CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 21083 of 2016

(Arising out of Order-in-Original No. MYS-EXCUS-000-COM-SB-034 to 35 – 2015-16/2549/16 dated 13.04.2016 passed by the Commissioner of Central Excise, Customs and Service Tax, Mysore.)

Sri Shabareesh Agencies
No.6, G.O.C.S. Building,
Balraj Urs Road,
Shimoga – 577 201.

Appellant(s)

VERSUS

The Commissioner of Central Excise, Customs and Service Tax,
Mysuru GST Commissionerate,
S1/S2, Vinaya Marga,
Siddhartha Nagar,
Mysuru – 570 011.

Respondent(s)

WITH

(i) Service Tax Appeal No. 21082 of 2016 (Sri Shabareesh Agencies vs. Commissioner of Central Excise, Customs and Service Tax, Mysore.)

(Arising out of Order-in-Original No. MYS-EXCUS-000-COM-SB-034 to 35 – 2015-16/2549/16 dated 13.04.2016 passed by the Commissioner of Central Excise, Customs and Service Tax, Mysore.)

(ii) Service Tax Appeal No. 20915 of 2018 (Sri Shabareesh Agencies vs. Commissioner of Central Tax, Mysuru.)

(Arising out of Order-in-Appeal No. MYS-EXCUS-000-APP-235-17-18 dated 21.03.2018 passed by the Commissioner of Central Tax (Appeals), Mysuru.)

(iii) Service Tax Appeal No. 20059 of 2021 (Sri Shabareesh Agencies vs. Commissioner of Central Tax, Mysuru.)

(Arising out of Order-in-Appeal No. MYS-EXCUS-000-APP-MSC-001 & 002-2020-21 dated 19.10.2020 passed by the Commissioner of Central Tax (Appeals), Mysore.)

(iv) Service Tax Appeal No. 20657 of 2022 (Sri Shabareesh Agencies vs. Commissioner of Central Tax, Mysuru.)

(Arising out of Order-in-Appeal No. MYS-EXCUS-000-APP-SAK-044-2022-23 dated 12.07.2022 passed by the Commissioner of Central Tax (Appeals), Mysuru.)

(v) Service Tax Appeal No. 20089 of 2021 (Sri Shabareesh Agencies vs. Commissioner of Central Tax, Mysuru.)

(Arising out of Order-in-Appeal No. MYS-EXCUS-000-APP-MSC-001 & 002-2020-21 dated 19.10.2020 passed by the Commissioner of Central Tax (Appeals), Mysuru.)

APPEARANCE:

Mr. K. Parameshwaran, Advocate for the Appellant.
Mr. M. A. Jithendra, Asst. Commissioner (AR) for the Respondent.

**CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)**

FINAL ORDER NO. 20777 – 20781, 20887 / 2024

DATE OF HEARING: 11.03.2024
05.08.2024

DATE OF DECISION: 10.09.2024

PER: R. BHAGYA DEVI

All the above six appeals have common issues, hence, they are being taken up together for disposal. The appellant M/s. Shabareesh Agencies are engaged in providing the services of 'Clearing and Forwarding Agency' to cement companies and have been paying Service Tax regularly under the above service. However, they failed to include certain expenses such as transportation charges, lorry hire charges, lorry freight received and other reimbursements that were incurred by them on the ground that they were either reimbursable expense and they have nothing to do with clearing and forwarding agency service. Based on the definition of the 'Clearing and Forwarding Agency' service and the principles of valuation and on the analysis of the agreements entered by the appellant with their clients, the Commissioner held that the appellant was liable to pay Service Tax on the gross value including the above expenses. Accordingly, the impugned order in respect of two show-cause notices confirms the demand along with interest under proviso to Section 73 (1) of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994. The Commissioner also imposed equivalent amount of penalty under Section 78 of the Finance Act, 1994. Aggrieved by the above order, the appellant is an appeal before us.

2. At the outset, the learned counsel submitted that the essential issue involved for decision in all the above said appeals is whether the transportation charges paid separately as per

independent activity undertaken for providing transportation through separate agreement would also be covered within the scope of Clearing and Forwarding Agency Services being provided to ACC Ltd., only for two locations/warehouses viz., Kadur and Shimoga and also when the applicable Service Tax on such transportation charges have been discharged by the said ACC Ltd., on reverse charge basis and for which necessary documentary evidences and proof had been submitted by the Appellant.

2.1 It is submitted that the Appellant herein is a registered partnership firm and have been *inter alia* rendering services as Clearing and Forwarding Agency for ACC Ltd., having its registered office in Mumbai and one of its local office at Bengaluru and factories/office at various locations, since the year 1990, only for two locations/warehouses viz., Kadur and Shimoga in the State of Karnataka. It is stated that the Appellant had separately undertaken the activity of owning fleet of lorries, essentially to provide goods transport services by road, as a separate and distinct activity, mainly to the said ACC Ltd., within the State of Karnataka and if so instructed by the said ACC Ltd, to other places/locations outside the State of Karnataka also. It is submitted that the Appellant provided lorry hire on lease to others, whenever the lorries are free and also provided transport services to the entities which are corporate entities/registered firms and further, on return trip had also undertaken transporting of sand, coke, etc., which transportation activities are either exempted or not liable for payment of Service Tax in the hands of the Appellant.

2.2 It is further stated that for the purpose of rendering the said Clearing and Forwarding Agency activities to the ACC Ltd., the Appellant entered into agreements with them, including Agreements dated 21/08/2009 and 19/08/2009, for rendering the said Clearing and Forwarding Agency services in the area of Kadur and Shimoga respectively, which was also renewed vide subsequent Agreements dated 21/08/2012 and 01/11/2015 in terms of which the Appellant herein was engaged on non-exclusive basis by the said ACC Ltd., for providing the said services and the role and responsibilities in this regard, have been set out in various clauses, and was discharging the Service Tax for the said activities of Clearing and Forwarding Agency undertaken, as per the terms of the said Agreements and the same is not being disputed by the Department in any manner thereof. The applicable Service Tax for the said activities undertaken have been paid in full and even ST-3 returns have been filed periodically and the same has not been disputed.

2.3 In addition to the said Clearing and Forwarding Agency Services undertaken for ACC Ltd., for the said two areas of Kadur and Shimoga, the Appellant herein vide separate and distinct agreements had been appointed as authorised road transporter for the said ACC Ltd., for transportation of cement from their factories/warehouses to the various warehouses and other locations as specified therein. These transportation agreements though have been specifically referred, have not been considered in the proper perspective. Similarly, since the above said Road Transport Agreement dated 01/12/2009 was also valid for period of only three years, subsequent agreements also came to be entered into by the Appellant herein with the said ACC Ltd., (including subsequent Agreements dated 26/12/2012 and 01/10/2015) only for undertaking the said transportation of cement by road thereto. In so far as the activities undertaken of Road Transport is concerned, the Appellant has been issuing Lorry Receipts etc., and it has also been the clear understanding between the Appellant and the ACC Ltd., that as the person responsible for paying freight charges, the said ACC Ltd., would be required to discharge the Service Tax liability on the same, on reverse charge basis, as per the statutory requirements stipulated in this regard under the provisions of applicable Service Tax enactments thereto.

2.4. It is submitted that *prima facie* it would get established that the said transportation activities were independently undertaken and is not covered by any composite agreement entered into with the said ACC Ltd. and the Clearing and Forwarding Agency Agreement relied upon in the said respective impugned orders does not provide for undertaking any such transportation by road, both for primary transportation and secondary transportation (i.e., from the warehouses of ACC Ltd., to the location of the various dealers/ customers of ACC Ltd.,) of cement for the said ACC Ltd., this aspect was clarified in the statement dated 30/07/2014 of the partner of the Appellant and is self-evident from the documentary evidences furnished in this regard in the form of copies of Agreements, sample copies of bills, certificate/confirmation from the said ACC Ltd., and other documents like independent Chartered Accountant Certificate dated 05/10/2018, thus the entire findings recorded in this regard in the impugned orders are based on erroneous assumption to the effect that the providing of Clearing and Forwarding Agency Services and transportation are to be considered as composite in nature or is only a logistic arrangement created as a link in the entire process of clearance from the factory of ACC and effecting delivery up to dealers/customers' premises and that though the same may become transportation in physical sense, but in commercial parlance or by way of definition of Clearing and Forwarding Agency as normally understood, would become part of Clearing and Forwarding Agency Services provided by the Appellant herein to the said ACC Ltd., would be grossly misconceived and totally erroneous, particularly in the facts and circumstances of the matter involved herein. It is submitted that copies of the relevant agreements and sample copies of invoices raised during the relevant period. The impugned orders cannot be sustained in view of the binding principles laid down in this regard in several case laws as listed below:

- Synergy Baxi Logistics Pvt Ltd vs. CCE: 2019-TIOL-3446-Cestat-DEL
- Transways vs. CST: 2019-TIOL-1502-CESTAT-KOL
- E.V.Mathai & Co. vs. CCE: 2006 (3) STR 116 [Tri.-Bang.]
- Bhagyanagar Services vs. CCE: 2006 (4) STR 22 [Tri.-Bang.]
  Sharma Cement Clearing Agency Vs. CCE – 2018-TIOL-718-CESTAT-ALL

- Balmer Lawrie & Co. Ltd. vs. CCE: 2014 (35) STR 800
- Toll India Logistics Pvt. Ltd. vs. CCE: 2018-TIOL-1981-CESTAT-MAD

2.5 The learned counsel further submits that all the impugned orders had erroneously placed reliance on the principles laid down by the Hon'ble Tribunal rendered in the cases of **Coal Handlers Pvt. Ltd. vs. CCE** reported in **2006 (3) STR 286** as well as **Karamchand Thapar & Bros. (Coal Sales) Ltd. Vs. CST** reported in **2013 (32) STR 577** as they have not only been overruled specifically by the Hon'ble Supreme Court in the decision **Coal Handlers Pvt Ltd. vs. CCE** reported in **2015 (38) STR 897** but the principles laid down therein have been *inter alia* erroneously considered for confirming the said demand of Service Tax on the Appellant. Similarly, the reliance placed on **Shreenath Roadways vs. CCE: 2017 (52) STR 371** and also in the case of **Capital Enterprises vs. CCE: 2016 (43) STR 245** since **Shreenath Roadways** (supra) has been reversed by the Hon'ble Rajasthan High Court in the case of **Shreenath Roadways vs. UOI: 2018 (16) GSTL 239**. However on the contrary, the specific aspects considered and the principles laid down by the Hon'ble Supreme Court in the above said case of **Coal Handlers Pvt Ltd.** (supra) and other case laws as set-out hereinabove would itself establish that separate activity of transportation undertaken cannot become part of Clearing and Forwarding Agency Services, even as per the expression "directly or indirectly" and "in any manner" as contained in the definition of "Clearing and Forwarding Agency Services" under Section 65(25) of the Finance Act, 1994. The Appellant also places reliance on the principles laid down by the Larger Bench of the Hon'ble CESTAT in the case of **Larsen & Toubro Ltd. vs. CCE: 2006 (3) STR 321** which has been quoted with approval even in the above said decision of the Hon'ble Supreme Court rendered in the case of **Coal Handlers Pvt Ltd.** (supra) thereto.

2.6 Above all, there is no dispute that on the entire transportation charges involved and pertaining to such transportation services provided to the said ACC Ltd., the applicable Service Tax has been paid on reverse charge basis and evidencing the same documents in the form of letter dated 02/12/2013 and 05/07/2016, along with Independent Chartered Accountant Certificate dated 05/10/2018 had been furnished before the Authorities but the same have not been taken into account or considered in the proper perspective. It is accordingly submitted that since the said transportation charges have already suffered Service Tax and the same has not been doubted or questioned by the concerned Service Tax authorities, the same could not have been once again included for demanding Service Tax as part of gross taxable turnover, that too under the category of Clearing and Forwarding Agency Services, as the same would be hit by double taxation as per the clear principles laid down in several decisions rendered in this regard. Reliance is placed on the decisions given below:

- Angiplast Pvt. Ltd. Vs. CST – 2013TIOL-785-CESTAT-AHM
- Vijay Sharma & Co. Vs. CCE – 2010 (20) STR 309

2.7 It is also submitted that the said transportation services under separate agreement have been mainly rendered to the other warehouses of ACC Ltd., for which the Appellant herein had not provided any Clearing and Forwarding Agency Services. For transportation of cement from one plant/location to another, they have been billing separately and this is evident from duly certified statement by the Chartered Accountant submitted along with sample copies of bills and the classification of the said transportation services as 'Goods Transport Agency' services by the Appellant herein, for the purposes of discharging Service Tax on reverse charge basis by the said ACC Ltd., thus cannot be considered as erroneous and held as forming part of 'Clearing and Forwarding Agency' services, in the light of the principles laid down in the case of **Gupta Coal India Ltd. vs. CCE** reported in **2017 (7) GSTL 433**.

2.8 In addition to the above, no Service Tax under the category of Clearing and Forwarding Agency Services could have been confirmed/upheld in the impugned orders in respect of mere transportation provided in the form of lorry hire or transporting sand, coke, etc., in the return trip and also for the reimbursements claimed and also for such services of mere transportation provided to limited companies, as they would all be exempted even under GTA services as per Notification Nos.25/2012 and/or would be liable to be paid by the service recipient under reverse charge, even as per Notification No.30/2012-ST itself thereto. Thus, it is submitted that for mere transportation activities provided to entities other than ACC Ltd., that too without undertaking any Clearing and Forwarding Agency Services, no demand of Service Tax could have been confirmed/upheld under the category of Clearing and Forwarding Agency Services. It is also submitted further that for the independent activity of transportation of goods as per Road Transport Agreements referred to hereinabove, the Appellant herein had also raised separate bills and even issued GC Notes/LRs. Reliance placed on the following decisions:

- Gas Authority of India – 2008 (232) ELT 7
- CCE Vs Swarnagiri Wire Insulations Pvt. Ltd. – 2014 (301) ELT 46
- Hindustan Petroleum Corpn. Ltd. Vs. CCE – 2011 (269) ELT 422
- Machilipatnam Central Consumers Cooperative Stores Ltd. Vs CCT: 1988 (71) STC 153

2.9 The learned counsel further submits that in Appeal Nos.ST/21082 and ST/21083/2016, the demands were confirmed beyond the normal period along with equal amount of penalty. In Appeal No.ST/20915/2018, the show-cause notice issued for further period was confirmed once again by extending the demand beyond the normal period along with equal amount of penalty by the original authority, which was set aside by the Commissioner (Appeals) but imposed 10% penalty under Section 76 of the Finance Act, 1994. In Appeal Nos.ST/20059 and ST/20089/2021 for periodical demands, the original authority dropped the demands but confirmed demand of Service Tax on lorry hire charges received viz. Service Tax to the tune of Rs.4,49,535/- with interest and imposed equivalent penalty. The demands that were dropped by the original authority were confirmed on review by the department. In Appeal No.ST/20657/2022, the Commissioner vide Order-in-Original dated 15/03/2021 confirmed the entire demand of Service Tax of Rs.1,03,76,351/- along with interest and 10% penalty of Rs.10,37,635/- was imposed under Section 76 of the Finance Act, 1994, but dropped the penalties proposed under Section 78. And also under Section Rule 7C of Service Tax Rules confirmed the late fee payable for the delay in filing the return for the period April 2016 to September 2016. In Appeal No.ST/20089/2021, the Appellant submits that the amounts have been confirmed as Service Tax under the category of "service" on the consideration received for providing lorry on hire and by denying the exemption claimed under Sl.No.22(b) of Service Tax Notification No.25/2012-ST by going beyond the scope of allegations as contained in the show-cause notice and also upholding the classification under totally a different heading.

2.10 With regard to limitation, the learned counsel submits that there was no basis or invoking the charge of suppression for invoking the extended period as the amounts received were reflected in the books of accounts maintained in the normal course of business and the lorry charges on hire had been provided only for transportation of foods items which would get covered under the exemption provided under Sl.No.21 of the said exemption Notification No.25/2012-ST. The transportation and other charges received by the appellant were duly reflected in the books and also was within the knowledge of the department, particularly at the time of furnishing Balance Sheet, Profit and Loss Account on 23/09/2010 in respect of another proceedings initiated for demanding Service Tax for the period 2009 to 2011 on the said Clearing and Forwarding Agency Services. The said proceedings initiated was concluded as per Order-in-Appeal dated 08/02/2017 and the Final Order No.22051/2017 dated 15/09/2017 passed by this bench of the Hon'ble CESTAT at Bengaluru. In addition to the above, on the entire transportation charges, applicable Service Tax (though on the abated value under the category of GTA services) has already been paid by the said ACC Ltd., for which evidences had been furnished and thus in such situations, there cannot be any suppression or intent to evade payment of Service Tax and further the matter involved herein also pertains to interpretational issues and is highly debatable and arguable; and hence for these reasons also, the extended period of limitation could not have been invoked or justified.

3. The learned Authorised Representative on behalf of the Revenue reiterating the observations of the Commissioner in all the impugned orders submitted that the various expenses incurred by the appellant are to be included in the gross value of the service rendered has 'Clearing and Forwarding Agency' in view of the definition of the 'Service' in terms of Section 25 and Section 65(105)(j) with effect from 16.07.1997. It is further submitted that the Clearing and Forwarding service includes a basket of services like transportation, storage, distribution etc., and the same cannot be split into various component services relied on the following decisions to substantiate the claim that gross value includes all the above charges.

- Coal Handless Pvt. Ltd. vs. CCE: 2015 (38) STR 897 (SC)
- CCE Indore vs. Carry Fast Agency: Final Order No. 51302/2023.
- Singh Trading Company vs. Commissioner of Central Excise Bhopal: 2018 (9) GSTL 201(Tri-Del.)

4. Heard both sides and perused the records. All the six appeals as reproduced in the table below are of common issues hence being disposed of by a common order.

Sl. No.	Appeal No.	Order-in-Appeal/ Order-in-Original	Period Involved / Show Cause Notice	Service Tax (Rs.)	Details of Penalties (Rs.)
1	ST/21082/2016	Common Order-in-Original No. 034 to 035-2015-16 dated 13/04/2016	2009-10 to 2012-13 dated 21/10/2014	3,23,34,787	Equivalent penalty of Rs.3,23,34,787/- Section 78
2	ST/21083/2016	Common Order-in-Original No. 034 to 035-2015-16 dated 13/04/2016	April 2013 to March 2014 dt. 04/06/2015	1,34,64,881	Equivalent penalty of Rs.1,34,64,881/- Section 78
3	ST/20915/2018	Order-in-Appeal No.MYS-EXCUS-000-APP-235-17-18 dated 21/03/2018 [Order-in-Original No.MYS-EXCUS-000-JC-SM-49-2016-17 dated 23/12/2016]	April 2014 to March 2015 dated 13/04/2016]	1,25,94,111	Equivalent Penalty Section 76 Penalty of Rs.12,59,411

Sl. No.	Appeal No.	Order-in-Appeal/ Order-in-Original	Period Involved / Show Cause Notice	Service Tax (Rs.)	Details of Penalties (Rs.)
5	ST/20089/2021	Common Order-in-Appeal No.MYS-EXCUS-000-APP-MSC-001 & 002-2020-21, dated 17/19.10.2020 Common Order-in-Original No.MYS-EXCUS-000-ADC-YCS-40-2018-19 dated 22/11/2018	April 2015 to March 2016 [Statement of Demand C.No.V/ST/15/39/2018 Hqrs. Adjn. dated 10/04/2018]	Rs.4,49,535/- already deposited at the time of filing first appeal under protest	Equivalent penalty of Rs.4,49,535/- Section 78
6	ST/20657/2022	Order-in-Appeal -044-2022-23 dated 12/07/2022 [Order-in-Original No.MYS-EXCUS-000-ADC-YCS-10-2020-21 (C.No. ADJ1/ADJ/ST/248/2020 dated 15/03/2021]	April 2016 to June 2017 [Statement of Demand C.No.V/ST/15/08/2019 Hqrs. Adjn. dated 13/05/2019]	Rs.1,03,76,351/-	10% of Service Tax demand imposed as Penalty i.e., Rs.10,37,635/- under Section 76 of the Finance Act, 1994. Late fee imposed under Rule 7C of the Service Tax Rules, 1994 for delay in filing the return for the period April 2016 to September 2016 (no amount specified in the impugned order).

4.1 The appellant is registered as 'Clearing and Forwarding Agency' and has been paying regularly Service Tax. The only dispute in these appeals is as to whether the expenses incurred by the appellant as a transporter with regard to lorry hire charges, transportation charges, lorry freight etc; received by them and other expenses shown in their revenue receipts to be added as part of the value for the service rendered by them as Clearing and Forwarding Agency. The appellant has entered into two separate agreements; one for Clearing and Forwarding Agency agreement dated 19th August 2009 and the second one Road Transport Agreement dated 1st December 2009. The relevant clauses of the agreement are reproduced below:

"3. Role of C&FA

1. C&FA as a logistic service provider:

a. C&FA shall be responsible for unloading consignment of cement products from wagons/trucks, stacking at railway platform inspection of bags loading into trucks and transporting the consignment of cement products to the warehouse and unloading, and stacking the consignment of cement products at the warehouse as applicable. C&FA shall, if instructed by ACC in writing, pay freight to the railways/road transporters for the consignment of cement products transported from ACC cement plants to

C&FA s location. C&FA shall, if instructed by ACC in writing, pay octroi, toll fee, AGT another local charges to the concerned municipal authorities for obtaining entry permit of the consignment of cement products transported from ACC cement plants to C&FAs location or onwards transportation from C&FA warehouse to the location of the dealers/customers as directed by ACC. C&FA shell carry out all administrative work of maintaining stock and other records as directed by ACC from time to time. The consignment of cement products are ACCs property and C&FA shall be handling the consignment of cement products on behalf of the ACC as agents of ACC.

....

7. Terms of payments and taxes

a. C&FA shall we paid for all the services as logistics provider a service fees, at the rate of ₹90 per tonne of cement products transported through rail. Further any rate revision during the contract. Will be applicable asper additional annexure to this agreement duly signed and approved by director logistics.

b. C&FA shall we paid efficiency bonus up to maximum of rupees—

c. C&FA shall be entitled to claim reimbursements of amounts paid as freight on behalf of AC to the Railways, Road transporters, upon submission of bills thereof along with the supporting documents as proof of such payments having been made.

d. C&FA shall be entitled to claim reimbursement of amounts paid towards octroi, toll fees, a GT or other local charges---to the concerned municipal authorities—"

4.2 The relevant clauses of the Agreement with regard to Road Transportation reads as:

"2. ACC hereby engages the transporter on a non-exclusive basis on the terms and conditions contained herein to carry and transport cement by road as and when required and as per instructions given by ACCs sales office add Bangalore from destinations to destinations as may be specified by ACC in the states of Karnataka and deliver them safely to the ACC warehouses dealers government parties consignments stockists etc; as the case may be. Nothing here in content shell prevent or prohibit ACC from engaging other road transporters for transportation of cement. It is clearly understood between the parties here to the transporters shall also on their part be at liberty to be engaged by other manufacturers of cement or any other products in the states of Karnataka but transporter shall give return information thereof to ACC.

…..

13. Transporter shall obtain from ACCs warehouses, dealers or consignment stockists written confirmation of the date of reporting of the trucks at the destination and the reasons for the delay in delivery of cement and submit the same to ACC. In case the delivery of cement is delayed for more than the specified days for the respective destinations, do penalty shall be recovered by ACC for each day of delay in delivery of cement at such rates as well be decided by ACC.

……

19. Transporter shell submit bills for the services once in a week at the concerned sales office off ACC along with the delivery challans duly acknowledged and certified by the ACCs warehouses, dealers or consignment stockists confirming safe delivery of cement of correct quantity. The payment shall be affected by concerned sales office by account payee cheque or electronic bank transfer as the case may be within specified time from the date of submission of the bills.

20. Transporter shall observe and comply with all applicable laws. Rules and regulations of the central/state governments, municipal authority, local bodies or the provisions of any law including rules and regulations of any local authority in force from time to time, which may be applicable to transporters and the services.”

4.3 There is no dispute that as per the Clearing and Forwarding Agreement reproduced above, the appellant has to clear the consignment of cement products received from ACC cement plants, warehouses etc., and dispatch the consignment of cement products to the locations of the dealers/customers as directed by ACC. Thus, the appellant invariably undertakes the following activities

i. Receiving the goods from the factories or premises of the principal (ACC) or his agents
ii. Warehousing these goods
iii. Receiving dispatch orders from the principal
iv. Dispatching the goods as per directions of the principal (ACC) by engaging transport on his own or through the authorized transporters of the principal

v. Maintaining records of the receipt and dispatch of the goods and the stocks available at the warehouse.
vi. Preparing invoices on behalf of the principal for submitting to ACC.

The appellant undertakes two kinds of transportation, the primary transportation charges pertain to transportation of cement from the factories of M/s. ACC Cements to various destinations as directed by the service recipient (ACC) and the secondary transportation charges are the charges incurred by the Service provider (appellant) for transport of cement from their warehouse to the destination suggested by the service recipient (ACC). There is no dispute that the above services are rendered by the appellant but the only claim of the appellant is that as discussed above since there are two separate agreement C & F Agency and transport agreements, the expenses incurred on the transportation cannot be included in the value for the service rendered as 'Clearing and Forwarding Agency' (C & FA). As seen from Clause 3(1)(a) the Agreement for C&FA (supra) reads as follows:

> "C&FA shall be responsible for unloading consignment of cement products from wagons/trucks, stacking at railway platform inspection of bags loading into trucks and transporting the consignment of cement products to the warehouse and unloading, and stacking the consignment of cement products at the warehouse as applicable. C&FA shall, if instructed by ACC in writing, pay freight to the railways/road transporters for the consignment of cement products transported from ACC cement plants to C&FA s location".

Therefore, Clearing and Forwarding Agency Agreement clearly includes loading and unloading charges and transportation charges. Hence, the claim of the appellant it is not part of Clearing and Forwarding Agency service cannot be accepted.

5. Now let's examine the definition of Clearing and Forwarding Agency (C&FA). In the Finance Act, 1994, Service Tax on the Clearing and Forwarding Agency Service was levied with effect from 16.07.1997. Section 65(25) of the Finance Act ,1994, defined Clearing and Forwarding Agents as '*means any person who is*

engaged in providing any service, either directly or indirectly, connected with the clearing and forwarding operations in any manner to any other person and includes consignment agent'. Section 65(105)(j) defined *'Taxable service as any services provided or to be provided to any person, by a Clearing and Forwarding Agent in relation to clearing and forwarding operations, in any manner'*. As per Section 67 of the Finance Act 1994, the value of any taxable service shall be *"the gross amount charged by the service provider for such service provided or to be provided by him"*. Taking into consideration the clauses of the Agreement and the above definition, it is very clear that the transportation charges, lorry hire charges, loading and unloading charges are to be part of the Clearing and Forwarding Agency Services. This is more aptly dealt with by the Larger Bench and the Larger Bench in the case of **Larsen & Toubro Ltd. vs. Commissioner of Central Excise, Chennai:** Final Order Nos. 1-4/2006-LB(PB), **2006 (3) S.T.R. 321 (Tri. - LB)** dated 22-6-2006 while defining 'Clearing and Forwarding Agency' observed as follows:

> "Whether mere procuring/booking orders for the principal by an agent on payment of commission basis would amount to providing services as 'clearing and forwarding agent' within the meaning of the definition of the expression 'clearing and forwarding agent' under Section 65(25) of the Finance Act, 1994, as held in the decision of the Tribunal in *Prabhat Zarda Factory (Pvt.) Ltd.* v. *CCE, Patna*, reported in 2002 (145) E.L.T. 222 (Tri.) = 2002 (50) RLT 326 (CEGAT-Kol.)."
>
> **9.** The definition of "clearing and forwarding agent" under Section 68(25) of Chapter V of the Finance Act, 1994 reads as under :-"'Clearing and Forwarding Agent' means any person who is engaged in providing any service, either directly or indirectly, connected with the clearing and forwarding operations in any manner to any other person and includes a consignment agent".
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> **9.1** From the above definition of "clearing and forwarding agent", it is borne out that the service should be connected with clearing and forwarding operations. The 'clearing and forwarding' operations would be various activities having bearing on clearance of goods which would involve documentary processes and arrangements for transfer of goods

to their destination, which process may also involve clearance at subsequent stages during forwarding operations. The procurer of orders on commission basis renders services, which are not connected with such clearing and forwarding operations which have bearing on the movement of goods.

9.2 It will be significant in this context to refer to the nature of operations undertaken by clearing and forwarding agents, as spelt out in paragraph 2.2 of Trade Notice No. 87/97 10/Service Tax/97 of the Madurai-2 Commissionerate dated 14, July 1997, in which it was observed that normally there was a contract between the principal and the clearing and forwarding agent detailing the terms and conditions and also indicating the commission or remuneration to which the C&F agent is entitled. A clearing and forwarding agent normally undertakes the following :-

(a) Receiving the goods from the factories or premises of the principal or his agents;
(b) Warehousing these goods;
(c) Receiving despatch orders from the principal;
(d) Arranging despatch of goods as per the directions of the principal by engaging transport on his own or through the authorized transporters of the principal;
(e) Maintaining records of the receipt and despatch of goods and the stock available at the warehouse;
(f) Preparing invoices on behalf of the principal

9.3 An agent engaged only for procuring purchase orders for the vendor on commission basis does not engage in any of the above activities, directly or indirectly. Commission agent engaged to procure orders and not entrusted with the work of clearing and forwarding of the goods would be a person who, in the ordinary course of business, makes contracts for sale or purchase of goods for others. The definition of "commission agent" in Section 2(aaa) of the Central Excise Act, 1944, would apply in relation to service tax as it applies in relation to duty of excise by virtue of sub-section (121) or Section 65 of the Act. Services of commission agent are included in the definition of "business auxiliary service" under sub-section (19) of Section 65 w.e.f. 1-7-2003, which includes service of a commission agent. As defined in Explanation (a) to sub-section (19) of Section 65 commission agent is a person who acts on behalf of another person and causes sale or purchase of goods, or provision or receipt of services, for consideration, and includes any person who, while acting on behalf of another person: deals with goods or services or documents of title to such goods or services; or collects payment of sale price of such goods or services; or guarantees for collection or payment for such goods or services; or undertakes any activities relating to such sale or purchase of such goods or services. This clearly shows that the activity of mere procurement of purchase orders for the principal on commission basis of a commission agent is treated separately by the Parliament from the activities of a clearing and forwarding agent. Activity of procuring orders is thus independent of clearing and forwarding operations. The agents doing these activities can be different. Moreover, clearing and forwarding operations do not flow directly or indirectly from mere procurement of orders. There is no obligation on the person procuring orders as a commission agent for the principal, only by virtue of that agency, to carry out clearing and forwarding operations in respect of the goods which are to be supplied pursuant to the orders so procured.

10. It appears to us that the expressions "directly or indirectly" and "in any manner" occurring in the definition of "clearing and forwarding agent" cannot be isolated from the activity of clearing and forwarding operations. A person may undertake to provide service of procurement of orders as agent of the principal without agreeing to provide services of clearing and forwarding of the goods. Clearing and forwarding has a very specific connotation in the context of movement of goods from the supplier to their destination and agents undertaking clearing and forwarding operations may never have been concerned with procurement of orders for the goods which are cleared and forwarded. A person entrusted with the work of commission agent for procuring orders for the principal cannot insist on also providing services as clearing and forwarding agent in respect of those goods and it would be open for the principal to engage some other person for the purpose of forwarding such goods. In cases where the buyer is under an obligation to take delivery of the goods from the vendor's premises, there would not be even any need on the part of the vendor to engage any forwarding agent, nor can a person engaged for the purpose of clearing and forwarding operations, insist on procuring orders for the principal in the absence of any stipulation to that effect".

There is no doubt that all the activities included in the 'Trade Notice' referred by the Larger Bench are being undertaken by the appellant in the present case. Therefore, the fact that there are two separate contracts bifurcating the activity of Clearing and Forwarding agency and Transportation will not in any way do away with the fact that the appellant as only undertaken Clearing and Forwarding activities as per the agreement.

5.1 The Supreme Court of India in the case of **COAL HANDLERS PVT. LTD. Versus COMMISSIONER OF C. EX., RANGE KOLKATA-I 2015 (38) S.T.R. 897 (S.C.)** dated 5-5-2015 upholding the definition of Clearing and Forwarding Agency by the Larger Bench (supra) observed as follows:

> "10. It appears to us that the expressions "directly or indirectly" and "in any manner" occurring in the definition of "clearing and forwarding agent" cannot be isolated from the activity of clearing and forwarding operations. A person may undertake to provide service of procurement of orders as agent of the principal without agreeing to provide services of clearing and forwarding of the goods. *Clearing and forwarding has a very specific connotation in the context of movement of goods from the supplier to their destination and agents undertaking clearing and forwarding operations may never have been concerned with procurement of orders for the goods which are cleared and forwarded.* A person entrusted with the work of commission agent for procuring orders for the principal cannot insist on also providing services as clearing and forwarding agent in respect of those goods and it would be open for the principal to engage some other person for the purpose of forwarding such goods. In cases where the buyer is under an obligation to take delivery of the goods from the vendor's premises, there would not be even any need on the part of the vendor to engage any forwarding agent, nor can a person engaged for the purpose of clearing and forwarding operations, insist on procuring orders for the principal in the absence of any stipulation to that effect".

5.2 Similarly, the Tribunal in the case of **Karamchand Thapar & Bros. (Coal Sales) Ltd. vs. C.S.T., Kolkata** 2013 (32) S.T.R. 577 (Tri. - Kolkata) dated 2-4-2013, in similar set of facts observed as follows:

> **"5.26** The ld. Advocate for the Appellant has also placed heavy reliance on the judgement of Hon'ble Punjab & Haryana High Court in the case of *CCE, Punchkula* v. *Kulcip Medicines Pvt. Ltd*. *(supra)*. The facts involved in the said case was that the assessee had entered into an agreement with M/s. Cipla for handling and distribution of their products and were entrusted with the job of receiving, storing and distributing Cipla products

to their authorised stockists and distributing centres. For the service so rendered, the assessee was entitled for commission based on agreed percentage of sales figures and also for reimbursement of recurring expenses. We find that facts involved in the said case are entirely different and hence the observation of the Hon'ble High Court in the context of the said case cannot be made applicable to the fact of the present case. Also, we do not feel the necessity of discussing various judgments cited by both sides for the reasons that the facts and circumstances involved in those cases are totally different and have scant relation to the services rendered by the Appellant in the present case. In our view, the facts of the present case, are closely comparable only with the facts of the *Coal Handler's* case (supra) where this Tribunal has categorically observed that the services rendered for movement of coal from collieries to its place of consumption would come within the definition of clearing and forwarding agent. We also do not find substance in the argument of the ld. Advocate for the Appellant that to fall within the definition and scope of clearing & forwarding agent, it is necessary for a person to undertake all the activities/services narrated in the Mumbai Commissionerate Trade Notice. In our view the activities/services mentioned in the said Circular which was based on the Notification issued by the Board bearing F. No. 43/7/97-TRU, dated 11-7-1997, are only illustrative in nature and not exhaustive, as is clear from the use of the expressions, "normally", "usually", in the said Notification/Trade Notice. Hence, it is not necessary that to fall under the definition of clearing & forwarding agent, a person is required to undertake all the listed activities or any of the said activities. By implication, if a person undertakes activities/ renders services, not mentioned in the aforesaid list of services, but satisfies all the ingredients of the definition of 'Clearing & Forwarding Agent' discussed as above, then he would fall within the scope of the said definition. Thus, we have no hesitation to hold that the activities/services rendered by the Appellant to its clients under contracts/agreements for movement of coal from the collieries to the premises of their clients satisfy the definition of "Clearing and Forwarding Agent" prescribed at Section 65(25) and taxable service under Section 65(105)(j) of the Finance Act, 1994.

5.27 The ld. Adv. for the Appellant submitted that the ld. Commissioner has erroneously, confirmed the demand on the value of freight financing charges, received against separate contract, from their client M/s. GSEB, which according to them cannot be chargeable to Service Tax as the same cannot fall under the category of Clearing & Forwarding Agent service. We find that the ld. Commissioner in the impugned order had recorded a finding that the amount received on account of freight financing were part of clearing and forwarding services rendered by the Appellant connected with clearing and forwarding operation of coal. He has also observed that the value for Service Tax did not include the actual railway freight charged by the Appellant, but on the amount of commission received from such services, hence, its value cannot be excluded from the total demand. On going through the said contract, we find that the services mentioned therein were not of simply making payment for the freight charges, in advance to railways, on behalf of their client, but it also includes services connected with clearing and forwarding operations, rendered to GSEB, hence, in our view the same are chargeable to Service Tax".

5.3 Moreover, as rightly held by the Tribunal in the case of **Commissioner of CGST and Central Excise, Indore vs. M/s. Carry Fast Agency: Final Order No.51302/2023 dated 15.09.2023** separate agreements appear to be only an arrangement to camouflage the C&F Agent's liability for providing Clearing and Forwarding Agent Service. The observations of the Tribunal are reproduced below:

"14. Reverting to the facts of the present case, we observe that irrespective there are two separate agreements between the principle and the agent, one for transportation and another for clearing. In addition, the consideration received is also in two different modes with respect to the invoices of respondent's clearing activity, he is receiving the consideration as commission. Whereas for the invoices about providing forwarding services, he is receiving the contractual payment. But the forwarding activity has been provided by the C&F agent i.e. the assessee and he, himself is clearing the product of his principle. The bifurcation of both the services, there is no doubt, permissible as per the decision in Kulcip Medicines (P) Ltd. (supra). However, we also observe that the agent in both these contracts is same i.e. the respondent. It is important here to go through the said two different contracts/agreements:

(i) The agreement dated 20.12.2012 executed between M/s. Dabur India Limited and the respondent is about business of transporting the company's goods from company's warehouses on door delivery basis to the different stockists in state of Madhya Pradesh or delivery of goods to any other place/state as per the request of the company. We observe that clause 48 of this agreement addresses the carrier i.e. the respondent as C&F agent, who is not allowed to part with the consignment, in any case, without the acknowledgement of the receipt of goods by the stockist.

We also observe that the agreement is absolutely silent about issuance of consignment notes and admittedly respondent is not registered as Goods Transport Agency. These observations are sufficient for us to hold that even if respondent is rendering transportation service under a separate contract but said service rendered by him cannot be called as Goods Transport Service.

(ii) The second agreement dated 19.04.2012 between M/s. Dabur India Limited and the respondent is about undertaking the business of clearing, storing and forwarding of company's goods as C&F agent of the company for State of Madhya Pradesh.

We observe from clause 1 that C&F shall transfer stocks to any of the company stockiest/super stockiest or C&F agent located all over India. As per clause 2 of the agreement, appellant as C&F agent is allowed to use the warehouse/godowns of M/s. Dabur India Limited to receive and stock the goods therein & to consign its goods from time to time, as per requirement, by Road and Rail.

From these clauses of both the agreements, it is clear that respondent is admitted to be the C&F agent. As already observed above respondent only is providing clearing as well as forwarding service. Hence it is not open to respondent to say that service provided by him is different from C&F Agent Service. Irrespective there are two separate contracts executed by the principle but for appointing one and the same person i.e. respondent to render carrying as well as forwarding service. This fact distinguishes the present case from Kulcip Medicines (supra). Thus, we hold that both the activities rendered by respondent shall constitute one synchronized service of C&F agent. Hence respondent is liable to levy under Section 65(25) of the Finance Act. More so for the reason that appellant is registered as C&F agent and not as GTA.

Thus we answer the above question in negative by holding that when one and the same person is providing service of clearing as well as forwarding irrespective under two separate contracts, it shall not amount to be the bifurcation of C&F Service. The agent has to be assessed for rendering C&F Service 65(25) and 65(105) of the Finance Act.

15. We find that respondent-assessee has relied upon the decision of M/s. Synergy Baxi Logistics Pvt. Ltd. (supra), we notice the decision of Hon'ble Supreme Court in the case of Coal Handlers Private Limited Vs. CCE reported as 2015 (38) STR 897 (SC), wherein while discussing the meaning and scope of forwarding agent, the court held that the transportation service is not part of the forwarding operations. Further the same person can act both in the capacity of C & F agent as well as courier in a separate transportation and different contract. We observe that in M/s. Synergy Baxi Logistics Pvt. Ltd. (supra) the C&F himself was not transporter. He had assured that wherever bank approved transporters are available, their services shall be utilized as a first priority. In case, bank approved transporters are not specified for certain places, care shall be exercised to dispatch the said products through registered transporters or through reputed transporters. While entrusting the Products to transporters in the course of forwarding, the C&F shall arrange and ensure that all the required excise gate passes / invoices / documents are carried by the transporters, The relevant invoices / documents / challans shall carry the name of the Company as the consignor and the name of the customer as the consignee. But in the present case as per agreement dated 20.12.2012, the assessee –respondent i.e. M/s. Carry Fast Agency only has been appointed as transporter. For these reasons we are of the opinion that facts of M/s. Synergy Baxi Logistics Pvt. Ltd. (supra) are distinguishable.

16. As the result of above discussion we answer the question framed in negative that **two separate contracts bifurcating the activity of clearing and forwarding will not discharge the C&F Agent from his liability of C&F Service taxable under Section 65(105)(i) of the Finance Act. It is for the sole reason that under two separate contracts, the respondent himself is the service provider. We hold that such an arrangement is to camouflage the C&F Agent's liability for providing clearing & Forwarding Agent Service.**

(emphasis supplied)

5.4 The decisions relied upon by the appellant have been clearly distinguished in the orders reproduced above, hence, the same have not been discussed individually.

6. The other issue to be decided is whether the service provider (appellant) is a pure agent of the service recipient. As per the contract, it is the responsibility of the appellant to undertake the

services of Clearing and Forwarding Agent and has been paid fixed charges as well as charges incurred on actual basis for providing such service. The appellant independently chooses secondary service providers and the rates are also decided independently. There is no separate contract or agreement to show that there are no pre-agreed service charges. In the present case, the appellant is not having any legal or contractual obligation to pay the third party on behalf of the service recipient and therefore, cannot be considered as a pure agent.

7. The CBEC vide various circulars and the Commissioners based on these circulars, had issued Trade Notices to clarify the scope of the clearing and forwarding Agents. The scope of the activities referred in the trade notice of the C&FA is the same as the activities that are present in the agreement of the appellant herein and hence, the question of not including the handling charges, transportation charges into the gross value of the C&FA services rendered by the appellant cannot be sustained. The relevant clauses of the Trade Notice issued by Madurai Commissionerate which has been relied by the Larger Bench (supra) is reproduced below:

> **"Service Tax on services rendered by clearing and forwarding agents and rent-a-cab scheme operators**
>
> For subsequent modifications/developments see, Trade Notice No. 1/2000, dated 27-4-2000, Trade Notice No. 87/97 (10/Service Tax/97), dated 14-7-1997 of the Madurai-2 Commissionerate.
>
> Attention of the Trade is invited to Madurai Commissioner's Trade Notice No. 27/97 (04/Service Tax/97), dated 4-3-1997 wherein it was informed that the Finance Bill, 1997 - 1998 proposed [to] extend levy of Service Tax on new services. Of the new services proposed in the Finance Bill, 1997 - 1998, the services rendered by clearing and forwarding agents and rent-a-cab scheme operators have now been brought under Service Tax net vide Section 88 of the Finance Act, 1997 w.e.f. 16-7-1997. Notification Nos. 26/97-S.T. and 27/97-S.T., both dated the 11th July, 1997 have been issued in this regard.

2. Clearing and Forwarding Agents

2.1 Clearing and forwarding agent has been defined as any person who is engaged in providing any service, either directly or indirectly, connected with clearing and forwarding operations in any manner to any other person and includes a consigning agent. The taxable service has been defined as any service provided to a client, by C&F agent in relation to clearing and forwarding operations in any manner. The clearing and forwarding agents are engaged/appointed by manufacturer of goods (both excisable and non-excisable goods), producers and distributors of goods and shall also include such agents appointed for agricultural and mineral goods.

2.2 Normally, there is a contract between the principal and the clearing and forwarding agent detailing the terms and conditions and also indicating the commission or remuneration to which the C&F agent is entitled. A clearing and forwarding agent normally undertakes the following :

(a) Receiving the goods from the factories or premises of the principal or his agents;
(b) Warehousing these goods;
(c) Receiving despatch orders from the principal;
(d) Arranging despatch of goods as per the directions of the principal by engaging transport on his own or through the authorised transporters of the principal;
(e) Maintaining records of the receipt and despatch of goods and the stock available at the warehouse;
(f) Preparing invoices on behalf of the principal.

2.3 It has been decided that the person responsible for collecting the service tax in the case of services rendered by a clearing and forwarding agent shall be the person engaging/appointing a clearing and forwarding agent (Notification No. 26/97-Service Tax refers). It may be noted that unlike in the case of other service tax levies where the service provider is the person responsible for collecting the service tax, in the case of services rendered by clearing and forwarding agents the service tax liability shall be discharged by the person availing the service so rendered. In other words, the principal who engages a clearing and forwarding agent is the person responsible for collecting and paying the service tax to the exchequer.

2.4 Further under the Finance Act, 1997 the value of taxable service rendered by a clearing and forwarding agent has been defined as the gross amount charged by such agent from the client for the services of clearing and forwarding operations in any manner. However, under Service Tax Rules it has been provided that the value of taxable service in relation to services rendered by clearing and forwarding agents to a client shall deemed to be the gross amount of remuneration or commission (by whatever name called) paid to such agent by the client engaging such agent (Notification No. 27/97-S.T. refers.)

2.5 For the services rendered, the C&F agent receives commission or remuneration which usually consists of two components : (I) Minimum commission on a flat rate or turnover basis depending on the packages/consignments handled; (II) A variable commission based on performance which is computed on the performance indicators agreed upon between the agent and the principal. This is usually given as a percentage of the turnover. The above two constitute the remuneration or commission paid to the C&F agent by the principal.

2.6 In cases where C&F agents engaged for various towns, states or areas are paid only by the regional or the head office of the company appointing such agents, for service tax purposes it would suffice to register only such regional or head offices. In such cases the regional office or the head office, as the case may be, should also be required to give an undertaking to discharge the service tax liability.

4.1 As per Section 69 of the Finance Act, 1994, read with Rules 3 and 4 of the Service Tax Rules, 1994, every person responsible for collecting the service tax is required to be registered with the concerned Central Excise Officer appointed under Rule 3. Notification No. 27/97-Service Tax, dated 11-7-1997 amends Rule 2 of the said rules so as to prescribe that the person responsible for collecting the service tax in relation to the services provided by a clearing and forwarding agent shall be the person who engages a clearing and forwarding agent and by whom remuneration or commission (by whatever name called) is paid for such services to the said agent and the person responsible for collecting the service tax in relation to the services provided by a rent-a-cab scheme operator shall be the operator who raises the bill for services rendered to any person by such operator.

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4. It may be noted that the value of taxable service rendered by clearing and forwarding agent continue to remain as the gross amount of

remuneration or commission (by whatever name called) paid to such agent by the principal or the client engaging such agent as provided under sub-rule (8) to Rule 6 of the Service Tax Rules, 1994."

8. With regard to limitation, it is noticed that the first show-cause notice in this regard was issued on 21.10.2014 for the period 2009-10 to 2012-13 for an amount of Rs.3,23,34,787/-. The Commissioner in the impugned order has held that from the records of the case and statement of the appellant clearly proves the fact that they had consciously avoided including the additional considerations received by them for rendering Clearing and Forwarding Service. Only after investigation by the department, the fact that the appellant was collecting other charges which were not part of the value declared for the service rendered by them came to be noticed and therefore, it is a clear case of suppression. The appellant, however, submitted that the Preventive Officers visited one of their units and issued a show-cause notice dated 09-10-2014 demanding Service Tax for the period April 2009 to March 2011. The notice was adjudicated vide Order-in-Original No. 09/2014-15 and confirmed the demands on the ground that the appellant had not disclosed the material facts that they were engaged in providing taxable services and had suppressed the facts with intention to evade payment of Service Tax on the service of C & F Agency, thus had upheld the demand for the extended period and imposed penalty under Section 78. On appeal before the Commissioner (Appeals), the Commissioner (A) held that *bona fide* error in not filing ST-3 returns and not paying Service Tax due to financial difficulties was accepted and penalty under Section 78 was set aside invoking the provisions of Section 80 of Finance Act, 1994. The department filed an appeal against this order before this Tribunal and this Tribunal upheld the order of the Commissioner by dropping the penalty under Section 78, however, the Tribunal justified the payment of late fee for delay in filing the ST-3 returns. In view of the above, there cannot be any justification for invocation of suppression for the show-cause notices issued at a later date. It is also not in dispute that the appellant had received payments for the transportation charges as

reflected in their books of accounts. In view of the above, we do not find any reason to sustain the demands beyond the normal period.

9. In one of the appeals Appeal No. ST/20059/2021, the Commissioner in the impugned Order-in-Appeal No. MYS-EXCUS-000-APP-MSC-001 & No.002-2020-21 dated 19.10.2020 though has upheld inclusion of the handling and transportation charges in the gross value of the Clearing and Forwarding Service has excluded that part of the value on which evidences were placed on record of payment of Service Tax by the recipient.

10. In view of the above, we confirm that the gross value for the service rendered as Clearing and Forwarding Agency includes the transportation charges, lorry hire charges, handling charges etc., as has been held in all the impugned orders. However, the demands in all the six appeals are confirmed only for the normal period, thus setting aside the penalties imposed under Section 78 of the Finance Act, 1994. The late fee imposed under Rule 7C of the Service Tax Rules, 1994 is upheld. On production of evidences to the extent Service Tax has been paid by the recipient, the value needs to be excluded for payment of tax. All these appeals are remanded only for the purpose of re-quantification of Service Tax for the normal period. Needless to say that an opportunity of hearing to be given to the appellant before concluding the remand proceedings.

11. Appeals are disposed of on the above terms.

(Order pronounced in Open Court on 10.09.2024.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

rv