. Other income
SCN-2	2012-13	1. Commission	1. Freight and other incidental charges 2. Other income
SCN-3	2013-14	1. Commission	1. Freight and other incidental charges 2. Discount received from airlines and sealines 3. Income as pure agent
SCN-4	2014-15	1. Commission 2. Business support services 3. Cargo handling services	1. Freight and other incidental charges 2. Discount received from airlines and sealines 3. Export of services (convertible currency)
SCN-5	2015-16	1. Commission	1. Income as pure agent

8. We now proceed to decide the exigibility to service tax on each of the incomes on which service tax has been confirmed in the impugned order:

8.1 **Freight and other incidental charges:** The appellant provides for freight of the cargo in vessels and aircrafts. As seen from the documents produced by the learned counsel, we find that the appellant is buying this space from the airlines and

selling it further to exporters. The airlines and sealines invoice the appellant and in turn, the appellant invoices the exporters for the space which he sells them. As decided in the **Greenwich Meridian,** when one buys and sells space on its own account, it is trading in the space and is not rendering any service. No service tax can be charged on such amounts,

8.2. **Discounts received from airlines and sealines:** When the appellant purchased large space, it received discounts from the airlines and sealines which it accounted for in its books of accounts. It is a well settled legal principle that such discounts are not a consideration for providing any service but are a concession in price for bulk purchase. No service tax can be charged on such discounts.

8. 3. **Prior period items:** Learned counsel for the appellant submits that these were some past dues which they had received and these amounts were not receipts for rendering any taxable service. In the absence of the any contrary evidence, we find that no service tax can be levied on these amounts.

8.4. **Export of services:** The appellant had rendered services to overseas clients and received consideration in the form of remittance of foreign currency. Prior to 1.7.2012, the Export of Service Rules 2005 determined what should be considered as export of Services. Rule 3 of these Rules read as follows;

> **3. Export of taxable service. –** (1) Export of taxable services shall, in relation to taxable services,–
>
> (i) specified in sub- clauses(d), (m),(p),(q),(v), (zzq),(zzza),(zzzb),(zzzc), (zzzh), (zzzr), (zzzy), (zzzz),(zzzza)& (zzzzm) of clause (105) of section 65 of the Act, be provision of such services as are provided in relation to an immovable property situated outside India;

(ii) specified in sub-clauses (a), (f), (h), (i), (j), (l), [* * *], (n), (o), [* * *], (w), (x), (y), (z), (zb), (zc), (zi), (zj), (zn), (zo), (zq), (zr), (zt), (zu), (zv),(zw), (zza), (zzc), (zzd), (zzf), (zzg), (zzh), (zzi), (zzl), (zzm), (zzn), (zzo), (zzp), (zzs), (zzt), (zzv), (zzw), (zzx), (zzy), (zzzd), (zzze), (zzzf), (zzzp), (zzzzg), (zzzzh), (zzzzi), (zzzzk) and (zzzzl) of clause (105) of section 65 of the Act, be provision of such services as are performed outside India:

Provided that where such taxable service is partly performed outside India, it shall be treated as performed Outside India;

Provided further that where the taxable services referred to in sub-clauses (zzg), (zzh) and (zzi) of clause (105) of section 65 of the Act, are provided in relation to any goods or material or any immovable property, as the case may be, situated outside India at the time of provision of service, through internet or an electronic network including a computer network or any other means, then such taxable service, whether or not performed outside India, shall be treated as the taxable service performed outside India;

(iii) specified in clause (105) of section 65 of the Act, but **excluding**,–

(a) sub-clauses (zzzo) and (zzzv);

(b) those specified in clause (i) of this rule except when the provision of taxable services specified in sub-clauses (d), (zzzc), (zzzr) and (zzzzm) does not relate to immovable property; and

(c) those specified in clause (ii) of this rule,

when provided in relation to business or commerce, be provision of such services to a recipient located outside India and when provided otherwise, be provision of such services to a recipient located outside India at the time of provision of such service:

Provided that where such recipient has commercial establishment or any office relating thereto, in India, such taxable services provided shall be treated as export of service only when order for provision of such service is made from any of his commercial establishment or office located outside India:

Provided further that where the taxable service referred to in sub-clause (zzzzj) of clause (105) of section 65 of the Act is provided to a recipient located outside India, then such taxable service shall be treated as export of taxable service subject to the condition that the tangible goods supplied for use are located outside India during the period of use of such tangible goods by such recipient.

(2) The provision of any taxable service specified in sub-rule (1) shall be treated as export of service when the following conditions are satisfied, namely:-

(a) [* * *]

(b) payment for such service is received by the service provider in convertible foreign exchange.

Explanation.- For the purposes of this rule "India" includes the installation structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof.

8.5. For the period from 1.7.2012, the Place of Provision of Service Rules, 2012 determined the place in which the service was provided. Usually, the place of provision of service shall be the location of the service recipient. Rule 3 of these Rules reads as follows:

"3. Place of provision generally.-

The place of provision of a service shall be the location of the recipient of service:

Provided that in case "of services other than online information and database access or retrieval services" where the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service."

8.6. Evidently both before 1.7.2012 and after this date, if the service recipient is located outside India, the service shall be deemed to have been exported or rendered outside India. Therefore, no service tax can be charged on such services.

8.7. **Income as pure agent:** According to the learned counsel, while rendering the services as commission agent and facilitating imports and exports of its clients, if any additional expenditure is incurred by the appellant, it got reimbursed the amounts for such services which cannot be treated as payments for rendering any taxable services. Such amounts have been included in the value of taxable services rendered in the impugned order.

8.8 We do not find any ground to charge service tax on reimbursements of such expenses when they were not payments for rendering any taxable service before 1.7.2012 and not for rendering any taxable service not in the negative list after 1.7.2012.

8.8. **Other income:** During some years, the amounts shown as other income in the books of account were taken as consideration received for rendering taxable services. According to the learned counsel for the appellant there is no basis for such an assumption.

8.9. Clearly, none of the above disputed amounts are exigible to service tax under the Finance Act.

9. Since we have found in favour of the appellant on merits, we need not examine the submissions regarding limitation and penalties etc.

10. The appeal is allowed and the impugned order is set aside with consequential relief to the appellant.

[Order pronounced on **26/09/2025**]

(BINU TAMTA)
MEMBER (JUDICIAL)

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)

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