

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO.III

**Service Tax Application No.40159 of 2019
(on behalf of appellant)**

In

Service Tax Appeal No.146 of 2011

(Arising out of Order-in-Original No.59 & 60/2010 dt. 29.11.2010 passed by
Commissioner of Service Tax, Chennai)

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

Appellant

B-1, 3rd & 4th Floors,
Thiru-vi-ka-Industrial Estate
Guindy
Chennai 600 032

VERSUS

Commissioner of Service Tax,

696, Anna Salai, M.H.U Complex,
Nandanam
Chennai- 600 035

Respondent

WITH

**Service Tax Application No.40160 of 2019
(on behalf of appellant)**

In

Service Tax Appeal No.268 of 2011

(Arising out of Order-in-Original No.59 & 60/2010 dt. 29.11.2010 passed by
Commissioner of Service Tax, Chennai)

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

Appellant

B-1, 3rd & 4th Floors,
Thiru-vi-ka-Industrial Estate
Guindy
Chennai 600 032

VERSUS

Commissioner of Service Tax,

696, Anna Salai, M.H.U Complex,
Nandanam
Chennai- 600 035

Respondent

APPEARANCE :

Ms. K. Nancy, Advocate
For the Appellant

Shri K. Veerabhadra Reddy, ADC (AR)
For the Respondent

**CORAM : HON'BLE MR. MADHU MOHAN DAMODHAR, MEMBER (TECHNICAL)
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)**

Date of Hearing : 05.04.2019
Date of Decision : 01.05.2019

MISC ORDER No. 40276-40277 / 2019

Per BENCH

The applicants/assessee have filed two applications namely, ST/ROM/40159/2019 and ST/ROM/40160/2019 in respect of Appeals ST/146/2011 & ST/268/2011 respectively seeking rectification of mistake in respect of Final Order Nos.40251-40254/2019.

2. On behalf of the appellant, Ld. Counsel Ms. K.Nancy appeared and submitted that there are apparent errors on the face of record which needs to be rectified. She made oral and written submissions as under :

i) The assessee had filed two appeals viz. ST/146/2011 and ST/268/2011 against the impugned Order-in-Original No.59 & 60/2010 dated 29.11.2010 passed by the adjudicating authority viz. Commissioner of Service Tax, Chennai (respondent).

ii) In terms of the order passed, the authority dropped major portion of the demands relating to service tax payment on various services. In respect of SCN No.26/2009 dt. 02.03.2009 and 566/2009 dt. 21.10.2009 demands were made for Rs.1,60,36,913/- and Rs.10,75,785/- respectively. In the impugned order, the respondent dropped the proposals for Rs.1,52,02,413/- and Rs.8,66,206 respectively. Demands were confirmed for an amount of Rs.8,34,500/- in respect of SCN No.26/2009 dt.02.03.2009 and for Rs.2,09,579/- in respect of SCN No.566/2009 dt. 21.10.2009. These two demands were confirmed on account of the following :

- a) Denial of abatement under GTA services.
- b) Export of Services and
- c) Services rendered to SEZ.

iii) At the same time, the department also filed two appeals ST/142/2011 and ST/143/2011 aggrieved by the very same impugned order. The contention made in the department appeals is that the dropping of the demand on account of various reimbursable charges by the adjudicating authority is not correct and therefore a plea was made for remanding the case to the adjudicating authority for re-consideration of the demands to the extent of Rs.1,60,68,619/- (Rs. Rs.1,52,02,413/- + Rs.8,66,206) in respect of both the SCNs.

iv) All the four appeals were heard on 07.01.2019 and orders were reserved.

v) Subsequently, the applicants received the Final Order No.40251-40254/2019 dt. 07.02.2019 passed by this Tribunal wherein in the order portion, the following is stated :

“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.

vi) After considering the rival arguments advanced, in para-5 of the said Final Order, the Tribunal has rendered the following findings :

“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.”

vii) Further, the following findings have been made in paras 6 and 7 with regard to assessee's claims made in the appeals filed by them :

"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."

viii) Thus effectively, as per the findings in para 5 to 7 of the Tribunal's Final Order dt. 07.02.2019, the department's plea for remitting the matter to the original authority for reconsideration of the issue relating to charging of service tax on reimbursable expenses was rejected and the applicant/appellant's pleas with regard to setting aside of the remaining demand was partly allowed and partly remanded with respect to GTA services with a direction to the original authority to consider it after offering reasonable opportunity to the appellants and after considering all

supporting documents. But, in the order portion, it is stated that the revenue appeals are allowed by way of remand and the applicant/appellant's appeals are partly allowed and partly remanded in respect of service tax on GTA services. This order is contradictory to the findings rendered in paras 5 to 7 of the Tribunal's Final Order dt. 07.02.2019 and thus there is an apparent error on the face of record.

ix) Based on the discussion and the findings, the revenue appeals are liable to be dismissed and the applicant's appellant's appeals are to be partly allowed and partly remanded with regard to service tax demand on GTA Services.

x) In view of the above, the applicants/appellants pray that apparent mistake in the Final Order No.40251-40254/2019 dated 07.02.2019 may be rectified and ROM applications be allowed.

3. On the other hand, on behalf of Revenue, Ld. A.R Shri K. Veerabhadra Reddy refutes the contentions of the applicant and submits that only for lack of supporting documents with regard to contentions of assessee that they were providing services to SEZ in respect of GTA services, the matter had been remanded specifically by the Tribunal. Hence there is no apparent error on the face of record.

4. Heard both sides and have gone through the facts of the case.

5.1 From the facts on record, we find that related assessee appeals ST/146 & 268/2011 had emanated out of the Order-in-Original No.59 & 60/2010 dt. 29.11.2010 against the adjudicating authority's confirmation of service tax demands of Rs.10,44,079/- on CHA and GTA services, Rs.98,238/- in respect of reimbursable expenses relating to EDI charges, Bank commission and Loading and Unloading charges and demand of Rs.9,45,841/- on GTA services. Against the same orders-in-original, the Revenue had also filed Appeals ST/142 & 143/2011 against the dropping

of demand by the adjudicating authority to the extent of Rs.1,60,68,619/- on reimbursable expenses.

5.2 With respect to assessee appeals ST/146 & 268/2011, in respect of confirmation of service tax demand on GTA services claimed to be used for transportation of goods to SEZ units, amounting to Rs.9,45,841/- vide para-7 of the impugned Final Order, the Tribunal had ordered remand of the 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."* At the same time, with regard to Department Appeals ST/142-143/2011 against the dropping of demand by the adjudicating authority in respect of reimbursable expenses, the Tribunal relied upon the judgment of Hon'ble Apex Court in *Union of India Vs Intercontinental Consultants and Technocrafts Pvt. Ltd.* – 2018 (10) GSTL 401 (SC). The Tribunal agreed that the demand in respect of reimbursable expenses cannot sustain and allowed the assessee appeals in that regard.

5.3 In these circumstances, the Revenue appeals ST/142-143/2011 should have been correctly dismissed and the assessee appeals ST/146 & 268/2011 should have been partly allowed in respect of service tax demand of Rs.98,238/-) relating to reimbursable expenses and partly remanded in respect of service tax demand of Rs.9,45,841/- on GTA services.

6. Viewed in this light, we find merit in these ROM applications. There indeed is an inadvertent apparent error in para 8 (a) of Tribunal's Final Order that *"Revenue's appeals No. ST/142-143/2011 are treated as allowed by way of remand."* The correct wording of the said portion should have been as under :

"Revenue's appeals No. ST/142-143/2011 are dismissed"

Accordingly, Serial No. (a) of para-8 of Tribunal's Final Order No.40251-40254/2019 dt. 07.02.2019 stands rectified as under :

"(a) Revenue Appeals No. ST/142-143/2011 are dismissed."

The ROM applications are allowed on above terms.

(Order pronounced in the open court on 01.05.2019)

(Madhu Mohan Damodhar)
Member (Technical)

(P. Dinesha)
Member (Judicial)

