

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI
[COURT : Division Bench B1]**

Appeal Nos.: ST/00254/2012 & ST/40025/2013

Sl. No.	Appeal No.	Appellant	Respondent
1.	ST/254/2012	M/s. Coimbatore Anamallais Agencies Pvt. Ltd., Coimbatore	The Commissioner of G.S.T. & Central Excise, Coimbatore
Arising out of Order-in-Appeal No. CMB-CEX-000-APP-024-11 dated 30.01.2012 passed by the Commissioner of Cus., C.Ex. & Service Tax (Appeals), Coimbatore			
2.	ST/40025/2013	M/s. Coimbatore Anamallais Agencies Pvt. Ltd., Coimbatore	The Commissioner of G.S.T. & Central Excise, Coimbatore
Arising out of Order-in-Appeal No. CMB-CEX-000-APP-207-12 dated 28.09.2012 passed by the Commissioner of Cus., C.Ex. & Service Tax (Appeals), Coimbatore			

Appearance:-

Shri. N. Anand, Advocate

for the Appellant

Ms. T. Usha Devi, DC (AR)

for the Respondent

CORAM:

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Hon'ble Shri P. Dinesha, Member (Judicial)

Date of Hearing/Decision: 13.12.2018

Final Order No. **43178-43179 / 2018**

Per P. Dinesha :

The assessee has filed these appeals against the Orders passed by the Commissioner (Appeals) *inter alia* challenging the demand of service tax on the expenses reimbursed.

2.1 The appellants are engaged in the business of sales of Light Motor Vehicles and Spares and Servicing/Repair of Light Motor Vehicles of "TOYOTA" at their authorized service station. The dealers of Light Motor Vehicles normally provide free services for

the said vehicles sold during a warranty period. The expenses incurred for providing free services are reimbursed by the manufacturers. The appellant has paid service tax on the labour charges portion alone and not paid service tax on the portion of material cost reimbursed.

2.2 Show Cause Notices dated 19.03.2010 and 22.09.2010 were issued *inter alia* alleging that the appellant had not correctly adopted the value of taxable services provided by them as they had failed to include the money value of the consideration used in the taxable service provided and had also contravened the provisions of Section 68(1) of the Act read with Rule 6(1) of the Service Tax Rules, 1994 in as much as they had failed to pay appropriate service tax for the services provided by them under the category of Authorized Service Station and thereby demanding service tax along with appropriate interest and penalty. After hearing the assessee, the adjudicating authority vide Orders-in-Original dated 22.02.2011 and 28.10.2011 confirmed the demands in the Show Cause Notices. In the above Orders, the adjudicating authority has recorded that the only issue which was to be ascertained was whether the exclusion of reimbursements received by the assessee from the manufacturers towards expenditure/costs incurred by the assessee during the warranty service period was correct or not; has also recorded the

submissions of the assessee that the value of spares reimbursed was attributable to the cost of goods which would not form part of the taxable value and has even referred to Rule 6(1) of the CENVAT Credit Rules, 2004 which according to him, made the position clear that the reimbursements received by the Authorized Service Stations from the manufacturers of motor vehicles, etc., was required to be included in the value of taxable service. The assessee/appellant having not met with success in its first appeals before the Commissioner of Customs, Central Excise and Service Tax (Appeals), Coimbatore, has filed the present appeals.

3. Today when the matter came up for hearing, Ld. Advocate Shri. N. Anand appeared on behalf of the assessee/appellant while Ld. DC (AR) Ms. T. Usha Devi appeared on behalf of the Revenue/respondent.

4. We have heard the rival contentions and perused the records.

5. Right from the issuance of the Show Cause Notices, the Revenue itself is harping on the fact that the appellant was reimbursed the expenses, which were required to be taxed. The same was confirmed in the Orders-in-Original as well as the impugned Orders. We find that the issue as to taxability of the reimbursible expenses has finally been laid to rest by the Hon'ble Supreme Court in the case of *Union of India Vs. Intercontinental*

Consultants and Technocrats Pvt. Ltd. – 2018 (10) G.S.T.L. 401

(S.C.). The relevant observations of the Hon'ble Supreme Court are 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 assesseees. 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 sub-clauses 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 sub-section (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 :

“27. A legislation, be it a statutory Act or a statutory rule or a statutory notification, may physically consists of words printed on papers. However, conceptually it is a great deal more than an ordinary prose. There is a special peculiarity in the mode of verbal communication by a legislation. A legislation is not just a series of statements, such as one finds in a work of fiction/non-fiction or even in a judgment of a court of law. There is a technique required to draft a legislation as well as to understand a legislation. Former technique is known as legislative

drafting and latter one is to be found in the various principles of "interpretation of statutes". Vis-a-vis ordinary prose, a legislation differs in its provenance, layout and features as also in the implication as to its meaning that arise by presumptions as to the intent of the maker thereof.

28. *Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as *lex prospicit non respicit* : law looks forward not backward. As was observed in *Phillips v. Eyre* [(1870) LR 6 QB 1] , a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.*

29. *The obvious basis of the principle against retrospectivity is the principle of "fairness", which must be the basis of every legal rule as was observed in *L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co. Ltd.* Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later."*

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

6. Following the above *ratio decidendi*, the appeals are allowed with consequential benefits, if any, as per law.

(operative part of order pronounced in open court)

(P Dinesha)
Member (Judicial)
Sdd

(Madhu Mohan Damodhar)
Member (Technical)