

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 2380 of 2012

[Arising out of Order-in-Original No. 75-77/GB/2012 dated 30.04.2012 passed by the Commissioner of Service Tax, Delhi]

Commissioner of Service Tax, Delhi

17-B, IAEA House, M G Road,
I P Estate, New Delhi 110002

.....Appellant

VERSUS

M/s Kuehne & Nagel Pvt Ltd

70, Udyog Vihar, Phase IV,
Gurgaon, Haryana 122003

.....Respondent

WITH

Service Tax Appeal No. 56700 of 2013

[Arising out of Order-in-Original No. 186/GB/2012 dated 30.11.2012 passed by the Commissioner of Service Tax, Delhi]

Commissioner of Service Tax, Delhi

17-B, IAEA House, M G Road,
I P Estate, New Delhi 110002

.....Appellant

VERSUS

M/s Kuehne & Nagel Pvt Ltd

70, Udyog Vihar, Phase IV,
Gurgaon, Haryana 122003

.....Respondent

APPEARANCE:

Mr. C. Dhansekaran, Special Counsel (AR) for the Appellant

Mr. Ashok Batra, CA and Mr. Parikshit Aggarwal, CA for the Respondent

CORAM: HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)

HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60262-60263/2026

DATE OF HEARING: 21.11.2025

DATE OF DECISION: 19.03.2026

S. S. GARG :

These two appeals are filed by the Revenue against two different Orders-in-Original ('OIOs'), dated 30.04.2012 and 30.11.2012 respectively, passed by the Commissioner of Service Tax, Delhi, whereby the learned Commissioner has dropped the demand of service tax raised in the four Show Cause Notices ('SCNs') for the period covering 2004-2009, 2009-2010, 2010-2011 and 01.04.2011 to 31.03.2012.

2. Briefly stated facts of the present case are that the Assessee-Respondent, M/s Kuehne & Nagel Pvt Ltd, are a multinational corporation incorporated on 31st July, 1996 as a wholly owned subsidiary of KN Asia Pacific Holding AG Switzerland. The Respondent are registered with the Service Tax department under the centralized registration issued on 17th December, 2008. They are engaged in providing different taxable services viz. storage and warehousing, cargo handling service, business auxiliary service, intellectual property right service other than copyright, transport of goods by road service and customs house agent's service under Section 65 of the Finance Act, 1994. They operate through a network of branches across India, while services rendered outside India are provided by the Respondent's overseas business associates within the KN Group. During the audit conducted by the officers of the Central Excise department, Cochin, it was noticed that the Respondent had wrongly assessed the gross value of services provided by them which resulted in short payment of service tax. The Respondent acting as a Customs

House Agent ('CHA') have provided different services to their customers. On these allegations, four SCNs were issued for the periods covering 2004-2009, 2009-2010, 2010-2011 and 01.04.2011 to 31.03.2012. The first three SCNs were adjudicated by a common OIO dated 30.04.2012 and the last SCN was adjudicated by OIO dated 30.11.2012, vide which the learned Commissioner has dropped the demand of service tax. Hence, aggrieved by the said two OIOs passed by the learned Commissioner, the Revenue has preferred these two appeals before us.

3. Heard both sides and perused the material on record.

4. The learned Special Counsel for the Revenue-Appellant submits that the impugned OIOs passed by the learned Commissioner are not sustainable in law as the same have been passed without properly appreciating the provisions of service tax applicable to CHA.

4.1 The learned Special Counsel further submits that prior to Service Tax (Determination of Value) Rules, 2006, i.e. before 18.04.2006, the value of taxable service was the gross amount charged under Section 67 of the Finance Act, 1994. He further submits that the CBEC Circular No. 43/1/97-TRU dated 06.06.1997 had already clarified that payments made by a CHA to third party on behalf of clients, for which the CHA is reimbursed, must be included when computing service tax liability. He further submits that after coming into effect from 18.04.2006, Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 mandated that any expenditure or cost incurred by the service provider in the course of providing a

taxable service, shall be treated as consideration and be included in the taxable value. Therefore, service tax on CHA service must be computed on the gross service charges, regardless of the heads/nomenclature billed to the clients.

4.2 He also submits that the Respondent provided CHA service in India to overseas clients and received income collected by their overseas branch and forwarded to the Indian Office. The Respondent failed to pay service tax on this income, claiming reimbursement for "local expenses" and "overseas expenses" as non-taxable income. He further submits that as per the Revenue, the Respondent are liable to pay service tax on the amounts collected on account of the overseas billing for providing CHA service to their clients.

4.3 He also submits that the Adjudicating Authority failed to consider the CBEC Circular No. 119/13/2009-ST dated 21.12.2009 regarding service tax valuation issues pertaining to CHA service. He further submits that the Adjudicating Authority also observed that the issue is not related to classification of taxable service but is related to valuation of CHA service with reference to Section 67 of the Finance Act.

4.4 He also refers to the provisions of Section 65(105) and Section 65(105)(h) of the Finance Act, which define the CHA as well as taxable service provided by the CHA.

4.5 He further submits that method of charging the service tax does not in itself determine whether the service provided is a single

service or multiple services, and the classification in such cases is based on essential character by applying the principle of classification enumerated in Section 65A of the Finance Act.

5. On the other hand, the learned Consultant for the Assessee-Respondent justifies the impugned OIOs passed by the learned Commissioner and submits that the entire case of the Revenue is whether the expenditure or cost incurred by the Respondent shall be included in the value for purpose of charging service tax on the CHA service provided by them.

5.1 The learned Consultant further submits that the Revenue in the present case has only relied upon the CBEC Circular No. 43/1/97-TRU dated 06.06.1997 and Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 which came into effect from 18.04.2006 for inclusion of the payments made against the expenditure by the Respondent on behalf of their clients for computing their service tax liabilities.

5.2 The learned Consultant further submits that the provisions of Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 wherein the reimbursable expenses also need to be included in the value of taxable services rendered has been held to be ultra-vires to Section 67 of the Finance Act by the Hon'ble Apex Court in the case of **Union of India vs. Intercontinental Consultants & Technocrats Pvt Ltd – 2018 (10) GSTL 401 (SC)**. He further submits that in view of the said judgment of the Hon'ble Apex Court, the demand of service tax on this account is not sustainable. He also

submits that any circular prior to the said judgment of the Hon'ble Apex Court inferencing the same conclusion as that of Rule 5(1) *ibid* is *null* and *void ab-initio* after the commencement of the said judgment.

5.3 He further submits that CBEC Circular No. **119/13/2009-ST dated 21.12.2009** has also clarified this issue wherein it is stated that other than CHA service charges, other charges incurred and recovered as reimbursement from their client are not includible in the gross value of CHA service. In this regard, he places reliance on the decision of Ahmedabad Bench of the Tribunal in the case of **Shakti Enterprise vs. CCE & ST, Rajkot – 2023 (12) TMI 126 CESTAT Ahmedabad.**

5.4 The learned Consultant further submits that the issue involved in the present case is no more *res integra* and in view of the judgment of Hon'ble Apex Court in the case of **Union of India vs. Intercontinental Consultants & Technocrats Pvt Ltd** (supra), the reimbursable expenses incurred by the Assessee on behalf of service recipient are not includible. He further submits that the above said judgment of the Hon'ble Apex Court has been followed by the Chennai Bench of the Tribunal in the following cases:

- **M/s International Clearing & Shipping Agency vs. CCE & CGST, Chennai - 2023 (11) TMI 104 CESTAT Chennai**
- **M/s Aditya Birla Money Ltd vs. CCE & CGST, Chennai – 2025 (3) TMI 506 CESTAT Chennai**

He also relies on the following decisions of the various benches of the Tribunal on the identical issue:

- **Sri Ganesh Shipping Agency vs. CCE & ST, Mangalore - 2018 (9) GSTL 293 (Tri. Bang.)**
- **Rajcomp Info Services Ltd vs. Pr. Commr of CGST & CE, Jaipur – 2023 (73) GSTL 237 (Tri. Del.)**
- **M/s International Shippers & Traders Pvt Ltd vs. CCE & Customs, Visakhapatnam-I – 2015 (11) TMI 906 CESTAT Bangalore**
- **Commr of ST, New Delhi vs. Karam Freight Movers – 2017 (4) GSTL 215 (Tri. Del.)**

5.5 The learned Consultant further submits that the Adjudicating Authority has rightly held that the expenses recovered by the Respondent from their clients are not includible in the value charged by them for the provision of services for various reasons as stated in details in the impugned OIOs itself.

5.6 He further submits that in accordance with Section 67 of the Act, only consideration for the specific service is subject to taxation and therefore, any expenses on behalf of the client and recovered on an actual basis cannot be included in the taxable amount. For this, he places reliance on the decision of Bangalore Bench of the Tribunal in the case of **Rolex Logistics Pvt Ltd vs. CST, Bangalore – 2009 (13) STR 147 (Tri. Bang.)**.

5.7 The learned Consultant further submits that the expenses recovered by the Respondent cannot be brought within the ambit of taxable services under the category of CHA services. He also refers to the definition of CHA services as defined under Section 65(105)(h) of the Finance Act, which provides that:

“any service provided or to be provided to any person, by a custom house agent in relation to the entry or departure of conveyances or the import or export of goods”.

5.8 He also submits that the recovery of expenses which are in nature of transportation expenses such as air freight, sea freight, airport authority charges, airline charges etc cannot be taxable under the scope of CHA services. He further submits that it was consistently held in various judicial pronouncements that the activities related to custom station can only be taxed under CHA services and other expenses incurred which are not in connection with entry or departure at any custom station, cannot be taxable under CHA services. In this regard, he relies on the following decisions of the Tribunal:

- **DHL Lemuir Logistics Pvt Ltd vs. CST, Bangalore - 2010 (17) STR 266 (Tri. Bang.)**
- **KIN-Ship Services (India) Pvt Ltd vs. CCE & Customs, Cochin – 2008 (10) STR 331 (Tri. Bang.)**

6. We have considered the submissions made by both the parties and have also perused the grounds of the appeals filed by the Revenue as well as the decisions relied upon by the Respondent. We find that the only issue raised by the Revenue in the present appeals is whether the expenses recovered by the Respondent from their clients are liable to be included in the gross value charged for provision of service by invoking the provisions of Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006. We find that this issue is no more *res integra* and has been settled by the Hon'ble Apex Court in the case of **Union of India vs. Intercontinental**

Consultants & Technocrats Pvt Ltd (supra) wherein the Hon'ble Apex Court has categorically held that the provisions of Rule 5(1) *ibid* is ultra-vires to Section 67 of the Finance Act.

7. Further, we find that the CBEC has also clarified this issue vide **Circular No. 119/13/2009-ST dated 21.12.2009** stating that other than CHA service charges, other charges incurred and recovered as reimbursement from their clients, are not includible in the gross value of CHA service. Further, we find that this circular was considered by Ahmedabad Bench of the Tribunal in the case of **Shakti Enterprise** (supra). Relevant findings of the Tribunal are reproduced herein below:

"9. We find that as per the provisions of Rule 5 of the Service Tax (Determination of Value) Rules, 2006, the reimbursable expenses also need to be included in the value of taxable services rendered. However, this rule has been held to be ultra-vires to section 67 by Hon'ble Supreme Court in the case of Intercontinental Consultants & Technocrats Pvt. Limited as reported in 2018 (10) G.S.T.L. 401 (S.C.). Hence, the demand of Service Tax on this count is clearly not sustainable. On the very issue in hand, the Board in the circular supra has also clarified the matter in favour of the assessee. The relevant para of the circular is reproduced below:

5. It is reported that disputes have arisen on the issue of inclusion of such reimbursable charges, which are currently pending at various stages of dispute settlement mechanism. Certain field formations have also issued communications, directing that charges on certain activities incurred by CHAs are not covered under exclusions available to 'pure agent'. It is also reported that divergent practices as regards the records & documentations, are being followed by the CHAs in relation to the charges for receiving services from other service providers as well as to their billings to their customers. This has added to the conflict and litigation.

6. With a view to resolve the disputes and to bring it clarity, the issue has been examined. The divergent practices followed at different places and lack of consistency in the manner of maintaining records and issuance of documents by the CHAs, make it impossible to lay down any specific guidelines or issue any specific directions. In the circumstances, it is clarified that essentially, the exclusion should be allowed to such charges from the taxable value of CHA services, where all the following conditions are satisfied, -

(a) The activity/service for which a charge is made, should be in addition to provision of CHA service (as mentioned in paragraph 1);

(b) There should be arrangement between the customer & the CHA which authorizes or allows the CHA to (i) arrange for such activities/services for the customer; and (ii) make payments to other service providers on his behalf;

(c) The CHA does not use the activities/services for his own benefit or for the benefit of his other customers;

(d) The CHA recovers the reimbursements on 'actual' basis i.e. without any mark-up or margin. In case of CHA includes any mark-up or profit margin on any service, then the entire charge (and not the mark-up alone) for that particular activity/service shall be included in the taxable value;

(e) CHA should provide evidence to prove nexus between the other (than CHA) services provided and the reimbursable amounts. It is not necessary such evidence should bear the name or address of the customer. Any other evidence like BE No./Container No./BL No./ packing lists is acceptable for the establishment of such nexus. Similar would be the case for statutory levies, charges by carriers and custodians, insurance agencies and the like;

(f) Each charge for separate activities/services is to be covered either by a separate invoice or by a separate entry in a common invoice (showing the charges against each entry separately) issued by the CHA to his customer. In the latter case, if certain entries do not satisfy the conditions mentioned herein, the charges against those entries alone should be added back to the taxable value;

(g) Any other miscellaneous or out of pocket expenses charged by the CHA would be includable in the taxable value for the purposes of charging tax on CHA services.

7. The conditions mentioned at paragraph (6) would be applicable for services provided with effect from 19th April 2006, i.e. after the introduction of the valuation rules. For the prior period, the taxable value should be determined in accordance with the prevailing instructions issued by Board as referred to foregoing paragraph 3 of this circular. Any communication issued by any of the subordinate offices which are contrary to the conditions referred to in paragraph 6 of this circular, or as the case may be, the prevailing Board's circulars stands superceded to the extent of the contradiction.

8. The pending disputes may be settled in terms of this circular.

In view of the Hon'ble Apex Court judgment in Intercontinental case supra and the Board circular, the reimbursable expenses incurred by the appellant on behalf of the service recipient is not includible."

8. Further, we find that the ratio of the Hon'ble Supreme Court' judgment in the case of **Union of India vs. Intercontinental Consultants & Technocrats Pvt Ltd** (supra) has been consistently followed by the various benches of the Tribunal. In this regard, we may refer to the decision of Chennai Bench of the Tribunal in the case of **M/s Aditya Birla Money Ltd** (supra) wherein also, on the the identical issue, the Tribunal has held as under:

"8. We find that the appellate authority has upheld the impugned orders in original finding that the reliance placed by the adjudicating authority on Rule 5(1) of the Valuation Rules in confirming the demands made by the impugned orders in original, is tenable in law and that the appellants do not satisfy the conditions to bring them within the ambit of pure agent as per Rule 5(2) of the Valuation Rules. The demands in both these appeals pertain only to the amounts that was reimbursed to the appellants and which the appellant had paid to the respective stock and commodity exchanges and the service tax liability quantified thereon.

9. We find that the issue is no more res-integra in view of the decision of the Honourable Supreme Court in the case of UOI v Intercontinental Consultants and Technocrats Pvt Ltd, 2018 (10) GSTL 401 (SC) which has considered the issue of liability to pay service tax on reimbursable expenses received by the service provider in the course of rendering services for the client, apart from the

consideration received for rendering the services on which the client has discharged the liability to pay service tax. The Honourable Supreme Court affirmed the decision of the Delhi High Court in Intercontinental Consultants & Technocrats Pvt Ltd v UOI, 2013 (29) STR 9 (Del), wherein Rule 5(1) of the Service Tax Valuation Rules, 2006 which provided for inclusion of expenditures or costs incurred by the service provider in the course of providing taxable services, in the value of such taxable services, was struck down as ultra vires Section 66 and Section 67 of the Act and as travelling beyond the scope of the said sections. The Honourable Supreme Court had also noticed the nature of reimbursable expenses that arose for consideration in the facts of the case as well as that in connected appeals before it, and has gone on to hold as under:

“21. Undoubtedly, Rule 5 of the Rules, 2006 brings within its sweep the expenses which are incurred while rendering the service and are reimbursed, that is, for which the service receiver has made the payments to the assessee. As per these Rules, these reimbursable expenses also form part of ‘gross amount charged’. Therefore, the core issue is as to whether Section 67 of the Act permits the subordinate legislation to be enacted in the said manner, as done by Rule 5. As noted above, prior to April 19, 2006, i.e., in the absence of any such Rule, the valuation was to be done as per the provisions of Section 67 of the Act.

22. Section 66 of the Act is the charging Section which reads as under:

“there shall be levy of tax (hereinafter referred to as the service tax) @ 12% of the value of taxable services referred to in sub-clauses of Section 65 and collected in such manner as may be prescribed.”

23. Obviously, this Section refers to service tax, i.e., in respect of those services which are taxable and specifically referred to in various subclauses of Section 65. Further, it also specifically mentions that the service tax will be @ 12% of the ‘value of taxable services’. Thus, service tax is reference to the value of service. As a necessary corollary, it is the value of the services which are actually rendered, the value whereof is to be ascertained for the purpose of calculating the service tax payable thereupon.

24. In this hue, the expression ‘such’ occurring in Section 67 of the Act assumes importance. In other words, valuation of taxable services for charging service tax, the authorities are to

find what is the gross amount charged for providing 'such' taxable services. As a fortiori, any other amount which is calculated not for providing such taxable service cannot a part of that valuation as that amount is not calculated for providing such 'taxable service'. That according to us is the plain meaning which is to be attached to Section 67 (unamended, i.e., prior to May 1, 2006) or after its amendment, with effect from, May 1, 2006. Once this interpretation is to be given to Section 67, it hardly needs to be emphasised that Rule 5 of the Rules went much beyond the mandate of Section 67. We, therefore, find that High Court was right in interpreting Sections 66 and 67 to say that in the valuation of taxable service, the value of taxable service shall be the gross amount charged by the service provider 'for such service' and the valuation of tax service cannot be anything more or less than the consideration paid as quid pro qua for rendering such a service.

25. This position did not change even in the amended Section 67 which was inserted on May 1, 2006. Sub-section (4) of Section 67 empowers the rule making authority to lay down the manner in which value of taxable service is to be determined. However, Section 67(4) is expressly made subject to the provisions of subsection (1). Mandate of sub-section (1) of Section 67 is manifest, as noted above, viz., the service tax is to be paid only on the services actually provided by the service provider.

26. It is trite that rules cannot go beyond the statute. In Babaji Kondaji Garad, this rule was enunciated in the following manner :

"Now if there is any conflict between a statute and the subordinate legislation, it does not require elaborate reasoning to firmly state that the statute prevails over subordinate legislation and the byelaw, if not in conformity with the statute in order to give effect to the statutory provision the Rule or bye-law has to be ignored. The statutory provision has precedence and must be complied with."

27. The aforesaid principle is reiterated in Chenniappa Mudaliar holding that a rule which comes in conflict with the main enactment has to give way to the provisions of the Act.

28. It is also well established principle that Rules are framed for achieving the purpose behind the provisions of the Act, as held in Taj Mahal Hotel :

"the Rules were meant only for the purpose of carrying out the provisions of the Act and they could not take away what was conferred by the Act or whittle down its effect."

29. In the present case, the aforesaid view gets strengthened from the manner in which the Legislature itself acted. Realising that Section 67, dealing with valuation of taxable services, does not include reimbursable expenses for providing such service, the Legislature amended by Finance Act, 2015 with effect from May 14, 2015, whereby Clause (a) which deals with 'consideration' is suitably amended to include reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service. Thus, only with effect from May 14,

*2015, by virtue of provisions of Section 67 itself, such reimbursable expenditure or cost would also form part of valuation of taxable services for charging service tax. Though, it was not argued by the Learned Counsel for the Department that Section 67 is a declaratory provision, nor could it be argued so, as we find that this is a substantive change brought about with the amendment to Section 67 and, therefore, has to be prospective in nature. On this aspect of the matter, we may usefully refer to the Constitution Bench judgment in the case of Commissioner of Income Tax (Central)-I, New Delhi v. Vatika Township Private Limited [(2015) 1 SCC 1] wherein it was observed as under : * * **

30. As a result, we do not find any merit in any of those appeals which are accordingly dismissed.”

9. Further, we find that the learned Adjudicating Authority has clearly held that the expenses recovered by the Respondent are not liable to service tax. In this connection, we may refer to specific findings of the learned Adjudicating Authority as articulated in para 23.6.6 of the impugned OIO dated 30.04.2012, which is reproduced herein below:

"23.6.6 *However, the assessee further claimed that the demand on the expenses cannot be made out as they are not income but are expenses by virtue of the said transactions and coupled with the fact that the value in question not identified in which the amount of expenses needed to be included. Further, it was contested that such expenses i.e. local expenses & overseas expenses were never claimed as reimbursable expenses, under intimation to the Department supra, on the contrary, such expenses are integral part of the income as indicated in the overseas billing & charged from their overseas clients against foreign exchange. Since the income generated out of the overseas billing is not a taxable event and no Service Tax was paid; hence, it was argued that raising a demand on expenses alone is not sustainable.”*

10. Further, we find that the Respondent received consideration in convertible foreign exchange for rendering freight and forwarding services outside India and the said fact is not disputed. Consequently, the expenses recovered on an actual basis for providing the export services cannot be subjected to the service tax, particularly when the primary service itself is not liable to service tax. In this connection, we may refer to specific findings of the learned Adjudicating Authority as articulated in para 23.6.7 of the impugned OIO dated 30.04.2012, which is reproduced herein below:

"23.6.7 *I find that the issue of overseas billing is essentially related to income earned by the assessee for rendering the services to their overseas clients whether for export or imports. However, I find it evident on the record that income generated out of overseas income was never subjected to payment of service tax under CHA or any other category. In other words, that the income earned arising out of overseas billing is not taxable. If this is the situation, it cannot be the case that expenses are only liable for taxation under the provisions of the Act, as such expenses are essentially would be a part of the gross value of taxable services. Hence, I find that the issue is not related to reimbursement of expenses under the category of overseas billing."*

11. Further, we may refer to specific findings of the Adjudicating Authority recorded in para 23.6.8 of the impugned OIO dated 30.04.2012, wherein it is clearly stated that the activities related to custom station can only be taxed under CHA services and other expenses incurred which are not in connection with entry or

departure at any custom station, cannot be taxable under CHA services. Relevant portion of the finding is reproduced herein below:

"23.6.8 *The issue of reimbursement of expenses and inclusion of such expenses in the gross value of taxable services has already been held to be with reference to the taxable category of CHA services, Hence, it is obvious that all such expenses in any case would be related to CHA services as provided under Section 65(105)(h) read with Section 65 (35) of the Act ibid. Even otherwise, the expenses alleged to be reimbursement are claimed to be out of the scope of CHA services as they are in the form of Air freight, Sea Freight, Airport/Port Authorities charges, airline/shipping line charges, local transportation & custom duties etc. Thus overall, it was contested that the amount under consideration is not taxable even otherwise."*

12. In view of our discussion above, we are of the considered opinion that there is no infirmity in the impugned orders passed by the learned Commissioner of Service Tax, Delhi; accordingly, we uphold the same and dismiss the appeals filed by the Revenue.

(Order pronounced in the open court on 19.03.2026)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)