CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. I

Service Tax Appeal No. 42487 to 42489 of 2015
(Arising out of Order-in-Appeal Nos.186-188/2015 (STA-1) dated 21.09.2015 passed by Commissioner of Service Tax (Appeals-I), Chennai)

M/s. Geodis Overseas Pvt Ltd., **...Appellant**
No.2B&2C, Ega Trade Centre,
New No. 318, Poonamallee High Road,
Kilpauk, Chennai – 600 010.

Versus

Commissioner of GST & CE, **....Respondent**
Chennai North Commissionerate,
No.26/1, Mahathma Gandhi Road,
Nungambakkam, Chennai – 600 034.

APPEARANCE :

Shri J. Shankarraman, Advocate for the Appellant
Shri. N. Satyanarayana, Authorised Representative for the Respondent

CORAM :

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V. MEMBER (JUDICIAL)

FINAL ORDER Nos.40478-40480/2025

DATE OF HEARING: 20.02.2025
DATE OF DECISION :09.04.2025

Per AJAYAN T.V.

M/s. Geodis Overseas Pvt Ltd (M/s. GOPL), the appellant herein, has preferred these three appeals assailing the impugned Orders-in-Appeal Nos.186-188/2015 (STA-1) dated 21.09.2015 (OIA in short) whereby the appellate authority has upheld the orders in original No.133/2010 dated 24.12.2010 and 91 & 92/2011 dated 20.09.2011 of the adjudicating authority, while adjudicating three SCNs, covering the periods 01.10.2002 to 31.03.2007; 01.08.2007 to 31.03.2008 & 01.04.2008 to 31.03.2009 respectively, and confirming the demands of service tax payable as indicated therein, under Section 73(2) of the Finance Act 1994 (Act in short) read with proviso to section 73(1) of the Act along with applicable interest and imposing penalties under Section 76, and 78 of the Act as well as Rule 15 of the Cenvat Credit Rules, 2004, as more specifically indicated in the respective Orders in Original.

2. Brief facts are that the appellant is engaged in providing "Cargo Handling Services (CHS) to their various clients, and has been paying service tax on the above said service (CHS) provided from Chennai, since the date of imposition of Service Tax (i.e. from 16.08.2002). Besides cargo handling service, the appellant is also providing Business Auxiliary Service, Storage and Warehousing Services. During audit of accounts of the appellant conducted, it was noticed that no Service Tax was paid on certain charges received, which were not included in the taxable value of Cargo Handling Service (CHS) during the aforementioned periods. The appellant also availed cenvat credit on input services such as terminal handling charges, customs clearance and bill of lading charges etc. used for providing handling of export cargo. However, these activities of handling export cargo involved managing distribution and logistics, which in the appellant’s view was in the nature of providing support to their customs and clients, and thus amounted to Business support service. In the course of such business, for their activity of Cargo Handling Service, the appellant paid service tax by cash and on their activity of handling export cargo which they classified as Business Support Service, the appellant paid service tax utilizing the entire cenvat credit availed. The Department was of the view that the activities of handling export cargo that the appellant

classified under Business Support Service were also in fact liable to be classified only under Cargo Handling Service and in as much as the handling of export cargo was excluded from the ambit of Cargo Handling Service, the cenvat credit of input services availed by the appellant were in fact utilized for non-taxable output service. Thus, the Department was of the view that the cenvat credit taken by the appellant, being ineligible input cenvat credit, was liable to be recovered from the appellant.

3. Therefore, the SCNs pertaining to the period 01.08.2007 to 31.03.2008 & 01.04.2008 to 31.03.2009 also contained proposals for recovery of such ineligible cenvat credit in addition to the proposal to demand service tax on the charges that were not included in the taxable value of cargo handling service. The SCN for the period 01.10.2002 to 31.03.2007 was issued demanding service tax on the charges that were not included in the taxable value of cargo handling service and also invoking the extended period of limitation. The proposals in the SCN to the extent confirmed in the impugned orders in original were challenged before the appellate authority. The appellate authority vide the impugned orders in appeal upheld the orders in original of the adjudicating authority. Aggrieved by which, the appellants have preferred this appeal and are before this Tribunal.

4. The learned counsel, Shri. J. Shankarraman appeared and argued for the appellants. He submits that the appellant is acting as an agent of the recipient of service and makes payment to third party for services rendered on behalf of the client, in accordance with Rule 5(2) (i) of

Service Tax (Determination of Value) Rules, 2006. In the present case differential duty is being charged on reimbursable expenditure only. The appellant has not charged any amount in excess of the same. While so, there is no justification to confirm the demand. The Hon'ble High Court of Delhi in the case of Intercontinental Consultants & Technocrats Pvt. Ltd. 2013 (29) STR 9 (Del.) has held that Rule 5(1) which provides for inclusion of the expenditure or costs incurred by the service provider in the course of providing the taxable service in the value for the purpose of charging service tax is ultra vires Section 66 and 67 of the Finance Act, 1994 and travels much beyond the scope of those sections and has struck down the said Rule 5(1) as bad in law. The above judgement was upheld by the Hon'ble Supreme Court in the case of UOI -Vs- Intercontinental Consultants and Technocrats Pvt. Ltd 2018 (10) GSTL 401 (SC). It is his submission that this Tribunal has been consistently holding that such a demand is not permissible in view of the ruling of the Hon'ble Supreme Court judgement in the case of UOI -VS- Intercontinental Consultants and Technocrats Pvt. Ltd. 2018 (10) GSTL 401 (SC) and also the judgement of the Hon'ble Madras High Court in the case of CST-Vs Sangamitra Services Agency 2014 (33) STR 137 (Mad).

5. As regards the availment of ineligible Cenvat Credit the Ld. Counsel contends that the Lower Authority has merely stated that such credit has been utilized for providing the handling of export cargo and that handling of export cargo is specifically excluded from Cargo handling service under section 65(23) of the Finance Act 1994. The appellant had assailed this averment in the Show cause notice to the effect that,

even if that be so, then the question of having collected the said tax for the exempted service in itself was illegal and having collected the said tax for the exempted category, the department cannot now contend that credit cannot be taken for the said tax collected. The Ld. Counsel submits that in any event the credit taken has been utilized for payment of duty which is not required to be paid and thus such credit is therefore now not required to be reversed. Reliance is placed on the decisions of the Hon'ble Supreme Court in the case of CCE vs. Narayan Polyplast, 2005 (179) ELT 20(SC) and CCE Vs. Narmada Chematur Pharmaceuticals Ltd. 2005 (179) ELT 276(SC). It is further submitted that this Tribunal in the appellant's own case in Appeal No ST/391/2010 vide final Order No 42290/2018 dated 23.8.2018 for the period from 19 4.2006 to 31. 7 .2007 had allowed the appeal following the above rulings of the Hon'ble Supreme Court. It is also his submission, without prejudice, that the lower authorities ought not to have invoked larger period in this case and further the demand for the period from 19.4 2006 to 31.7.2007 is overlapping and ought to have been dropped. Similarly, penalty ought not to have been imposed as the issue involved is one of interpretation.

6. Learned Authorised Representative, Shri. N. Satyanarayana appeared for the Department and reiterating the findings in the impugned order in appeal. The learned A.R. submits that the appeal be dismissed.

7. We have heard both sides, perused the appeal records and the case laws cited by the appellants. The two issues that arise for consideration are the tenability of service tax demand invoking rule 5(1) of the Service

Tax (Determination of Value) Rules, 2006 (Valuation Rules) and requiring the appellant to include the reimbursed expenditures or costs incurred in the course of providing taxable services, and whether the demand of cenvat credit availed and utilized for payment of tax on non-taxable output service is tenable in law.

8. We find that the appellate authority has upheld the impugned order in original placing reliance on Rule 5(1) of the Valuation Rules. 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 stuck 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. In light of the Honourable Supreme Court’s decision supra, we are of the considered view that the findings in the impugned order in appeal

confirming the demand on non-inclusion of reimbursable charges cannot sustain and are liable to be set aside. As regards the issue of cenvat credit availed and which has been utilized for payment of service tax on services that are non-taxable, we are of the view that the said issue also stands decided in the appellant's favour in light of the Hon'ble Apex Court decision in ***CCE, Vadodara v Narmada Chematur Pharmaceuticals Ltd, 2005 (179) ELT 276 (SC)***, wherein the wrongly availed cenvat credit was utilized for payment of excise duty, the Hon'ble Apex Court has held that the consequences of payment of excise duty after availing modvat credit was revenue neutral and thus dismissed the appeal filed by the revenue. Thus, we are of the view that the demands made on the appellant on this count too will not sustain.

9. We also find that this Tribunal has by its final order No.42290/2018 in the appellant's own case involving the same issues, have held in the appellant's favour. Relevant portions of the order are reproduced below:

> "*The facts of the case are that the appellants inter alia, were engaged in cargo handling service. Pursuant to audit, it appeared to the department that appellants (i) were required to pay service tax on reimbursable expenses incurred during the period 19.4.2006 to 31.7.2007 amounting to Rs.3,68,758/- and (ii) wrongly availed CENVAT credit of service tax on input service used for non-taxable output service during the period June 2006 to March 2007 amounting to Rs.15,34,141/-. Accordingly, show cause notice dated 23.10.2007 was issued proposing demand of the aforesaid amounts along with interest and also for imposing penalties under various provisions of law. In adjudication, the original authority confirmed the proposal. In appeal, Commissioner (Appeals) vide impugned order dated 26.3.2010 reduced the penalty imposed under*

Rule 15(3) of CENVAT Credit Rules, 2004, however, upheld the remaining portion of the order passed by the original authority. Hence this appeal.

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5. We find that the ld. counsel is correct in his assertion that both the issues are covered by the case laws relied upon by him. Hence the impugned order therefore cannot sustain and requires to be set aside, which we hereby do. The appeal is therefore allowed with consequential relief, if any, as per law."

10. In view of the foregoing facts borne out from the records and the discussions and findings stated above, we hold that the impugned Orders-in-Appeal Nos.186-188/2015 (STA-1) dated 21.09.2015 are unsustainable and liable to be set aside. Ordered accordingly.

The appeals are allowed with consequential reliefs in law, if any.

(Order pronounced in the open court on 09.04.2025)

(AJAYAN T.V.)
MEMBER (JUDICIAL)

(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

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