CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. III

Service Tax Appeal No. 42194 of 2015

(Arising out of Order-in-Appeal No. 180/2015(STA-II) dated 05.08.2015 passed by Commissioner of Service Tax (Appeals-II), No. 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai – 600 034)

M/s. Tamilnadu Power Finance & Infrastructure Development Co. Ltd. **...Appellant**
No. 490/3-4, Anna Salai,
Nandanam,
Chennai – 600 035.

Versus

Commissioner of GST and Central Excise **...Respondent**
Chennai II Commissionerate,
No. 26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034.

APPEARANCE:

For the Appellant : Ms. Satish Chandrasekaran, Advocate
For the Respondent : Mr. N. Satyanarayana, Authorised Representative

CORAM:
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No. 41012 / 2025

DATE OF HEARING : 04.07.2025
DATE OF DECISION : 11.09.2025

Per Mr. VASA SESHAGIRI RAO

This Service Tax Appeal No. ST/42194/2015 has been filed by M/s. Tamil Nadu Power Finance and Infrastructure Development Co. Ltd. (hereinafter referred to as the 'Appellants') assailing the Order-in-Appeal No.

180/2015(STA-II) dated 05.08.2015 passed by Commissioner of Service Tax (Appeals-II), Chennai.

2. The facts of the case are that the appellants are engaged in providing "Banking and Financial Services". They are receiving deposits by issuing bonds to the general public and lend deposits received to Tamil Nadu Electricity Board as long-term loans, short term loans and also engaged in lending finance to hire purchase and receive interest for these loans.

3. On scrutinizing the returns filed by the appellants a Show Cause Notice No. 50/2010 dated 29.09.2010 for the period April 2009 to March 2010 was issued against the appellants for non-inclusion of amenity charges in the taxable value as they had given a portion of their premises to the Chief Executive officer, Tamil Nadu E-Governance Agency and received a sum of Rs.15,300/- as rent per month and Rs.1,12,375/- as amenity charges for the period of April 2009 March 2010. The appellants were paying service tax on the rent received but omitted to pay the service tax on amenity charges received which is liable to be included in the gross value chargeable to service tax under the head "Renting of immovable property

service" as per the provisions of section 67 of the Finance Act, 1994.

4. Subsequently, another Show Cause Notice No. 31/2011 dated 30.08.2011 was issued to the Appellants for the period from April 2010 to July 2011 demanding service tax of Rs.17,005/- on amenity charges on account of same ground.

5. The Original Adjudicating Authority *vide* Order-in-Original No. 62/2011 dated 30.12.2011 confirmed the demands proposed along with interest and imposed penalty.

6. The Appellant preferred an appeal before the Commissioner (Appeals) who *vide* impugned order confirmed the proposed demands in the Order-in-Original dated 30.12.2011 and imposed penalty under Section 78 of the Finance Act, 1994.

7. Being aggrieved by the above order, the Appellant has preferred an Appeal before this Tribunal.

8. The Ld. Advocate Mr. Satish Chandrasekaran appeared on behalf of the Appellant and submitted: -

i. That they were not liable to pay service tax on amenity charges as the charge in dispute is nothing but the reimbursement of 1/4th of the total office maintenance charge for every month which was actually incurred by the appellants on behalf of the service receiver and the reimbursements are actually not towards the service rendered rather they are only expenditure incurred on behalf of the service receiver.

ii. That the service provider incurs these expenditures in the interest of quicker service.

iii. That the expenditure is incurred on behalf of client and not directly relatable to service rendered.

iv. Therefore, these expenditures are not liable to be included in the gross amount as per Section 67 of the Finance Act, 1994

v. Reliance is placed on the decision of the Delhi High Court in *Intercontinental Consultants & Technocrats Pvt. Ltd v. Union of India [2013 (29) S.T.R. 9 (Del.)]* upheld by the Supreme Court in *Union of India v. Intercontinental Consultants & Technocrats Pvt. Ltd. [2014 (35) S.T.R. J99 (S.C.)]*

vi. That suppression of fact on the ground that the appellants had given a portion of their premises to the Chief Executive Officer, Tamil Nadu E-Governance

Agency and also the fact that appellants were receiving amenity charges is not sustainable by law, as all these relevant facts are very much within the knowledge of revenue and also the audit wing of the revenue visited our premises and there cannot be an allegation of suppression of fact.

9. *Per contra*, the Ld. Authorized Representative Mr. N. Satyanarayana appearing for the Revenue, re-iterated the findings in the Order-in-Appeal and submitted that the appeal lacks in merits and so, liable for rejection.

10. Heard both sides and considered the rival submissions including the evidence available on appeal records and the case laws relied upon.

11. The short issue for our consideration is whether amenity charges collected are includible as part of taxable value towards renting of immovable property services and if so, whether penalty can be levied for the same.

12. The Appellant *vide* its replies dated 26.10.2010 and 26.09.2011 had submitted that amenity charges collected are nothing but reimbursement of $1/4^{th}$ of the total

office maintenance charge for every month which was actually incurred by them. These payments are made on behalf of the receiver towards the maintenance charges incurred in the premises and they have to be treated as a reimbursement charges and the charges are not actually towards any services rendered and as such this amount is not to be included in their gross value as per Section 67 of the Finance Act, 1994.

13. It is not disputed that the Appellant has discharged service tax on the rent amount received under Renting of Immovable Property Service. Maintenance / amenity charges which are reimbursed are not to be included in the value in terms of provisions of Section 67 of the Finance Act, 1994 as held by the Hon'ble Apex Court in the case of *UOI vs. Intercontinental Consultants & Technocrats (P) Ltd. [(2018) 91 67(SC)].* The relevant extract of the ruling is reproduced below: -

> *"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 01, 2006) or after its amendment, with effect from, May 01, 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 01, 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 bye- law, 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 Limited8 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-à-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 8 (2015) 1 SCC 1 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."

14. In compliance with judicial discipline, reimbursement charges of the maintenance are not liable to be subject to service tax. As the Appellant wins on merit, the penalties imposed are also not maintainable.

15. In view of the above, the impugned Order-in-Appeal No. 180/2015(STA-II) dated 05.08.2015 passed by Commissioner of Service Tax (Appeals-II) is set aside. Thus, the appeal is allowed with consequential relief, if any, as per the law.

(Order pronounced in open court on 11.09.2025)

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

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

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