IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI
Court : DB- B1

ST/CO/8-9/2011, ST/MISC/41104/2017 &
ST/142-143/2011

(Arising out of Order-in-Original Nos. 59 & 60/2010 dated 29.11.2010 passed by the Commissioner of Service Tax, Chennai).

CCE & ST, Chennai : Appellant

Vs.

M/s. Nippon Express (India) Pvt. Ltd. : Respondent

ST/146,268/2011

(Arising out of Order-in-Original Nos. 59 & 60/2010 dated 29.11.2010 passed by the Commissioner of Service Tax, Chennai).

M/s. Nippon Express (India) Pvt. Ltd. : Appellant

Vs.

CCE & ST, Chennai : Respondent

Appearance

Shri M. Kannan, Advocate,
for the Appellant

Shri B. Balamurugan, AC (AR)
for the Respondent

CORAM :

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of Hearing: **07.01.2019**
Date of Pronouncement: **07.02.2019**

FINAL ORDER No. **40251-40254/2019**

Per P. Dinesha

Appellant is providing Custom House Agents services (CHA), Storage and Warehouse services and Business Auxiliary services (BAS). Alleging that the appellant had excluded certain amount claimed to be reimbursable expenses and that the appellant had not discharged service tax under GTA services, two Show cause notices (SCN) No. 26/2009 dated 02.03.2009 and No. 566/2009 dated 21.10.2009 for the period July, 2007 to August, 2008 were issued proposing to demand service tax on both reimbursed expenses and GTA services along with applicable interest and penalties. Vide impugned OIO Nos. 59 & 60/2010 dated 29.11.2010, the Commissioner partially confirmed the demand as proposed originally; the assessee as well as the Revenue being aggrieved, are assailing the impugned orders by these appeals.

2. Today when the matter was taken up for hearing, Ld. DR Shri A. Cletus, ADC, appeared for Revenue and Ld. Advocate, Ms. K. Nancy appeared for the assessee. We have heard the rival contentions, perused the documents as well as the orders of the lower authorities and have also gone through various decisions referred to during the course of hearing. Ld. Advocate submitted that the issue regarding taxability of reimbursed expenditure has been set at rest by the Hon'ble Supreme Court, in the case of *Union of India Vs. Intercontinental Consultants and Technocrafts Pvt. Ltd*. – 2018 (10) GSTL 401 (S.C.).

3. On going through the decision of the Hon'ble Apex Court, we note that the Hon'ble Apex Court has after considering various submissions and also various decisions, has ruled as under:-

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

Ld. Advocate submitted that the issue being similar, assessee's appeals are required to be allowed by setting aside the demand.

4. Per contra, Ld. DR, supported the findings of the lower authorities, but however, was unable to distinguish the applicability of the ratio laid down by the Hon'ble Supreme Court in the case of *Intercontinental Consultants and Technocrafts Pvt. Ltd*. (supra).

5. After going through the facts as also the ratio of the Hon'ble Supreme Court judgment supra, we find that the above decision squarely applies to the facts of the present case and hence the demands cannot sustain. For these reasons, we set aside the demands in respect of reimbursable expenses and allow the assessee's appeals No. ST/146, 268/2011 in this regard.

6. With regard to the service tax on the issue of GTA services, we find from the documents placed on file that the appellant had explained before the adjudicating authority that the reimbursement occurred on account of its services being rendered to SEZ customers from July 2007 to September, 2008. There is also a letter from the Superintendent seeking documentary evidence, month wise in support of the above, from the assessee. However, at paragraph 8.2 of the impugned order, the adjudicating authority has recorded that the assessee had not

filed any documentary evidence in support of its claim from exemption. Ld. DR also pointed out to a letter dated 31.05.201 wherein, the assessee had itself accepted and paid the service tax on GTA services of Rs. 5,25,281/- as against Rs. 9,45,841/-. From the compilation of the documents filed during hearing, we note that a similar letter is placed at page-32 wherein also, the assessee seems to have accepted the liability of service tax of Rs.5,25,281/- for the disputed period. As against the above, Ld. Advocate pointed out that the entire service was rendered/consumed at SEZ and therefore the same was not exigible to service tax and that all the supporting evidences were filed before the lower authority.

7. We are unable to perceive any discussion on the contentions of the assessee as to providing service to SEZ or that appellant did or did not furnish any documents; nor that the appellant's contentions are correct or incorrect, we are therefore constrained to remand this issue back to the file of the adjudicating authority to pass a denovo adjudication order, after offering reasonable opportunity to the appellants and after considering all such supporting documents placed/to be placed by the assessee.

8. In view of the above, we set aside the impugned order to the extent as below:-

(a) Revenue's appeals No. ST/142-143/2011 are treated as allowed by way of remand.

(b) Assessee's appeals No. ST/146 & 268/2011 are partly allowed in respect of reimbursable expenses and partly remanded in respect of service tax on GTA services.

9. The cross-objections Nos. ST/CO/8 - 9/2011 filed by the respondent in Revenue's appeals No. ST/142-143/2011 are also disposed of accordingly.

10. The miscellaneous application No. ST/MISC/40782/2017 is filed by the Revenue for change of name and address of the Revenue in the cause-title due to change in jurisdiction of the respondent. We find that the prayer for amendment of the cause title as also the address for communication of the department needs to be amended in accordance with the change of address/jurisdiction of the department from CST, Chennai to The Commissioner of GST & C E, Chennai South Commissionerate, MHU Complex, 692, Anna Salai, Nandanam, Chennai – 600035.

(Order pronounced in the open Court on 07.02.2019)

(P.DINESHA) MEMBER (JUDICIAL)	(MADHU MOHAN DAMODHAR) MEMBER (TECHNICAL)

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