CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHENNAI</u>

REGIONAL BENCH – COURT No. I

Service Tax Appeal No. 40458 of 2014

(Arising out of Order-in-Original No. 33/2013 dated 29.03.2013 passed by Commissioner of Service Tax, Newry Towers, No. 2054-1, II Avenue, Anna Nagar, Chennai – 600 040)

M/s. G.V. Films Ltd. **...Appellant**
New No. 9, Old No. 5,
2nd Floor, R.K. Puram,
4th Cross Street,
R.A. Puram,
Chennai – 600 028.

Versus

Commissioner of GST and Central Excise **...Respondent**
Chennai North Commissionerate,
Newry Towers, No. 2054-I,
2nd Avenue, 12th Main Road,
Anna Nagar,
Chennai – 600 040.

<u>APPEARANCE:</u>

For the Appellant : Mr. N. Viswanathan, Advocate
For the Respondent : Ms. Anandalakshmi Ganeshram, Authorised Representative

<u>CORAM:</u>
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

<u>FINAL ORDER No. 40807 / 2025</u>

DATE OF HEARING : 18.02.2025
DATE OF DECISION : 11.08.2025

Per Mr. VASA SESHAGIRI RAO

This Service Tax Appeal No. ST/40458/2014 was filed by M/s. G.V. Films Ltd., R.A. Puram, Chennai (hereinafter referred to as the 'Appellant') assailing the Order-in-Original No. 33/2013 dated 29.03.2013 passed by the Commissioner of Service Tax, Anna Nagar, Chennai who have confirmed the demand of service tax of Rs. 53,52,586/- for the period from April 2006 to March 2009 invoking proviso to Section 73(1) of the Finance Act, 1994 and also imposed penalties under Section 77(2) and Section 78 of the Act *ibid.*

1.2 During the audit of the accounts of the Appellant and subsequent investigation carried out by the Service Tax Commissionerate, Chennai it was found that the Appellant had raised funds through Global Depository Receipts (GDRs) to the tune of 25 million US Dollars vide two Offer Letters dated 20.04.2006 and 9 million Euros vide Offer Letter dated 23.10.2006. For raising the above funds, the Appellant availed the services of Lead Managers, Legal Advisors, Marketing Consultants, Placement Agents, Merchant Bankers, *etc.,* located outside India and incurred expenditure in convertible foreign currency. The Department was of the view that the above services provided by the overseas service providers are classifiable under Banking and Other Financial Services' and consequently, the Appellant was liable to pay Service Tax, as the Receiver of service in terms of Section 66A of the Finance Act, 1994 read with Rule 2(1)(d)(iv) of the Service Rules, 1994.

1.3 Further, it was also noticed that the Appellant has sold time slots — free commercial time on television classifiable under sale of space or time for advertisement service' and are liable to pay Service Tax on the same. As-the Appellant did not pay service tax on the above services, the Show Cause Notice No. 561/2011 dated 22.10.2011 was issued to them: demanding Service Tax of Rs 53,52,586/- under proviso to Section 73(1) of the Finance Act, 1994 along with interest under Section 75 besides seeking to impose penalties under Sections 76, 77 and 78 of the Act.

1.4 After due process of Law, the case was Adjudicated by the Commissioner of Service Tax, Chennai *vide* Order-in-Original No. 33/2013 dated 29.03.2013 (hereinafter referred to as the impugned order) and the demand as proposed in the SCN was confirmed along with appropriate interest and penalties were imposed under Section 78 and 77(2) of Finance Act, 1994.

2. Aggrieved by the above order, the Appellant filed this Appeal No. ST/40458/2014 against the impugned order before this forum.

3. The Ld. Advocate Shri N. Viswanathan has argued for the Appellant. He submits that: -

i. The officers attached to the DGCEI initially vide their letters dated 08.05.2007 and 04.07.2007 called for various information from them relating to their foreign currency transactions relating to the FCCB/GDR issues which they promptly provided vide their letter dated 24.08.2007. On examination, the DGCEI officers then choose not to proceed further in this matter finding that no case of loss of revenue has been made out. Thus, the officers of the DGCEI were fully aware of all their transactions. He further submits that subsequent to the audit of their accounts, the service tax authorities attached to the SIR (Survey, Investigation and Research) of the erstwhile service tax Commissionerate on the same set of facts have enquired with them about their above transactions accounted in their books of accounts and other statutory records for the period 2008/09. Pursuant to the said audit and subsequent enquiry carried out by the SIR a Show Cause Notice dated 22.10.2011 thus came to be issued.

ii. Banking and Financial Service as defined in Sec. 65 [12] of the Act is not a single service code but comprises of various sub classifications and the notice should have brought out the appropriate sub-classification, failure of which rendered the notice *void ab-initio* and vitiated.

iii. The respondent has gone beyond the scope of the notice by classifying the service under merchant banking service without putting the appellant to notice and without providing any opportunity to rebut the said sub classification and the impugned order got passed behind their back which is violative of the principles of natural justice hence not tenable in law.

iv. Service tax is destination-based consumption-based tax. When the service was consumed outside India and not received and consumed in India such service cannot be taxed.

v. In telecasting the TV serial, the TV channels have allowed the advertisements of the various sponsors which were telecast during the allotted time in half an hour slot and had also collected the charges towards such allotment of time. The TV channels namely Jaya TV had shared the revenue with the appellant in the ratio of 35% to the Channels and 65% to the appellant which according to the appellant is the consideration received by them for granting the right to telecast the serial. There was however no such sharing with the other television channels namely Zee TV and Malayalam Communication Ltd., who have telecasted the dubbed version of the above tele serial on making the payment to them for granting them the right to telecast the said serial owned by them, The notice however alleged that the receipt of 65% revenue from the Jaya TV and the consideration received from ZEE TV and Malayalam Communications Ltd. are towards provision of the Sale of space to display, advertisement in television programs under Section 65 [105] [zzzm] of the Finance Act 1994, brushing aside the objections raised by the appellant.

The levy on the sale of space in the visual media for advertisement could only befall on the TV channels who had sold the space in their TV channels and not on the persons whose TV program was telecasted during that time.

vi. The invocation of extended period of time by merely alleging that they had suppressed the facts of expenditure incurred in convertible foreign currency for availing the taxable services from overseas service providers and the details of income collected towards sale of space or time for advertisement is not tenable in the absence of any evidence and so would not meet the requirement of the proviso to Sec. 73 [1] of the Act.

vii. The expenses incurred by them in foreign exchange as well as the information about raising the GDR and FCCB were all reported in their annual financial statements for the years 2006-07 and 2007-08 which are public documents available on the public domain and hence the charge of wilful suppression of facts on this score cannot survive. Further the officers attached to the DGCEI were earlier seized of the matter and they had *vide* their letters dated 08.05.2007 and 04.07.2007 called for various informations and documents relating to the foreign currency transactions relating to FCCB/GDR which they had promptly furnished vide their letter dated 24.08.2007 along with all documents as called for. On examination of the entire issue, they choose not to proceed further since no case of loss of revenue was made out. The Internal Audit and SIR of service tax confirmed once again raising the same issue while conducting the audit of their accounts during 2008-09 have decided to issue the impugned SCN after four years of examination of their records by the officers of DGGCEI and that too after they have submitted their clarification which do not permit the invocation of the extended period of time.

viii. Even if the tax was required to be paid by them, they would be entitled to avail the credit of the same thus making it a revenue neutral situation and render the invocation of the extended period of time unavailable

4.1 *Per contra*, the Ld. Authorized Representative Shri N. Satyanarayanan, Assistant Commissioner (AR) appeared for the Department and re-iterated the contentions made in the Impugned order and furnished written submissions dated 10.12.2024. He has mainly stressed that the GDR/FCCB funds raised were utilised for developing their business in India like acquiring multiplex theatres, acquiring rights for various movies *etc.,* and in such a situation the appellant's claim that they received and consumed the impugned services abroad appears not be false and misrepresentation of facts. and all the conditions prescribed under Section 66A of the Act read with Rule 3(iii) are fully satisfied and the appellants are liable to pay ST under Section 66A (1)(b) of the Act.

4.2 The Appellants have produced a TV serial and telecasted the same on Jaya TV, for which they entered into a MOU with M/s Mavis Satcom, who owns Jaya TV. As per the agreement, Mavis would allot a time slot and the Appellants have to pay a slot fee in the allotted time and there would be advertisements and Mavis would market the free commercial time for advertisements and the Net revenue would be shared in the ratio of 35:65 by Mavis and the Appellants. The agreements entered into by the Appellants with the various parties with respect to the telecast of tele serial and the transactions undertaken by them, makes it clear that the Appellants had sold time slots on TV which is classifiable under Section 65(105)(zzzm) Explanation 1(ii) selling of time slots on radio or TV by a person, other than a broadcasting agency or organisation.

4.3 The Appellants have failed to disclose the funds raised through GDRs for the development of their company and also deliberately did not disclose the MOU with the TV channel and the income received thereunder.

4.4 It is clear that BOFS are provided from outside India and consumed inside India as the Appellants does not have any business outside India and the expenditure is accounted for in their Ledgers. MOU entered into with Mavis and their terms are clinching evidence for the activity of sale of space of time for advertisement service. The Appellants have suppressed the above facts with an intent to evade payment of duty and so invocation of extended period is justified in this case.

5. We have heard both sides and carefully perused the appeal records, as well as relied upon case laws. The issues that arise for determination in this appeal are as to: -

i. Whether the services provided by the overseas service providers in relation to issue of GDR/FCCB is a taxable service covered under "Banking and Other Financial Services under Section 65(12) read with Section 65(105) (zm) of the Finance, Act, 1994 and whether the Appellant is liable to pay service Tax on the same; under Section 66A of the Finance Act?

ii. Whether the sale of time slots on TV is classifiable under Section 65(105) (zzzm) of Finance Act 1994? and,

iii. Whether invocation of extended period of limitation under Proviso to Section 73(1) Finance Act is justified in the facts of the case?

6. For better understanding of the issue we need to know what a GDR/FCCB is, as these instruments are not defined under the Finance Act 1994.

GDRs (Global Depository Receipts) and FCCBs (Foreign Currency Convertible Bonds) are defined within the Scheme for Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depositary Receipt Mechanism) Scheme, 1993. This scheme was notified by the Indian government to allow Indian companies to raise capital from international markets.

GDR:

A GDR is a type of depository receipt issued by a foreign depository bank outside India, against ordinary shares or FCCBs of an Indian company. It allows non-resident investors to hold shares of an Indian company without directly owning the underlying shares.

FCCB:

An FCCB is a bond issued by an Indian company, denominated in a foreign currency, with principal and interest also payable in foreign currency. These bonds can be converted into ordinary shares of the issuing company, either in whole or in part, at the option of the bondholder.

The 1993 Scheme:

This scheme provides the framework for Indian companies to issue both GDRs and FCCBs. It outlines the procedures, regulations, and guidelines for such issuances.

7. Before considering the rival contentions, it is also necessary to examine the relevant provisions of Finance Act, 1994 which read as follows: -

"Section 65(12) "Banking and other financial services" means -

(a) the following services provided by a banking company or a financial institution including a non-banking financial company or any other body corporate or commercial concern namely: -

(i) financial leasing services including equipment leasing and hire-purchase.

Explanation - For the purposes of this item, "financial leasing" means a lease transaction where -

(i) contract for lease is entered into between two parties for leasing of a specific asset,

(ii) such contract is for use and occupation of the asset by the lessee;

(iii) ***merchant banking services****;*

(iv) securities and foreign exchange (forex) broking;

(v) asset management including portfolio management, all forms of fund management, pension fund management, custodial, depository and trust services;

(vi) advisory and other auxiliary financial services including investment and portfolio research and advice, advise on mergers and acquisitions and advise on corporate restructuring and strategy;

(vii) provision and transfer of information and data processing;

(viii) banker to an issue service; and

(ix) other financial services, namely lending, issue of pay order, demand draft, cheque, letter of credit and bill of exchange; transfer of money including telegraphic transfer, mail transfer and electronic transfer, providing bank guarantee, over draft facility, bill discounting facility, safe deposit locker, safe vaults, operation of bank accounts;

(b) foreign exchange broking and purchase or sale of foreign currency, including money changing provided by a foreign

exchange broker or an authorized dealer in foreign exchange or an authorized money changer, other than those covered under sub-clause (a);

Section 105(zm) reads as under:

(105) "Taxable Service "means any service provided or to be provided -

(zm) to any person, by a banking company or a financial institution including a non-banking financial company, or any other financial services".

A perusal of above provisions do not indicate that for charging Service Tax, merchant bankers or body corporate or commercial concern is required to be registered with SEBI. As long as the said service is being provided. Service Tax will be chargeable. Further, a perusal of the said definition indicates that services received by the appellant from M/s Citi and M/s Goldman Sach Ltd. will get covered by the scope of the service. We therefore hold that services received by the appellant is covered by the scope "Banking and other financial services.

8. The Ld. Advocate Shri N. Viswanathan has contended that Revenue has classified the services as BOFS under Section 65(105)(zm) of Finance Act 1994 in relation to issue of GDR under "Banking and Other Financial Services as a taxable service and that the alleged taxable BOFS service as defined in Sec. 65 [12] of the Act is not a single service

but a complete code comprising of various sub classifications such as equipment or financial leasing and hire purchase, credit card, merchant banking, forex trading, asset management, banking services, advisory services on merger and acquisitions, bankers to issue and other data processing management services showing that each one of the sub classification is unique in its own way and not related to each other and it is but necessary for the Notice to have brought out the appropriate sub-classification and failure of which rendered the notice void ab-initio and vitiated. Besides no cogent reasons were adduced in the Notice as to how the levy is attracted under RCM.

9.1 We have considered the rival submissions. As the first and second question framed by us are interlinked, we club the same together for a common decision. From the impugned order, we find that the appellant had raised funds outside India by Global Depository Receipts (GDRs/FCCB's) by availing the services of Lead Managers, Legal advisors, Marketing consultants, Placement agents, Merchant Bankers, etc. who were located abroad and the appellant incurred expenditure in freely convertible foreign currency for getting such services from them as shown below.

Sl. No	Offer Letter Reference	Amount	Lead Managers	Legal Advisors	Listing Agent
1	20.04.2006	USD 20.5 Million	Bugmann Seiler Corporate Finance AG, Switzerland	Brunner & Decurtins, Switzerland	The bank of New York Europe Ltd./ United Kingdom
2	20.04.2006	4.5 Million	Bugmann Seiler Corporate Finance AG, Switzerland	Brunner & Decurtins, Switzerland	Bank of New York Europe Ltd. United Kingdom
3	23.10.2006	EURO 9 Million	Hythe Securities Ltd, London and Daewoo Securities (Europe) Ltd, London	Finers Stephens Innocent LLP London	Bank of New York Europe Ltd. United Kingdom

9.2 In the impugned order, the expenditure incurred on import of services has been computed as follows: -

	Description	2006-07 (Amount in Rs.)	2007-08(Amount in Rs.)
1	**Issue expenses**	2,66,63,884	65,22,759
2	Bugmann (lead manager)	0	17,92,200
3	Tony Singh (overseas rep)	0	58,24,650
4	**Total**	**2,66,63,884**	**1,41,39,609**

9.3 Further we take note that para 2.3 of CBIC Circular F.No: B11/1/2000 TRU dated 09.07.2001 made a specific reference to Merchant Banking Regulations 1992 while explaining the scope of the service in terms of which, the various activities performed by an NBFC and other body corporates in connection with the issue management is covered under the scope of Merchant Banking Services. The

Appellant has not produced any evidence for alternative classification.

A plain reading of the above Circular makes it very clear that the overseas agents who handle the issue of GDR/FCCB abroad are covered under Issue management and the services rendered by them are covered under 'Merchant Banking Services' as defined in Section 65(12) of FA 1994.

9.4 Therefore, the services received by the Appellant from the service providers located abroad with regard to their GDR / FCCB issue are clearly covered under Banking and Other Financial Service as per sub clause (iii) of Section 65(12) of the Finance Act, 1994. Further, as per 65(105) (zm) "taxable service' means any service provided or to be provided to by a banking company or a financial institution including a non-banking financial company, or any other body corporate or any other person, in relation to banking and other financial services.

9.5 We note that the impugned order makes a mention in Para 6.2 that from the Company Profile given by the Appellant to the internal Audit group, it was noticed that M/s. G.V Films Ltd have raised funds by GDRs for acquiring multiplex theatres, rights for various movies and capex for TV serial production. Para 4.1 of the said profile reads as:

"Para 4.1 The capital Expenditure: They successfully made two GDR issues for a total of USD 60.5 million and two FCCB issues of USD 8.27 million and raised funds to part finance the capital Expenditure program of acquiring multiplex theatres, rights for various movies and capex for TV serial production. Both the GDR's and FCCB's are listed at the Luxemburg Stock Exchange, the present paid up capital of the Company is Rs. 348.22 crores."

9.6 The Authorized Representative in his written submissions has stressed that the money raised abroad was utilised in India. On the contrary, the Appellant did not come up with any documentary evidence that funds raised abroad were effectively deployed abroad.

9.7 The Appellant's contention was that service tax is destination-based consumption-based tax. So, to impose service tax on import of services the service should be rendered in India or provided to a person located in India and received in the taxable territory to satisfy the mandate of Service Tax Law. In the present case, the Ld. Advocate submits that the funds raised through issue of GDR and FCCB abroad were not brought to India but was kept in the foreign currency account maintained by them abroad for their overseas operations. The expenses incurred for issuing or raising Bond and GDR were said to have been incurred out of the funds kept abroad and was not incurred for obtaining foreign exchange from the financial institutions located in India. Secondly the said persons namely Luxemburg Stock Exchange, International Depositories, International Solicitors, International Merchant Bankers, custodians, Placement Agents who are alleged to have provided the services for listing the GDR/FCCB have only rendered the service/ s outside India and no portion of the said service was rendered or received or provided in India. When the service was consumed outside India and not received and consumed in India such service cannot be taxed as Service tax law cannot cover an activity done outside its territorial jurisdiction. The Appellants have relied upon the decisions in the following case Laws:-

i. *Sporty Solutionz Pvt. Ltd. [2022 (58) G.S.T.L. 336 (Tri. - All.)]*
ii. *Intas Pharmaceuticals 2009 [16] STR 748 [T/AIII];*
iii. *K.G. DENIM LTD –[2015 (37) S.T.R. 616 (Tri. Chennai)].*

9.8 We have perused all the above decisions. The case of *M/s. Intas Pharmaceuticals Ltd., vs. CST Ahmedabad [2009 (16) STR 748 (Tri.-Ahmd.)]* deals with Technical Testing and Analysis Service rendered outside India; Further the case of *K.G. Denim Ltd. [2015 (37) S.T.R. 616 (Tri. Chennai)]* is about Business Exhibitions and Technical Inspection and Certification Service carried out abroad Sporty Solutionz Pvt. Limited Vs Commissioner, Central

Goods and Service Tax (CESTAT Allahabad) is also about broadcasting cricket matches telecasting rights to be played at Bangladesh.

In all the above cases, the services were not received in India and therefore, the above orders are distinguished and have no persuasive value as the facts are not only dissimilar, but in the present case the services were received by the Appellant for expanding their business in India, which is contrary to the decisions cited above. Hence, we have no hesitation to term these decisions as not applicable to the facts of this appeal.

9.9 We further observe that the taxable services of Banking and other financial services falling under Section 65 (105) (zm) of the Finance Act, 1994 are covered under the category (iii) of Rule 3 of Taxation of Services (Provided from Outside India and Received in India) Rules, 2006. The services falling under this category (iii) become taxable and liable for payment of service tax if the recipient of services is located in India for use in relation to business or commerce irrespective of the place where the Services are rendered. In respect of category (iii) service, it will suffice that the service receiver is located in India and used the said services for business or commerce. In the present case, all the conditions prescribed under Section 66A of the Act read with Rule 3(iii) of Taxation of Services Rules, 2006 are fully satisfied as the Appellant company has permanent base in India, and consequently the Appellant is liable to pay Service tax in terms of Section 68(2) read with Rule 2(1)(d)(iv) of Service Tax Rules.1994.

9.10 On the contrary, we find that the Appellant has not submitted any evidence that the funds were deployed abroad for development of a web casting portal, to re-group internet rights, acquire rights of Hollywood films for web casting outside India which is only a statement and will not stand to scrutiny in the eyes of the Law. On the other hand, the Appellant's profile submitted to Audit clearly states that the funds are for deployment in India i.e, to part finance the capital Expenditure program of acquiring multiplex theatres, rights for various movies and capex for TV serial production.

9.11 The Appellant did not furnish details of how the GDR/FCCB funds were deployed. They have not furnished any offer document for issue of GDR/FCCB for deployment of funds. Therefore, the reasoning given by the Appellant that no services were received from Abroad cannot be accepted and we are inclined to accept the findings of the Adjudicating Authority in the impugned order on this score.

9.12 After coming to a conclusion that services were delivered/imported into India by a Non -Taxable person from a Non-Taxable territory, Section 66A of Finance Act will come into play.

9.13 Before we dwell on this further, we will see what the classification of services is all about. The impugned order in Para 6,2 makes a mention of the names of the Lead Managers, Legal Advisors, Listing agents for the GDR/FCCB issue. The Appellant has also not disputed this fact in appeal. Only point of contention is that they were not put to Notice while deciding the classification under Merchant Banking sub clause of the BOFS. Both the Appellant and the Respondent have relied upon the decision of CESTAT Mumbai in the case of Axis Bank Ltd. Versus Commissioner of Service Tax, Mumbai-I 2015 (40) S.T.R. 993 (Tri. - Mumbai).
This decision is about levy of Service Tax on issue expenses on GDR/FCCB issue. We observe that in this case, Service Tax was demanded under reverse charge mechanism under Section 66A of the Finance Act, 1994. Revenue is demanding the Service Tax as "Merchant Banking Services" listed at (iii) under the category of "Banking and other Financial Services" under Section 65(12) of the Finance Act, 1994 while the appellant claims the service to be "underwriting service"

under Section 65(105)(z) and 65(117) of the Finance Act, 1994. The Tribunal

In Para 16 of the order, had held that

> *"16...*
> *..*
> *..........................*
> *Further, Section 65(105)(zm) is as under: -*
> *"(105)" Taxable service" means any service provided or to be provided -*
> *(zm) To any person, by a banking company or a financial institution including a non-banking financial company or any other body corporate or commercial concern, in relation to banking and other financial services;"*
> *A perusal of above provisions do not indicate that for charging Service Tax, merchant bankers or body corporate or commercial concern is required to be registered with SEBI. As long as the said service is being provided, Service Tax will be chargeable. Further, a perusal of the said definition indicates that services received by the appellant from. M/s. Citi and M/s. Goldman Sach Ltd. will get covered by the scope of the service. We therefore hold that services by the appellant is covered by the scope "Banking and other financial services".*

9.14 The above decision also fortifies the stand taken by us and we apply the ratio of the same decision to this case also; and the services are to be classified as "Banking and other financial services" and as the same is provided to the receiver in India, the Appellant becomes liable to pay the same under Reverse charge as discussed supra.

9.15 Therefore, the questions (i) &(ii) framed by us are answered in favour of the Revenue and against the Appellant.

10.1 Next, we come to the issue of demand of Service Tax on sale of time slot for advertisement. The Appellant has contended that the amount realised by the TV Channels from the advertisers the levy should be addressed to the TV channels and not to them. In any case, they cannot sell the time slot to the sponsors since they were not the owners of the TV channels who had space for such sales. If at all there is any levy on the consideration received for the sale of space it should be on the TV channels who ought to have shared the revenue after factoring the tax component. The appellant has clarified that the income accounted for on the above account in their books related to the grant of the right to use their TV serial in respect of which they owned the copy right and as such the consideration received is towards sale of copy right and hence they had accounted for the same in their books as sales revenue of time slot sold to them by M/S. Mavis Satcom Ltd and in these circumstances, the notice proposing to levy service tax on them is not sustainable.

10.2 We have perused all the three MOU’s entered into by the Appellants with respect to the telecast of "Mayavi" 3D serial in TV Channels. The Appellant contended that they had only produced the said serial and had assigned their right for telecast of the same / market the time slots arising out of the telecasting of the said serial in the TV Channels in favour of M/s. Mavis Satcom Ltd., M/s. Zec Television and M/s. Malayalam Communications Ltd.

10.3 On perusal of the Memorandum Of Understanding (MOU) with M/s. Mavis Satcom Ltd. (Mavis) (who owns Jaya TV Channel) it is revealed that (i) Mavis would allot a time slot of half an hour on Saturdays every week for 26 weeks for telecast of the tele serial and the Appellant has to pay Rs.50,000/- as Slot fee for half an hour to Mavis, (ii) in the allotted half an hour, there would be 9 minutes for marketing of Commercial advertisements iii) Mavis would market the free commercial time for advertisements and the net revenue would be shared in the ratio of 35:65 by the Mavis and the Appellant respectively .

10.4 From the above, it is clear that the Appellant has received income @ 65% Of the revenue earned by Mavis from Commercial advertisements. It is also a fact that the Appellant entered into similar agreements with M/s, Zee TV and M/s. Malayalam Communications Ltd. and received income from them.

10.5 As per Section 65 (105) (zzzm) of the Finance 1994, "taxable service" means: -

> *"any services provided or to be provided to any person, by any other person, in relation to sale of space or time for advertisement, in any manner; but does not include sale of space for advertisement in print media and sale of time slots by a broadcasting agency or organization.*
>
> *Explanation-I For the purpose of this sub-clause, 'sale of space or time for advertisement' includes (i) providing space or time, as the case may be, for display, advertising, showcasing of any product or service in video programmes, television programmes or motion pictures or music albums, or on billboards, public places, buildings, conveyances, cell phones, automated teller machines, internet;*
>
> *(ii) selling of time slots on radio or television by a person, other than a broadcasting agency or organisation;"*

10.6 It is evident from the terms of the agreements entered into by the Appellant with the various parties with respect to the telecast of the tele-serial 'Maayavi', and the transactions undertaken by them, it is clear that the Appellant has sold the time slots on television which is classifiable under 'sale of space of time for advertisement service' and also received income for the same.

10.7 The Appellant's another contention is that the sale of time slots for advertisements was not done by them but it was done only by Mavis / TV Channels and that they have only assigned their right to Mavis / Channels for telecast of the serial as per the agreements. They also contended that the portion of the amount received by them from Mavis / TV Channels represented only the value for the assignment of their right to telecast the serial. On the other hand, we have noticed that from the terms of the MOU, the Appellant has received 65% of the money from Mavis/ 'IV Channele towards sale of free commercial time. None of the terms of the MOU indicates, that the Appellant has assigned their rights to telecast. Therefore, there is no merit in the Appellant’s contention, and the same is liable for rejection. Accordingly, we hold that the income received by the Appellant from Mavis is taxable under the category of “sale of space or time for advertisement” and they are liable to pay service tax on the said service. The demand of the service Tax of Rs 3,34,949/- confirmed in the impugned Order for the period 2007-08 to 2008-09 is to be sustained. Therefore, the third question framed by us is also answered against the Appellant.

11.1 Finally now coming to the aspect of limitation, we see that the appellant has submitted that the invocation of extended period of time by merely alleging that they had suppressed the facts of expenditure incurred in convertible foreign currency for availing the taxable services from overseas service providers and the details of income collected towards sale of space or time for advertisement with the department in any manner besides alleging that they had also collected the service tax on sale of space for the year 2008-09 is not legally maintainable as it does not meet the requirement of the proviso to Sec. 73 [1] of the Act.

11.2 The Appellant also submitted that the expenses incurred by them in foreign exchange as well as the information about raising the GDR and FCCB were all reported in their annual financial statements for the year 2006-07 and 2007-08 which are public documents available on the public domain and hence the charge of wilful suppression of facts on this score cannot survive. Further the officers attached to the DGCEI were earlier seized of the matter and they had *vide* their letters dated 08.05.2007 and 04.07.2007 called for various information and documents relating to the foreign currency transaction relating to FCCB/GDR which they had promptly furnished vide their letter dated 24.08.2007 along with all documents as called for. On examination of the entire issue, they choose not to proceed further as they were of the opinion that no case of loss of revenue was made out. Thus the officers of the DGCEI who are designated Central Excise Officers with all India jurisdiction were fully aware of all their transactions and in spite of the said fact the local officials of the Internal Audit and SIR once again raising the same issue while conducting audit of their accounts during 2008-09 have issued the impugned notice after four years of the examination of their records by the officers of DGGCEI and that too after they submitted their clarification which do not permit the invocation of the extended period of time.

11.3 It was further submitted that even if the tax was required to be paid by them, then they would be entitled to avail the same as input tax credit thus making it a revenue neutral situation which should render the invocation of the extended period of time unavailable. Furthermore, as the issue raised by the revenue only related to a pure question of law and does not rely upon any contumacious conduct on their part all the more the invocation of the extended time is not permissible.

11.4 We find that Proviso to Section 73(1) of Finance Act 1994 reads as hereunder: -

"Provided that where any Service Tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of -

(a) fraud; or

(b) collusion; or

(c) wilful misstatement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of Service Tax, by the person chargeable with the Service Tax or his agent, the provisions of this sub-section shall have effect, as if, for the words "one year", the words "five years" had been substituted."

11.5 All along the Appellant made impassioned pleas against the invocation of Proviso to Section 73(1) of the Finance Act 1994. We proceed to examine this issue in depth. We believe that the offer document for the public /Private issue of FCCB/GDR is a public document and for which *vide* publicity through Media has to be done in India and abroad and they have successfully raised the funds for CAPEX in India. Without the approval/consent of SEBI and RBI (Statutory Bodies), a public listed company cannot access funds abroad. We observe that upon completion or during the midst of the GDR/FCCB issue, the Appellant was visited by the Departmental officers DGCEI/AUDIT/SIR and regular correspondences were entered into between the various Departmental Authorities and the Appellant at regular intervals. All the said correspondences form part of the Appeal paper book pages from 34 to 65 which is extracted below: -

Sl No	Dept/Agency	First letter	Second letter	Reply
1	DGCEI	08.05.2007 (Page 34)	04.07.2007 (page 35)	24.08.2007 (Page 36)
2	AUDIT			11.09.2008 (Page 38-39)
3	CHENNAI IV DIVN	05.11.2008(Communication of discrepancies)		24.09.2009
3	SIR			17.04.2009 (Pg 44)

11.6 The period covered in the Demand is from April 2006 to March 2009. The first correspondence was entered into with the Appellant as early as 08.05.2007 and the next on 24.07.2007 by DGCEI. The Appellant had responded on 24.08.2007. Thereafter Audit was conducted from 9th June 2008 and discrepancies were communicated on 05.11.2008. Thus the above sequence of events happened when the company was raising funds through GDR/FCCB or just concluded the fund-raising process. The Department was in the knowledge of the issue during the period covered by the Demand itself, and in such a situation, attributing suppression of facts is not tenable. In such a situation, we do not find any evidence of Suppression /Fraud *etc.,* to invoke the extended period under Proviso to Section 73(1) of FA 1994. The first visit by the Department was in 2007, but the

SCN came to be issued in 2011 only. It appears that to camouflage the belated issue of SCN, the Department had to invoke the proviso to Section 73(1) to keep the demand alive. From the above facts, we are of the view that the demand should have been issued under normal period in terms of Section 73 of Finance Act, 1994. The Appellant has argued that the department has compiled the SCN based on figures furnished by the Appellant voluntarily when asked for. The Tax, if paid, will be available to the appellant as CENVAT Credit and the entire issue of Service Tax levy on MBS is revenue neutral to the Appellant. We also note that the Audit of the Appellant Company was also conducted for the period 2004-05 to 2007-08 and certain discrepancies were communicated. The Audit Commenced on 9th June 2008 (Page 47) of paper book. In such a situation, the facts are deemed to have been known to the Department and the theory of Suppression is ruled out. It is a genuine interpretational issue on classification of services and point of delivery of service and it has been held in a plethora of Decisions by Tribunals /Courts that extended period cannot be invoked in such a situation.

11.7 The Appellants have relied upon the following case laws: -

i. *Chiripal Polyfilms Ltd. Versus Commr. of C. EX. & S.T., Vadodara-I (2022) 1 Centax 125 (Tri.-Ahmd.)*
ii. *Maa Kalika Transport Pvt. Ltd. Versus Commissioner of CGST and Central Excise, Rourkela [(2023) 8 Centax 273 (Tri.-Cal)]*
iii. *Collector of Central Excise Versus H.M.M. Limited [1995 (76) E.L.T. 497 (S.C.)]*
iv. *Punj Lloyd Ltd. Versus Commissioner of C.EX. & S.T., Rohtak [015 (40) S.T.R. 1028 (Tri. - Del.)]*
v. *V.N.K. MENON & CO. Versus CESTAT, CHENNAI [2015 (323) E.L.T. 524 (Mad.)]*
vi. *Meenesh Construction Co. Versus Commissioner of C. EX., Jaipur-I [2018 (12) G.S.T.L. 97 (Tri. - Del.)]*

11.8 We have perused all the above decisions of the Tribunal/Courts and the facts of the cases are squarely applicable to the issue at hand. We have no hesitation in holding that there are no ingredients for invoking the extended period in this case as the authorities are seized of the issue of GDR from 2007 onwards and the Notice came to be issued only in 2011 after an unusually long delay of 4 years.

11.9 After holding that Section 73(1) is not applicable, the only option is Section 73 covering the normal period of limitation, which during the disputed period stood at 1 year. The demand in this case is for the years 2006-07 and 2008-09, which will be clearly hit by limitation of time as the SCN was issued only on 22.10.2011.

Therefore, we hold that the demand is hit by limitation of time.

12. Finally, we conclude that, though the demand survives on the grounds on Taxability of services, it fails to stand the test of limitation of time and deserves to be set Aside.

13. We allow the Appeal filed with consequential benefits as per Law.

(Order pronounced in open court on 11.08.2025)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

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