CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. III

Service Tax Appeal No. 42319 of 2014

(Arising out of Order-in-Appeal No. 200/2014(MST) dated 23.07.2014 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), No. 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

With

Service Tax Appeal No. 40453 of 2015

(Arising out of Order-in-Appeal No. 02/2014(MST) dated 01.12.2014 passed by Commissioner of Central Excise (Appeals-II), No. 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

With

Service Tax Appeal No. 42292 of 2015

(Arising out of Order-in-Appeal No. 172/2015(STA-II) dated 03.08.2015 passed by Commissioner of Service Tax (Appeals-II), No. 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

With

Service Tax Appeal No. 42329 of 2015

(Arising out of Order-in-Appeal No. 186/2015(STA-II) dated 06.08.2015 passed by Commissioner of Service Tax (Appeals-II), No. 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

With

Service Tax Appeal No. 41717 of 2016

(Arising out of Order-in-Appeal No. 75/2016(STA-II) dated 14.06.2016 passed by Commissioner of Service Tax (Appeals-II), Newry Towers, 3rd Floor, Plot No. 2054, I Block, II Avenue, Anna Nagar, Chennai – 600 040)

And

Service Tax Appeal Nos. 41569 to 41572 of 2017

(Arising out of Order-in-Appeal Nos. 78-81/2017(STA-II) dated 10.03.2017 passed by Commissioner of Service Tax (Appeals-II), Newry Towers, 3rd Floor, Plot No. 2054, I Block, II Avenue, Anna Nagar, Chennai – 600 040)

M/s. Promags **...Appellant**
New No. 187, Habibullah Road,
T. Nagar,
Chennai – 600 017.

Versus

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

APPEARANCE:

For the Appellant : Ms. Radhika Chandrasekar, Advocate
For the Respondent : Mr. M. Selvakumar, Authorised Representative

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

FINAL ORDER Nos. 41184-41192 / 2025

DATE OF HEARING : 01.08.2025
DATE OF DECISION : 29.10.2025

Per Mr. VASA SESHAGIRI RAO

These Nine Service Tax Appeals as tabulated below, are preferred by the appellant M/s. Promags, Chennai involving commonality of law and facts, and as there is also an allegation of overlapping demands for various services provided and therefore are thus clubbed together for decision by this common order.

Sl. No.	CESTAT Appeal No	Issue	Period	Amount (Rs)	OIA No/date	OIO No /Date	SCN/SOD No/date
1	ST/42319/14	MMR& BAS	April 2004 to March 2008 April 2008-to March 2009	24,93,989/- (Rs.18,49,747 apprtd) & Rs 2,96,055 Rs 2,27,849 & 1,31,435	200/2014dt 23.07.2014	100/2010 dt 31.08.2010	29/09 dt 26.08.2009
2	ST/42329/15	Security Agency Service	Oct 2004 to Sept 2009	6,11,003	186/2015 dt 06.08.2015	148/2011 dt 14.12.2011	284/2010 dt 20.04.2010
3	ST/41717/16	Various services prior to 1.7.2012	April 2011 to March 2012	5,54,980/- Tax Rs.55,498 Penalty	75/2016 (STA-II) dt 14.06.2016	60/2015-16 dt 22.01.2016	SOD No 66/2013 dt 21.04.2009
4	ST/40453/15	MMR & BAS	April 2009-March 2010	Rs.1,50,895/- under MMR and Rs 77,047/- under BAS	02/2014 dt 01.12.2014	13/2011 dt 08.02.2011	55/2010 dt 16.09.2010
5	ST/42292/15	MMR & BAS	1.4.2010 to 31.03.2011	Rs.3,55,214/- under MMR Rs	172/2015dt 03.08.2015	75/2013dt 31.03.2013	316/2011dt 09.09.2011

				1,83,00 BAS			
6	ST/41569 to 41572/17 (4 Appeals)	i)MMR ii)MMR iii)MMR iv)MMR	i)April 2012 to June 2012 ii)July 2012 to March 2013 iii) April 2013 to March 2014 iv) April 2014 to March 2015	i)Rs 2,69,858 ii)Rs.1,35,896/- iii)Rs.1,80,674/- iv)Rs.11,170	78-81/2017dt 10.03.2017	7 to 10/2016dt 12.08.2016	SOD 23/2014dt 16.05.2014 ii) SCN 19/2004 dt 12.08.2014 iii)SOD 05/2015dt 25.03.2015 iv) SOD 12/2015 dt 12.08.2015
	PROMAGS: 9 CESTAT APPEALS - 9 OIA- 9 OIO - 5 SCNs AND 4 SOD 'S						

MMR indicates Management, Maintenance and Repair Services.

BAS indicates Business Auxiliary Services.

2.1 The facts of the case as taken from the Appeal records briefly stated are that the Appellant have provided various services related to management, maintenance and repair of residential and commercial complexes and facilities attached thereto, but neither registered themselves nor paid service tax under the category of 'Management, Maintenance or Repair' service ('MMR service' for short). They have also canvassed financial products like 'Home Loan' on behalf of various financial institutions from whom they received 'Sales Commission', but no service tax was paid under the category of 'Business Auxiliary Service'.

2.2 On the basis of investigation conducted by the Director General of Central Excise Intelligence, it was proposed to demand service tax amounting to Rs.24,93,989/- and Rs.2,27,849/- on MMR Service covering the period (rom 16.06.2005 to 31.03.2009; and to demand service tax of Rs.2,96,055/- and Rs.1,31,435/- under BAS service for the financial years 2004-05 to 2008-09 *vide* two SCN's 16/2009 dated 21.04.2009 and 29/2009 dated 26.08.2009 (Further period).

2.3 After due process of law, the Adjudicating Authority have confirmed the demands as proposed, charged interest thereon, and also imposed penalties under Section 78 and 76 of the Finance Act, 1994 (FA for short).

2.4 Being aggrieved of the above Order, the Appellant filed an Appeal before the Commissioner of Central Excise (Appeals), Chennai who upheld the Order in original *vide* Order-in-Appeal No. 200/2014 (MST) dated 23.07.2014.

2.5 Once again being aggrieved by the above order, the Appellant come before this forum under Appeal Nos. ST/42319/2014 and ST/40453/2015.

3.1 Similarly in another case, involving extended period on security agency service, noticed during the Audit by the officers of Service Tax Commissionerate. Chennai it was found that the appellant had collected Rs.51,59,952/- from the clients towards security/cleaning service: provided by them during period from October, 2004 to September, 2009 but had not paid service tax thereon amounting to Rs 6,11,003 Hence, a Show Cause Notice No. 284/2010 dated 20.04.2010 was issued to them. The learned adjudicating authority after due process of law passed the Order-in-Original No. 148/2011 dated 14.12.2011 (i) confirming the demand of service tax under Section 73 of the Act (ii) along with appropriate interest under Section 75 the Act and (iii) imposed penalties under Section 77 & 78 of the Act.

3.2 When the appellant filed an appeal before the Commissioner (Appeals II), Chennai after due process of Law upheld the Order-in Original.

3.3 Once again aggrieved, the Appellant approached this Tribunal in Appeal *vide* Service Tax Appeal No ST/42329/15.

4. Subsequently involving the same issues, the Department issued periodical SCN's/SOD's demanding service tax along with applicable interest and proposals for imposition of penalties. After due process of law, the respective adjudicating authorities confirmed the demands of service tax along with interest and imposed penalties. Aggrieved by these orders in original, the appellant preferred appeals before the concerned Appellate Authorities, who have however rejected the appeals and upheld the impugned orders in original. Aggrieved, and dissatisfied with these orders in appeal, the appellants have preferred the appeals as tabulated *supra* and are now before this Tribunal.

To sum up, various Appeals have been filed by M/s. Promags ("hereinafter referred to as Appellant") assailing the Orders-in-Appeal ("hereinafter referred to as Impugned Orders") as detailed in the Table *supra.*

5. The Ld. Advocate Ms. Radhika Chandrasekar, appeared on behalf of the Appellants and submitted as follows: -

5.1 The Appellant has entered into different agreements with a number of flat owners' associations in Chennai to provide cleaning services, gardening and security services and from 01.01.2008 the Appellant registered with the Service Tax department under 'Security Agency services' and 'Cleaning Services' and started discharging service tax liabilities excluding the electricity charges paid and reimbursed by the flat owners.

Apart from this the Appellant also provides information about the financial products of the banks to the customers of bank and does pre-disbursement and post-disbursement documentation for the customers in relation to the disbursement of loans.

5.2 Thus, the Department issued various SCN’s for the period from 2004-05 to 2014-15 proposing to demand Service Tax under: -

a) Management, Maintenance and Repair services lor alleged maintenance of immovable property with respect to the security, cleaning and gardening services.
b) With respect to SCN No.284/2010 dated 20.04.2010 which proposed to demand Service Tax under Security Agency Services for the period from October 2004 to September 2009.
c) Business Auxiliary Services for promotion and marketing of various financial products of financial

institutions including banks along with levy of Interest and Penalty

5.3 The Appellant contending on merits submitted that they have provided security and cleaning services and have discharged service tax, excluding the electricity charges paid by them and reimbursed by the flat owners. With respect to the demand under BAS the Appellant contended that facilitating the purchase of financial product of bank cannot be construed as an act of promoting the business of the bank and that the activity takes place only when the customers intend to buy the financial product and the bank agrees to provide the product on satisfaction of conditions.

5.4 The appellant has submitted that the SCN was barred by limitation (wherever extended period invoked) and that there was no reason for the department to invoke extended period of limitation since there is no suppression or fraud or any other ingredient mentioned in the Section.

5.5 For the period 2006-07 and 2007-08 the Appellant had paid service tax under Security Agency

Services and Cleaning services a sum of Rs.16,38,056/along with interest of Rs.2,11,691/- prior to the issuance of SCN

5.6 From 2008 onwards the Appellant has been discharging service tax and the Show Cause Notices have been issued demanding Service Tax on the electricity charges paid by the Appellant and reimbursed by the flat owners which needs to be excluded, as reimbursements are not taxable.

5.7 The Adjudicating Authorities have confirmed the demand along with interest and penalty on the ground that the services are classifiable under Management, Maintenance and Repair Services and that the Appellant is liable to pay service tax on electrical charges and is liable to pay service tax under BAS for the amounts received from banks and that extended period is invocable (wherever the Show Cause Notices have been invoked).

5.8 With respect to SCN No. 284/2010 dated 20.04.2010 (ST/42329/2015) where the demand is under Security Agency Service, the demand overlaps with the demand in SCN No. 16/2009 dated 21.04.2009, SCN No. 29/2009 dated 26.08.2009 and SCN No. 55/2010 dated

16.09.2010 where the service of security service, gardening and cleaning service were grouped under a single category of service i.e. Management Maintenance and Repairs Services. It is trite is law that there cannot be two SCNs for the same period and for the same service. Reliance is placed on *CCE vs. India Thermit Corporation 2008 (226) E.L.T. 164 (S.C.)*

5.9 That in relation to the commission received from the banks, it is submitted that the Appellant provided information about financial products to banks customers when they approached it. The Appellant also provided pre-disbursement and post-disbursement documentation to its customers in relation to loans. Therefore, there cannot be a liability under BAS.

5.10 Facilitating purchase of financial products of bank cannot be construed as an act of promoting the business of the bank so the demand under BAS is incorrect. The transaction takes place only after the customers intend to purchase financial products and the bank gives a concurrence to provide the product. The activity initially is only between the bank and the customer.

5.11 Extended period is not invocable as none of the ingredients that are required for invoking the extended period are present.

5.12 The Appellant also seeks for the benefit of Section 80 of the Finance Act as amended which provides that notwithstanding anything contained in the provision of Section 76, Section 77 or Section 78 no penalty shall be imposed if there is reasonable cause for the failure to pay tax.

5.13 Further, the Appellant had submitted about their contention before the Adjudicating Authority as well as the First Appellate Authority that SCNs were issued for the very same period earlier and therefore by invoking the extended period another SCN for the very same period cannot be issued.

6. The Ld. Authorized Representative Shri M. Selvakumar argued on behalf of the Respondent and supported the findings in the impugned orders. With regard to the issue of limitation, the Ld. AR submitted that the short payment or short reversal would not have come to light but for the investigation carried out by the Department. He has

drawn our attention to Para 9(ii) Pg. 23 in respect of ST/42329/2015 where the Commissioner (Appeals) has held that the SCNs issued earlier were different and not on Security Services but regarding the non-payment of Service Tax on BAS. Therefore, the appellant is guilty of suppression of facts with an intent to evade payment of duty and justified invoking extended period. Finally, he submitted that there are no grounds for interference in the impugned order.

7. We have Heard both sides. Perused the appeal records as well as the case laws relied upon.

8. We now take up the issues one by one

8.1 It is essential first to look into the definitions of the Services discussed in the Impugned orders as follows: -

> ***A. Management, Maintenance and Repair Service****:*
> *Section 65 (64) "management, maintenance or repair" means any service provided by—*
> *(i) any person under a contract or an agreement; or*
> *(ii) a manufacturer or any person authorised by him, in relation to,—*
> *(a) management of properties, whether immovable or not;*
> *(b) maintenance or repair of properties, whether immovable or not; or*
> *(c) maintenance or repair including reconditioning or restoration, or servicing of any goods, excluding a motor vehicle;]*

['Explanation. — For the removal of doubts, it is hereby declared that for the purposes of this clause, —
(a) "goods" includes computer software;
(b) "properties" includes information technology software

B. Section 65 (19) "business auxiliary service*" means any service in relation to, —*

i. promotion or marketing or sale of goods produced or provided by or belonging to the client; or
ii. promotion or marketing of service provided by the client; or 2[****]
iii. any customer care service provided on behalf of the client; or
iv. procurement of goods or services, which are inputs for the client; or [Explanation. — For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "inputs" means all goods or services intended for use by the client;]

[v. production or processing of goods for, or on behalf of the client; or]
vi. provision of service on behalf of the client; or
vii. a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision, and includes services as a commission agent, 5[but does not include any activity that amounts to "manufacture" of excisable goods.]
[Explanation. — For the removal of doubts, it is hereby declared that for the purposes of this clause, —

(a)" commission agent" means any person who acts on behalf of another person and causes sale or purchase of goods, or provision or receipt of services, for a consideration, and

includes any person who, while acting on behalf of another person —

(i) deals with goods or services or documents of title to such goods or services; or (ii) collects payment of sale price of such goods or services; or

(iii) guarantees for collection or payment for such goods or services; or

(iv) undertakes any activities relating to such sale or purchase of such goods or services;

[(b) (c) excisable goods" has the meaning assigned to it in clause (d) of section 2 of the Central Excise Act, 1944(1 of 1944); "manufacture" has the meaning assigned to it in clause (f) of section 2 of the Central Excise Act, 1944(1 of 1944)]

C. Section 65(94) "security agency" *means any 2[person] engaged in the business of rendering services relating to the security of any property, whether movable or immovable or of any person, in any manner and includes the services of investigation, detection or verification, of any fact or activity, whether of a personal nature or otherwise, including the services of providing security personnel;*

From the internet definition, we find that an apartment maintenance is bundled service is a single, comprehensive package of services provided to upkeep a residential property, covering everything from cleaning and security to repairs, landscaping, and utility management. These bundled services, often part of housing society maintenance fees, are priced based on factors like property size or the number of facilities offered, with the goal of reducing costs, improving tenant satisfaction, and increasing property value.

What is included in bundled maintenance services?

These services are designed to maintain the safety, comfort, and aesthetic appeal of a residential property. They typically include:

***Cleaning and Housekeeping**: Maintaining the cleanliness of common areas within the apartment complex.*

***Security**: Providing security services for the entire property.*

***Landscaping**: Upkeep of the grounds and common green spaces.*

***Repairs**: Addressing issues with common facilities like lobby lighting and elevators.*

***Utility Management**: Handling common utilities and ensuring their proper operation.*

How are bundled services priced?

The cost of these services varies but is generally based on:

***Property Size**: Larger properties or units typically incur higher fees.*

***Facilities and Amenities**: Societies offering more luxurious facilities will have higher maintenance charges.*

***Hybrid Systems**: Some complexes combine a per-square-foot fee with a flat rate for shared services like lifts and parking.*

Benefits of bundled maintenance services

***Cost Efficiency**:*

A bundled service can be more cost-effective than managing each aspect separately.

***Improved Tenant Satisfaction**:*

A well-maintained property leads to a better living experience for residents.

***Increased Property Value**:*

Regular upkeep helps to maintain and increase the overall value of the property.

***Comprehensive Coverage**:*

Residents receive a wide range of essential services through a single fee, simplifying management and upkeep.

8.2 We now take up all the Appeals as mentioned in the Table in first Para at Page 2, for decision in seriatim: -

9. APPEAL No. ST/42319/14

This Appeal is covered by Two SCN's one issued invoking the extended period for the period June 2005 to March 2008 and proposing penalty under Section 76 and 78 of FA 1994. In the second SCN, the period is from April 2008 to March 2009 and penalty under Section 76 and 77 of FA was proposed.

9.1 The Appellant has submitted that: -

i. The demand was confirmed under Management, Maintenance and Repair services as proposed in SCN and upheld by the impugned Order, allowing reimbursement of electricity charges and confirmed the demand under Business Auxiliary services on the Direct Selling agent Commission

ii. The Commissioner of Customs, Central Excise & Service Tax (Appeals) in Para 8 rightly observed that charges paid for electricity consumption in units to EB was not taxable since the same was reimbursed to the Appellant by their clients. He has also observed in Para No. 8 of the Order-in-Appeal that to that extent the taxable value is to be reduced. However, in Para No. 12, the Commissioner (Appeals) failed to mention the same and simply upheld the Order-in-Original dated

31.08.2010. On this count the Order-in-Appeal is erroneous and not maintainable

iii. The Demand is hit by limitation of time as the ingredients set out in Section 73 of FA 1994 to invoke extended period are not existing in this case and cited several case Laws in their favour.

iv. As regards BAS, a taxable service has to be provided to a client by any person in relation to business auxiliary services. There is no service provider- client relationship between Appellant and the bank and hence the definition of 'taxable service' itself is not applicable.

9.2 We find from the SCN, the Managing partner has furnished the details of receipt of income from the maintenance of complexes month wise and year wise after giving abatement for expenditure incurred towards electricity charges

The SCN alleged that there was no provision to deduct expenditure toward TNEB charges and computed the service tax on gross amounts received.

9.3 We find that though levy of service tax on maintenance of Immovable property came into effect from 16.05.2005, the Appellant has registered themselves with the Service Tax Commissionerate, Chennai only in the month of January 2008 though they were in receipt of consideration for rendering such services even prior to 'the period of registration.

9.4 We also find that Shri Vijai Kumar, Managing Partner admitted the lapse and paid service tax voluntarily for the period from May 2006 to March 2008 along with interest and intimated the same in their letter dated 24/6/2008, and he stated inter-alia that they had not paid the service tax for the period shown but he undertook to discharge the appropriate service tax soon.

9.5 The Appellant was appointed as Business Associates by various financial institutions by way of entering into agreements and are also rendering services to their clients on their behalf and are receiving amount and accounting the same as Commission in their books of accounts. But, it is found that applicable service tax was not paid.

9.6 We find that the Appellant on his own accord furnished the details of income from maintenance of complexes. We have perused the Order-in-Original and the impugned order where the classification of services rendered was done under MMR Services (Immovable property services). The Appellant has already paid Tax and Interest for part of the period in dispute. The Department has added electricity charges and computed the tax demand. We find the Impugned order in Para 8 of his impugned order has held that

> *"…………………. The electricity charges paid by the Appellant and reimbursed by their clients shall be out of the purview of service tax. In respect of electricity units consumed in common area i.e. staircase, lobby, etc., it is opined that the residents shared the charges equally among themselves on pro-rata basis and paid to the electricity Board. Therefore, such charges attributable to consumption of electricity units and paid into Electricity Board were not taxable as service provided by the Appellant. To that extent the taxable value is reducible.*

However, in the operative portion of his order, the LAA has upheld the Order-in-Original which in our view is an apparent mistake while concluding the Order. However, we do not go into the issue once again as it has been already held after detailed discussion and analysis that the electricity charges are not includible. We set aside the order of the Lower Appellate Authority in this Regard and Allow the Appeal on the exclusion of electricity charges as claimed by the Appellant. However, this exercise requires Arithmetical calculations and in the absence of the same in the Appeal records, we are unable to do so. We remand this portion of the order for taking intO the observation of the LAA in the impugned order and re-compute the demand.

9.7 We find that the demand of service lax on sales commission under the category of BAS service, is unambiguously clear that commission paid to sales agents is taxable under the category of BAS. This aspect has been discussed in detail in the Impugned Order .The expenses incurred for procuring viable clients cannot be adjusted against the consideration, treating part of the commission as 'reimbursements of expenses'. There was no obligation on the financial institutions to pay salary and other expenses for the staff of the Appellant. On the contrary, the salary and other expenses are to be borne by the Appellant and 'sales commission' paid was the sole and gross Consideration for procuring clients. It is settled law that cost of providing a taxable service cannot be excluded as 'reimbursement' of expenses from the ambit of taxable value. Service tax is chargeable on gross amount received as consideration for providing the service. In this regard, reliance is placed on the ratio of the following decision: -

"***Sri Bhagavathy Traders vs Commissioner of Central Excise, Cochin [2011 (24) S.T.R. 290 (Tri-LB)]-***

6.1 Having analyzed the various decisions cited on behalf of the assessee and on behalf of the department, it would be appropriate to consider the scope of the term "reimbursements" in the context of money realized by a service provider. A person selling the goods to another cannot treat cost of raw materials or the cost of labour or other cost components for inputs services, which went into the manufacture of the said goods as reimbursements. If the buyer enters into a contract for supply of raw materials after negotiating prices from the supplier for the raw materials and the raw materials are received by the manufacturer and the manufacturer pays the amounts to the supplier of raw materials and recovers the same from the buyer, it can certainly be considered as reimbursements. It is to be noted that in such a case, the manufacturer has no role about choosing the source of the materials procured or the price at which the materials procured and the manufacturer is not under any legal or contractual obligation to pay the amount to the supplier. However, if the manufacturer procures raw materials from a source of his choice at a price negotiated between him and supplier of the raw materials and uses the material for manufacture of the final products which he sells, the question of his collecting the cost of raw materials as reimbursement does not arise. The concept of reimbursement will arise only when the person actually paying was under no obligation to pay the amount and he pays the amount on behalf of the buyer of the goods and recovers the said amount from the buyer of the goods.

6.2 Similar is the situation in the transaction between a service provider and the service recipient. Only when the service recipient has an obligation legal or contractual to pay certain amount to any third party and the said amount is paid by the service provider on behalf of the service recipient, the question of reimbursing the expenses incurred on behalf of the recipient shall arise. For example, when rent for premises is sought to be claimed as reimbursement, it has to be seen whether there is an agreement between the landlord of the premises and the service recipient and, therefore, the service recipient is under obligation for paying the rent to the landlord and that the service provider has paid the said amount on behalf of the recipient. The claim for reimbursement of salary to staff, similarly has to be considered as to whether the staff were actually employed by the service recipient at agreed wages and the service recipient was under obligation to pay the salary and it was out of expediency, the provider paid the same and sought reimbursement from the service recipient."

9.8 When Sri Vijai Kumar, partner was, enquired, he in his statement dated 10/06/2008 deposed inter alia that he was not aware of the provisions and hence not paid service tax so far and that he would pay service tax In respect of such Income received for rendering such services to the banks.

9.9.1 In the case of *Sisodia Associates Versus C.C.E. & S.T. -Jaipur-ii 2018 (7) TMI 1441 – CESTAT NEW DELHI* we find that Business Auxiliary Service – appellant is engaged in providing D.S.A. Service to M/s ICICI HFC Ltd. For promotion of their loans and received Commission – Held that:- The issue stands settled against the assessee on merit. In the case of *Brij Motors Pvt. Ltd. Vs. Commissioner [2011 (11) TMI 410 – CESTAT, NEW DELHI]* the Tribunal held that for the loan taken by the customers, if the assessee is getting some commission from bank, the same amounts to promotion and marketing of services provided by the client and is liable for payment of Service Tax under the category of 'Business Auxiliary Service' – demand upheld.

9.9.2 Further we note that in the case of *Addis Marketing Versus Commissioner of Central Excise, Mumbai 2016 (11) TMI 19 – CESTAT MUMBAI* it had been held that: -

> *"6. We find that as regard the admissibility of the services of promotion and marketing loans and finances on behalf of the bank and non banking financial institution in various judgments cited by the Ld. Counsel, the Larger Bench of this tribunal as well as Board Circular dated 16/11/2006 it has been settled that service provided by the appellant to HDFC bank is classifiable as Business Auxiliary Services and liable for service tax."*

9.10 We find in Para 34.2 of the OIO it has been abstracted that as per the General Clause of the agreement, the sourcing fee is inclusive of the service tax and all related charges and levies thereon. The Associate shall bear and pay the service tax and the related dues/ levies as may be found payable.

9.11 We find from the statement given by Shri Vijai Kumar, wherein he inter-alia, stated that their services rendered to the Bank was covered within the said provision; that he was not aware of the provisions and he did not pay service tax so far but would pay service tax in respect income received for rendering such services to the banks. He has admitted the liability to Tax under BAS.

9.12 In view of the above findings, we have no hesitation in holding that the Commission received from Banks and Financial Institutions are rightly classified under BAS in the impugned order and we uphold the decision.

9.13 Limitation and penalty - The Appellant contended that extended period is not invocable. None of the ingredients that are required for invoking the extended period are present. The Appellant relies upon the following decisions wherein it has been held that the expression 'suppression' has been used in the proviso to Section 11A of the Act accompanied by very strong words as 'fraud' or 'collusion' and therefore has to be construed strictly. It has also been held that when a notice is issued for subsequent period for the same issue, extended period cannot be invoked as the department is already aware of the details. The Appellant placed reliance on the following case Laws:

i. *M/s. Continental Foundation Joint Venture Vs. CCE (2007) 216 ELT177*
ii. *Pushpam Pharmaceuticals Company Vs Collector of C.Ex. Bombay (1995) 78 ELT401*
iii. *Collector of Central Excise Vs. Chemiphar Drugs & Liniments Ltd (2002) TIOL 266*
iv. *Nizam Sugar Factory Vs Collector of Central Excise (2006) 197ELT465(SC)*
v. *ECE Industries Ltd vs. CCE (2004) 164 ELT236*

We find that the issue has been extensively dealt with in the Order-in-Original in Paras 42, 42.1 and 43 which read as follows: -

"42.0 Where ST-3 Return the value of was less than the amount actually collected by the assessee and. assessee was not able to substantiate with documentary evidence. that the value disclosed in the return was the correct amount, the department would be justified in invoking the extended period fe initiating proceedings for recovery of tax, - Insurance and pr Department Vs CE reported in 2007 (10) STT 502 (CESTAT - Delhi).

42.1 As regards the question whether the extended time limit under the proviso to Section 73(1) of the Finance Act, 1994 is to be invoked for demand of service tax, I have examined the arguments put forth by them. It is on verification by the department, the fact of provision of several services by them without payment of service tax came to light. Similarly, merely because they have obtained registration for Security Service and Cleaning Service earlier will not automatically lead to a conclusion that there is no service tax liability on other services which are provided by them, unless they come forward to intimate the department or seek clarification from the

department about such activity. The assessee are bound to examine the service tax liability soon after the imposition of levy of service tax on such activity. Thus, it is clear that the assessee did not obtain registration for the services namely Management, maintenance and Repair service rendered from 16.06.2005 to 31.03.2009, nor paid any service tax on the gross amount received by them from the respective flat owners' association.
The facts have come to the notice of the Department only after the detailed investigation conducted by the officers of the Directorate General of Central Excise Intelligence, Chennai Zone with regard to their financial records. I, therefore, hold that the assessee have suppressed the vital information with intent to evade payment of service tax and accordingly invoking of extended time limit under the proviso to Section 73(1) of the Act, is justifiable.

43. As regards the question whether the assessee are liable for penal action as proposed in the show cause notice, in view of the observations made above, it has been held that the assessee have suppressed the facts of non-payment of service tax on the charges collected towards maintenance and repair of goods or things in the building/complex occupied by their tenants, and therefore, the argument that the case of interpretational issue does not hold water. In view of the same I am not inclined to accept the argument of the assessee that penalty under Section 76 and 78 of the Act, is not to be invoked as there is no reasonable cause for the non-payment o! service tax as envisaged in Section 80 of the Finance Act, 1994. Thus, once it is held that the assessee has suppressed the facts with intention to evade payment of service tax, penalty under Section 78 of the Finance Act, 1994 would be automatic and gets attracted. In this connection, I rely upon the decision of the Hon'ble Supreme Court in the case of Dharmendra Textile Mills and Rajasthan Spinning & Weaving Mills. As regards the proposal for penalty under Section 76, I am of the opinion that the imposition of penalty under Section 78 would itself meet the ends of justice and, therefore, penalizing them under Section 76 may not be warranted further in respect of the demands made in the Show Cause Notice No. 16/2009 dated 21.04.2009. However, I impose appropriate penalty under Section 76 of the Finance Act, 1994 in respect of the demands made vide Show Cause Notice No.29/2009 dated 26.08.2009. Promags are also liable for penalty under Section 77 of the Finance Act, 1994, inasmuch as read with Section 91 & 95 of the Finance (No.2) Act, 2004 and Section 136 & 140 of the Finance Act, 2007, for their failure to register with the department and failure to furnish the prescribed return in and for suppressing value and furnishing false details in ST-3 returns and for their failure to pay service tax and educational cess by suppression of facts; Promags are liable to pay interest under Section 75 of the finance Act, 1994 on the service tax not paid / short-paid o the due dates inasmuch as charging of interest on such case is automatic."

9.14 From the above findings, we see that this issue was extensively discussed both in the Order-in-Original / Order-in-Appeal. There is no ground to interfere with the decision of Lower Appellate Authority.

We also find that the Managing Partner of the Appellant in his statement dated 10.06.2008 stated *inter-alia* to a specific query as to whether Promags declared to the department about the services provided prior to the period of registration i.e. prior to 01.01.2008, he stated that they had not informed the department about the said services provided prior to 01.01.2008. When the ledgers showing income towards maintenance for the period 2006-07 and 2007-08 were shown to Sri Vijai Kumar and enquired as to why no service tax was paid during the period, he stated inter-alia that they had not paid the. service tax for the period shown and that he undertook to discharge the appropriate service tax soon.

9.15 Further we observe that Sri Vijai Kumar, Partner admitted the lapse and paid service Tax voluntarily for the period from May 2006 to March 2008 with interest and intimated the same in their letter 24.06.2008. Therefore, the fact of suppression/misstatement is also admitted by the

Appellant on his own volition which is binding on the Appellant/Firm.

9.16 From the findings in the OIO/OIA, we observe that the fact of suppression of facts and misstatement of facts was clearly established. We find that, but for the intervention of the Department, the misclassification, Non-payment of Service Tax would not have seen the light of the day. The fact of Suppression is clearly established in this case. We have gone through the impugned orders/OIO and we have no reason to differ from the above findings and we are in total agreement with their findings.

9.17 Further, we find that the first SCN covered in the impugned order is issued invoking the extended period and the second SCN was issued under Normal period only on the same set of facts for the further period. In view of our above findings, we have no hesitation in holding that extended period is rightly invoked in this case and Penalties imposed under Section 77 and 78 for the First SCN and under Section 76 for the demand covered under SECOND SCN is in order.

9.18 Therefore, we have no hesitation in holding that invocation of extended period and imposition of penalty as above is justified.

9.19 The Appellant also sought for the benefit of Section 80 of the Finance Act as amended which provides that notwithstanding anything contained in the provision of Section 76, Section 77 or Section 78 no penalty shall be imposed if there is reasonable cause for the failure to pay tax. In the instant case the Appellant has discharged service tax under security and cleaning services.

9.20 According to Section 80 no penalty may be imposed under Section 76, 77 or 78(1) of the Act if the assessee is able to prove that there is reasonable cause for such failure. In Para 2.4, we find that

> *"2.4 The Appellant/ M/S Promags entered Into Memorandum of Agreement dated 30/10/2005 for operation and Maintenance with M/S Jalns Avanthlka Flat owner's Association (Annexurø A-5) wherein M/s Promags agreed to perform the following activities (a) security to the building, (b) Housekeeping of the building, (c) Electrical Services, (d) plumbing Services, (e) Gardening, (f) Operation of the sewage treatment plant and swimming pool and (g) Preventive maintenance of lifts, plant and machinery. M/S Jalns Avantika Flat Owners Association agreed to pay Rs 0.93 paise per sq ft for a total area of Rs 1,42,437 Sq Ft inclusive of service Tax. The Appellant paid the Tax belatedly in 2008 only after the intervention of the Department and Obtained ST Registration under cleaning and security services only on 1.1.2008. This shows their deliberate intent to register and*

> *avoid payment of tax though they were aware of the Tax liability as can be seen from the above MOA.*
> *Under these circumstances, we do find any reasonable cause for their failure and we are not inclined to consider their request. Their request under Section 80 of FA 1994 is rejected."*

9.21 To sum it up, we remand the impugned order to the LAA for the limited purpose of computing the Tax after deducting the reimbursed expenses on account of electricity charges and pass a reasoned order after following the principles of natural justice.

9.22 This Appeal is disposed of with above directions.

10. APPEAL No. ST/42329/2015

10.1 The Brief facts of the case are that the appellant a service provider registered for "Security service', and 'Cleaning service". During audit by the officers of Service Tax Commissionerate. Chennai it was noticed that the appellant had collected Rs.51,59,952/- from the clients towards security/cleaning service: provided by them during period from October, 2004 to September,2009 but had not paid service tax thereon amounting to Rs 6,11,003/- Hence, Show Cause Notice was issued to them. The learned adjudicating authority after due process of law passed the impugned order (i) confirming the demand of service tax under Section

73 of the Act (ii) along with appropriate interest under Section 75 the Act and (iii) imposing a penalty under Section 77 & 78 of the Act.

10.2 Aggrieved by the impugned order: the appellant filed this appeal before the Commissioner (Appeals) Chennai. The Commissioner (Appeals) Chennai after due process of Law upheld the OIO on merits and rejected Appeal on the grounds of time bar in filing the Appeal.

10.3 Once again, aggrieved, the Appellant filed this Appeal before this Tribunal.

10.4 The Ld. Advocate Ms. Radhika Chandrasekhar appeared for the Appellant and the Ld. Authorized Representative Mr. M. Selvakumar Appeared for the Respondent/Department.

10.5 The Ld. Counsel for the Appellant submitted as follows: -

i. In Show Cause Notice No. 284/2010 dated 20.04.2010 (ST/42329/15) the department proposed to demand Service Tax under 'Security Agency Services' for the period from October 2004 to September 2009 though it was already considered as a part of a composite service of Management Maintenance and Repairs and demanded under different SCNs issued.

ii. It is relevant to state that for the period of dispute in SCN No. 284/2010 dated 20.04.2010 (ST/42329/15), the Appellant has discharged service tax for security service and cleaning service except on the reimbursed electricity charges, which has been accepted by the department in the orders. In the first Show Cause Notice (SCN No. 16/2009 dated 21.04.200), Para 5.1 in Page 138 of ST/42319/14 it is clearly mentioned that the ledgers. P&L. from EY2004-05 have been scrutinized and agreement clauses have also been extracted. Therefore, the same issue cannot be reagitated through another proceeding as it is against the principle of *Res-Judicata*.

iii. The Ld. Advocate further has contended before the Adjudicating Authority as well as the First Appellate Authority (Para 9(i) Pg. 23 ST/42329/2015) that SCNs were issued for the very same period earlier and therefore by invoking the extended period another SCN for the very same period cannot be issued.

iv. Extended period is not invocable as none of the ingredients that are required for invoking the extended period are present. The Appellant relies upon the several decisions wherein it has been held that the expression 'suppression' has been used in the proviso to Section 11A of the Act accompanied by very strong words as 'fraud' or 'collusion' and therefore has to be construed strictly. It has also been held that when a notice is issued for subsequent period for the same issue, extended period cannot be invoked as the department is already aware of the details.

v. The Appellant also sought the benefit of Section 80 of the Finance Act as amended which provides that notwithstanding anything contained in the provision of Section 76, Section 77 or Section 78 no penalty shall be imposed if there is reasonable cause for the failure to pay tax. In the instant case the Appellant has discharged service tax under security and cleaning services.

vi. With respect to SCN No.284/2010 dated 20.04.2010 (ST/42329/2015) where the demand is under Security Agency Service, the demand overlaps with the demand in SCN No. 16/2009 dated 21.04.2009, SCN No. 29/2009 dated 26.08.2009 and SCN No. 55/2010 dated

16.09.2010 where the service of security service, gardening and cleaning service were grouped under a single category of service i.e. Management Maintenance and Repairs Services. It is trite is law that there cannot be two SCNs for the period and the same service. Reliance is placed on *CCE Vs. India Thermit Corporation [2008 (226) E.L. T. 164 (S.C.)]*

vii. Finally, she requested to consider the above submissions and allow the Appeal on the grounds of merit as well as limitation.

10.6 *Per Contra*, the Ld. Departmental Authorized Representative Mr. M. Selvakumar appeared on behalf of the Respondent and reiterated the contentions made in the Order-in-Original and Order-in-Appeal and this is a clear case of outright Non-payment of Tax by suppressing the facts from the Department and extended period is invokable in this case. With regard to the issue of limitation, Ld. AR submitted that the short payment or short reversal would not have come to light but for the interference of the Department. Therefore, the appellant is guilty of suppression of facts with an intent to evade payment of duty.

Therefore, he argued that there are no grounds for interference in the impugned order.

10.7 We have heard both the sides.

10.8 The following issues arise for our consideration in this case as to: -

i. Whether the LAA has erred in holding the management, maintenance and repair services as security agency services resulting in overlapping demand ie whether the demand under MMR and Security services overlap in this case?
ii. Whether the extended period of limitation is invokable in this case?
iii. Whether the benefit of Section 80 of FA 1994 is available in this case?

10.9 The Appellant submitted that the impugned Order and the Order-in-Original failed to appreciate that the Appellant obtained registration under the category of Security Agency Service in the month of March 2004 and discharged service tax for the period March 2004 to August 2005, Further, the Appellant has Stopped providing security agency service from September 2005 onwards and the books of accounts maintained by Appellant makes it clear that there was no credit under this category and the Orders erred in proposing a demand of service tax on the amount of

Rs.51,59,952/- without appreciating the nature of the receipt.

10.10 The receipt on account of electricity is only recovery of the electricity bills for the common facilities. The Appellant pays the amounts and recovers these amounts from the association. Payments and recovery of electricity bills cannot be considered as security agency service.

10.11 That unless the revenue generated from the transaction is for the Services rendered under the category of Security services, there is no Liability of service tax. In the instant case the revenue receipts are for renting the premises for the cinema and advertising shootings, extra work Charges *etc*. Therefore, the activity provided by Appellant cannot fall within the ambit of service tax.

10.12 The Order-in-Original erred in coming to a conclusion that the Appellant have not given any bifurcation of the above-mentioned receipts. The Appellant is ready to provide the necessary bifurcation whenever required.

10.13 The para 2 of the SCN makes a mention that

> *"2. During the course of Audit of Accounts of the assessee by the Internal Audit Group of this Commissionerate, it*

was noticed that the assessee during the period from October,2004 to September,2009 have received an amount of Rs.51,59,952/- from their clients towards the Security/ Cleaning services provided to them. However, the assessee have not discharged the service tax on the said service income realised. The non-payment of service tax on the above said amount works out to Rs.6,11,003/- as per the annexure to this notice."

10.14 We find that it has been already held that the Appellant is rendering composite services (Para 9). From the SCN we find that the services rendered by the Appellant are a) security to the building, (b) Housekeeping of the building, (c) Electrical Services, (d) plumbing Services, (e) Gardening, (f) Operation of the sewage treatment plant and swimming pool and (g) Preventive maintenance of lifts, plant and machinery etc. The contract price is Rs 0.93 paise per sq ft for a total area of Rs 1,42,437 Sq Ft inclusive of service Tax and the Ledger and P& L Account shows receipt of income under "Maintenance". Further the contract is a composite one and cannot be vivisected.

Security services are already covered in our earlier order in Appeal Nos ST/42319/14 that it is part of the composite contract of maintenance of Apartments and the price cannot be vivisected.

10.15 The Appellant disputed that the charges were not Security Agency Services and that they have documentary evidence to prove item wise charges.

10.16 The Appellant submitted that the demand overlaps with the demand already made under MMR Services for which detailed submissions have been made in Appeal ST/42319/14.

10.17 Further the Appellant submitted that in their Appeal heard by this Tribunal ST/42319/14 that there is overlapping demand as shown in the table below.
It is relevant to state that for the period of dispute in SCN No. 284/2010 dated 20.04.2010 (ST/42329/15), the Appellant has discharged service tax for security service and cleaning service except on the reimbursed electricity charges, which has been accepted by the department in the orders. In the first Show Cause Notice (SCN No. 16/2009 dated 21.04.200), Para 5.1 in Page 138 of ST/42319/14 it is clearly mentioned that the ledgers. P&L. from FY2004-05 have been scrutinized and agreement clauses have also been extracted. Therefore, the same issue cannot be reagitated through another proceeding as it is against the principle of Res-Judicata. The relevant paragraphs in the Appeals for the same period where payment made under Security Agency Service has been discussed and considered

as a composite service falling under 'Management Maintenance and Repairs' a are indicated below: -

ST/42319/14 SCN No. 16/2009 dated 21.04.2009	1. <u>SCN</u> Paras 2.2, 2.3 & 2.4 (Pg 136-137) where agreement clauses wherein there is reference to security service and various other services are extracted 2.OIO a)Paras 22, 22.1, 22.2, 22.3, 23, 24 (Pg 91-92) discuss the security services provided b)Para 33.1 (Pg 96) treats Security service as a part of a composite service of Management Maintenance and Repair Service c)Para 42.1 (Pg 100) states that merely because registration under Security Service has been taken earlier, it will not automatically lead to a conclusion that there is no Service Tax liability on other services which are provided by the Appellant 2. <u>OIA In</u> Para 3(iii) (Pg 37) Para 7 (Pg 38) states that provision of services like security service, housekeeping, etc as provided in the agreements are within the scope of 'Maintenance'

10.18 We have gone through the details in the above Table and find that Security Services have been held to be within the Scope of Maintenance and the same cannot be taxed again which will tantamount to double taxation and is not sustainable in law.

Further we find that Security services are already covered and decided in our earlier Appeal No ST/42319/14 as part of

Composite service under MMR Services and therefore this issue need not be discussed in length once again for the sake of repetition.

10.19 We also find that Security services have been included in the composite service of MMR Service and extended period has been invoked in Appeal No. ST/42319/14. Therefore, a second demand for the same service and same period cannot be allowed under Extended period under the name of Security agency service which was already covered by us in our decision in Appeal No ST/42319/ST IN Para 9.

10.20 Further it was submitted by the Appellant that It is trite law, that there cannot be two SCNs for the same period and the same service and placed Reliance on *CCE Vs. India Thermit Corporation [2008 (226) E.L.T. 164 (S.C.)].*

10.21 We have perused the above decision and the same is squarely applicable in this case. Therefore, the demand under Security Agency service is required to be set aside being a repeated demand and being already covered under MMR Services for the similar period.

10.22 Further, extended period is not invocable as none of the ingredients that are required for invoking the extended period are present. The Appellant relied upon the following decisions wherein it has been held that the expression 'suppression' has been used in the proviso to Section 11A of the Act accompanied by very strong words as 'fraud' or 'collusion' and therefore has to be construed strictly. It has also been held that when a notice is issued for subsequent period for the same issue, extended period cannot be invoked as the department is already aware of all the facts.

The Appellant has relied on several case laws in their favour.

- *i) M/s. Continental Foundation Joint Venture Vs. CCE (2007) 216 ELT177*
- *ii) Pushpam Pharmaceuticals Company Vs Collector of C.Ex. Bombay (1995) 78 ELT 401*
- *iii) Collector of Central Excise Vs. Chemphar Drugs & Liniments Ltd (2002) TIOL 266*
- *iv) Nizam Sugar Factory Vs Collector of Central Excise (2006) 197 ELT 465 (SC)*
- *v) ECE Industries Ltd Vs. CCE (2004) 164 ELT 236*

10.23 We have perused some of the case Laws and find that: -

> ***"i. Nizam sugar Factory vs CCE, A.P.--- [2006 (197) ELT 465(SC)]-***
>
> ***"9.*** *Allegation of suppression of facts against the appellant cannot be sustained. When the first SCN was issued all the relevant facts were in the knowledge of the authorities. Later on, while issuing the second and third show cause notices the same/similar facts could not be taken as suppression of facts on the part of the assessee as these facts were already in the knowledge of the*

authorities. We agree with the view taken in the aforesaid judgments and respectfully following the same, hold that there was no suppression of facts on the part of the assessee/appellant."

ii. Hyderabad Polymers (P) Ltd vs CCE, Hyderabad [2004 (166) ELT 151 (SC)]*-*

"6. The Collector has given a categoric finding that the earlier Show Cause Notice raised a demand on a similar issue and for an identical amount. That Show Cause Notice had been dropped. In our view the Tribunal was wrong in still holding that there was suppression of fact or material. This Court has in the case of ECE Industries Limited v. Commissioner of Central Excise, New Delhi reported in 2004 (164) E.L.T. 236 (S.C.) held as follows :-

…

On the ratio laid down in this judgment it must be held that once the earlier Show Cause Notice, on similar issue has been dropped, it can no longer be said that there is any suppression. The extended period of limitation would thus not be available. We are unable to accept the submission that earlier Show Cause Notice was for a subsequent period and/or it cannot be taken into consideration as it is not known when that Show Cause Notice was dropped. If the Department wanted to take up such contentions it is for them to show that that Show Cause Notice was not relevant and was not applicable. The Department has not brought any of those facts on record. Therefore, the Department cannot now urge that findings of the Collector that that Show Cause Notice was on a similar issue and for an identical amount is not correct."

10.24 It is clear from the above case Laws that once a demand has been issued on the same grounds invoking extended period of limitation, then issuing second demand on the same set of facts is not maintainable. We have perused the aforesaid case Laws, and the ratio decidendi of the above decisions are squarely applicable in this case and we respectfully follow the same.

10.25 Therefore, we hold that the demand issued in this case is hit by limitation of time, and also on the fact that as it overlaps with the demand made under MMR service, the demand under Security agency service fails to survive on merits as well as limitation. We set aside the impugned order and allow the Appeal with consequential benefits as per Law.

11.1 Appeal Nos. ST/40453/15 & ST/42292/15 are filed by the Appellant against the impugned orders passed by Commissioner (Appeals) Chennai for including reimbursement of electricity charges in MMR Services and against the taxability of services rendered to Banks and Financial Institutions under BAS Services.

11.2 It is not disputed that the Appellant provided various services related to management, maintenance and repair of residential and commercial complexes and facilities attached thereto, but neither registered themselves nor paid service tax under the category of 'Management, Maintenance or Repair' service ('MMR service' for short). They also canvassed financial products like 'Home Loan' on behalf of various financial institutions from whom they received 'Sales

Commission', but no service tax was paid under the category of 'Business Auxiliary Service'.

11.3 On the basis of investigation conducted by the Director General of Central Excise Intelligence, it was proposed to demand service tax on MMR Service covering the period (rom 16.06.2005 to 31.03.2009; and to demand service tax under BAS service for the financial years 2004-05 to 2008-09 vide two SCN’s 16/2009 dated 21.04.2009 and 29/2009 dated 26.08.2009(Further period) .The present periodical SCN’s for the subsequent period as detailed in the table Supra were issued and after due process of law, the Respondent confirmed the demands as proposed, charged interest thereon, and also imposed penalties under Section 76 and 77 of the Finance Act, 1994 ('FA for short).

11.4 Aggrieved of the above Orders, the Appellant filed Appeals before the Commissioner of Central Excise (Appeals), Chennai and the Commissioner of Central Excise (Appeals) upheld the Orders in original vide Order-in -Appeal as detailed in the table below:

11.5 Once again aggrieved by the above order, the Appellant has carried this Appeal before this Tribunal under Appeal Nos. ST/42319/2014 and ST/42292/15.

ST/40453/15	MMR & BAS	April 2009-March 2010	Rs 1,50,895/- under MMR and Rs 77,047/- under BAS	02/2014 dt 01.12.2014	13/2011 dt 08.02.2011	55/2010 dt 16.09.2010
ST/42292/15	MMR & BAS	1.4.2010 to 31.03.2011	Rs 3,55,214/- under MMR Rs 1,83,00 BAS	172/2015dt 03.08.2015	75/2013dt 31.03.2013	316/2011dt 09.09.2011

11.6 The Ld. Counsel for the Appellant submitted that the order of the Commissioner of Central Excise (Appeals) is not sustainable for the following reasons:

a) In Para No.3 of the Show Cause Notice it was recorded that the Appellant has received electricity charges and the same has not been included in the taxable value. The Service Tax (Determination of Value) Rules, 2006 provides for levy of service tax on the gross amount.

b) The Deputy Commissioner of Service Tax in page No. 12 Para No.18 has held that the electrical charges as well as charges towards electricity related works are liable to be included in the taxable value.

c) The Commissioner of Central Excise (Appeals) has given a finding that the Appellant has not reimbursed electricity charges and the entire amount pertains to electrical work. This observation is contrary to the Show Cause Notice and Order in Original.

d) Both the Show Cause Notice and Order in Original invoked provision of Service Tax (Determination of Value) Rules, 2006 to include the electricity charges.

e) If the charges are related to electrical work, the question of determination of value does not arise. The question would have been whether the receipts are liable to service tax or not.

f) The Appellant has sufficient documents to establish that they have paid electricity charges and subsequently reimbursed by the clients.

g) The observation by the Commissioner of Central Excise (Appeals) is contrary to the facts and law and therefore liable to be set aside.

11.7 *Per Contra*, the Ld. Counsel for the Respondent, Shri M. Selvakumar, Authorized Representative appeared before us and reiterated the contentions made in the OIA (Impugned Order) and submitted that there is no merit in the Appeal and requested to reject the Appeal.

11.8 We have perused the SCN/OIO and OIA and the arguments of both the sides.

We find that SCN is about electricity charges which were reimbursed to the Appellant. The OIO/OIA have traversed beyond the SCN to hold that the entire amount pertains to electrical work. The Appellant has also submitted that they have proof of the that they have paid electricity charges which were subsequently reimbursed by the clients. We find that it is nothing but reimbursement of expenses and so demands cannot sustain.

11.9 The Appellant relied upon the following case Laws in support of their arguments: -

a) Tribunal in the case of *ICC Reality India Pvt Ltd Vs Commissioner of Central Excise (2013) TIOL 1751* has held that electricity charges reimbursed from tenants is not liable to be included in the taxable value.
b) the Tribunal in the case of *Vansum Industries Vs Commissioner of Central Excise (2013) TIOL 92* during stay stage has held since electricity being goods, the value towards the same cannot be included for the purpose of service tax.
c) the Tribunal in the case of *Eon Hinjewadi infrastructure Pvt Ltd (2012) TIOL 1688* during stay stage has held that

electricity being goods qualifies for deduction in terms of Notification No. 12/2003 while providing Management, Maintenance and Repair Service. The same view has been taken by the Tribunal in the case of *Polad Traders Pvt Vs Commissioner of Central Excise (2010) TIOL 12.*

11.10 The Appellant submitted that the Impugned order failed to appreciate that any attempt to levy service tax on electricity would amount levy of service tax on goods and the same is not legally permissible.

11.11 We have already held in the above clubbed Appeal ST/42319/14 that Service Tax is not leviable on electricity charges as they are reimbursements. Therefore, the demand on MMR is payable after deducting the value of electricity charges.

11.12 In respect of Commission received from Banks/Financial Institutions for marketing their financial products, this is an already decided issue in Appellants own case by this Bench in Appeal No ST/42319/14 in this clubbed Appeal. Applying the same ratio, we hold that Service Tax is payable under Business Auxiliary services.

12.1 As Regards Appeal No. ST/42292/15, the facts are slightly different. The demands in respect of MMR and BAS are upheld as done by us in Appellant's own Appeal in ST/42319/14. The only distinguishing factor is the nature of electricity charges. The Appellant's submission is that that it is electricity charges that are reimbursable and so excludible.

12.2 Whereas in the Department on the other hand contends that the Appellant is under the obligation to bear the electricity expense upto Rs.11,000/- and the balance would be reimbursed without appreciating that the Appellant being a service provider has no obligation to bear any expenditure from their pocket and that the Commissioner of Service Tax (Appeals-II) in para 10 of the Order in-Appeal has held that the charges collected by the Appellant in the present case do not relate to electricity charges and is related to electrical related activities.

12.3 We find that there are contrary claims on the aspect of electricity charges/electrical charges on both the sides without any documentary evidence placed before us to come to a conclusion.

12.4 We remand this issue for the limited purpose of ascertaining the actual nature of electricity charges incurred in view of the contrasting claims by both the sides without letting in any evidence and verify for eligibility of the same in the course of providing MMR Service and pass orders as deem fit after following the Principles of Natural Justice within 3 months of this Order.

13. APPEAL No. ST/41717/2016. This Appeal has been filed against confirmation of demand on electricity charges under MMR Services without giving the benefit of deduction of reimbursable electricity charges along with interest and Penalty for the Period 2011-12.

13.1 The SOD No. 66/2013 dated 03.04.2013 was issued on the same facts as the earlier set of facts and not reproduced here for the sake of repetition.

The brief facts also remain the same. We find that there are 3 issues in this statement of demand

i. Whether the Appellant is liable to pay Service Tax on the electricity charges for the period 2011-12 under the category of MMR Services when the same is claimed to be reimbursable by the Appellant?

ii. ii) Whether the SOD is maintainable in the absence of saving clause for the charging provision?

iii. Interest/penalty are payable in this case?

13.2 There is only MMR service involved in this Appeal which has been held as Taxable in Appellant's own case decided in this Cluster of Appeals and on following the same, we hold that the demand is tenable. However, the whole issue is centred around the non-inclusion of electricity charges in the gross value of the service for payment of Tax. In the SCN/OIO, the Non included amount is mentioned as electricity charges. In Appellants own case in Appeals No ST/42319/14 and ST/40453/15 this is an already decided issue and decided in favour of Appellants. On applying the ratio of the same decisions, the impugned order is set aside and therefore the imposition of Interest and penalty will not arise.

13.3 As the first question is answered in favour of the Appellants, there is no requirement to visit the second and third question framed by us.

13.4 The Appeal is allowed with consequential benefits as per Law.

14. Appeal Nos. ST/41569/17 to 41572/17:

14.1 These Appeals have been filed by the Appellant against the confirmation of demand on electricity charges without giving the benefit of deduction of reimbursable electricity charges under MMR Services.

14.2 The Appellant contended that they have discharged service tax on the taxable value as determined under Section 67 of the Finance Act, 1994 as amended. The Appellant paid the electricity charges to the Tamil Nadu Electricity Board and subsequently recovers the same. The Appellant did not include the electricity charges reimbursed, since electricity per se is goods and therefore not liable to service tax. Further the charges towards electricity recovered from the flat owner and paid to electricity Board is not a consideration for providing taxable services.

14.3 The brief facts as culled out from the impugned order are that the Appellants are providers of Security Service and Maintenance of Flat Service etc. hold registration Certificate No. AAGFP9613RSTO01. It was noticed that the appellant have collected electricity charges from their clients, which is includible in the taxable value in respect of

Maintenance or Repair Services vide Section 65(64) of the FA 1994 on which the appellant paid service tax. As the electricity charge was not included in the taxable value by the Appellant for payment of Tax, the following periodical Statements of Demand/Show Cause Notice were issued.

Sl. No.	SCN No/SOD No &date	OIA No /Date	Service Tax demanded Rs.	For the period
1	SOD23/2014 dated 16.05.2014	78-81/2017(ST-II) dt 10.3.2017	2,69,858/-	April,2012 to June, 2012
2	SCN19/2014 dated 20.08.2014	-do-	1,35,896/-	July, 2012 to March, 2013
3	SOD 05/2015 dated 25.03.2015	-do-	1,80,674/-	April, 2013 to March, 2014
4	SOD 12/2015 dated 12.08.2015	-do-	11,170/-	April, 2014 to March, 2015

14.4 The Learned Adjudicating Authority after due process of law, passed the OIO 's (i) confirming the demand of service tax (under Section 73 of the Act along with appropriate interest under Section 75 of the Act and (ii) imposing 10% penalty under Section 76 of the Act and penalty of Rs.10,000/- under Section 77 of the Act in respect of each demand/notice.

14.5 Aggrieved, the Appellant filed Appeals before the Commissioner (Appeals) and the Commissioner (Appeals II) Chennai upheld the OIO's except for dropping the penalty imposed under Section 77 of the Act.

14.6 Once again aggrieved, the Appellant filed 4 Appeals before this Tribunal numbered as ST/41569/17 to ST/41572/17.

14.7 The Ld. Advocate Ms. Radhika Chandrasekhar for the Appellant and the Authorized Representative Mr. M. Selvakumar, appeared before this Tribunal and made their submissions.

14.8 The only issue before us in all the 4 Appeals is whether the Appellant is liable to pay service tax on the electricity charges as electricity per se is goods which is outside the ambit of service tax,

14.9 As the issue involved in all the 4 Appeals are common, they are clubbed together for a common decision.

14.10 The contention of the Appellant is that they have paid whatever electricity charges collected from the association to the TNEB.

14.11 From the Para 2(i) of the OIA (Impugned order) we find that as electricity charges were not included, the 4 SOD/SCN's were issued by the Department. Further, a similar issue was decided in the SOD preceding the present impugned order which was decided by us in favour of the Appellant i.e. APPEAL No. ST/41717/16 relying upon Appellants own case in the present clubbed Appeals, Appeal Nos. ST/42319/14 and ST/40453/15. The Appellant has relied upon several decisions in support of their claim. Based on the ratio of the above decisions, we have no hesitation in holding that electricity charges are not includible under the category of MMR Services and set aside the demand. As the demand of Tax fails, the consequent interest and penalty automatically get extinguished.

Therefore, the present Appeals ST/41569/17 to ST/41572/17 are allowed with consequential benefits.

15. Finally, we sum up the entire proceedings as follows: -

Sl. No.	CESTAT Appeal No	Issue	Period	Amount (Rs)	Decision
1	ST/42319/14	Security Agency &Cleaning Serv - Before negative list	April 2004 to March 2008 April 2008-to March 2009	24,93,989/- (Rs.18,49,747 apprtd) & Rs.2,96,055 Rs.2,27,849 & Rs.1,31,435	Demand under MMR & BAS confirmed. Electricity charges are permitted to deducted from the gross value of service. **Remanded** for recomputation of demand under MMR. Interest and Penalty upheld.
2	ST/42329/15	Security Agency Service	Oct 2004 to Sept 2009	Rs.6,11,003	Demand under Security agency service dropped on the grounds of overlapping demand with MMR in Sl No 1 above Appeal and also on the grounds of limitation.
3	ST/40453/15	MMR &	April 2009-	Rs 1,50,895/-	Demand under MMR is upheld

		BAS	March 2010	under MMR and Rs.77,047/- under BAS	after allowing deduction of electricity charges. The demand under BAS is also upheld. Interest & Penalty upheld
4	ST/42292/15	MMR & BAS	1.4.2010 to 31.03.2011	Rs.3,55,214/- under MMR Rs 1,83,00 BAS	Demands under MMR & BAS upheld. In respect of re-imbursable expenses, **remanded** back to verify the documentary evidence and pass suitable orders.
5	ST/41717/16	Various services prior to 1.7.2012	April 2011 to March 2012	Rs.5,54,980/- Tax Rs.55,498 Penalty	Allowed with consequential benefits as per Law
6	ST/41569 to 41572/17(4 Appeals)	i)MMR ii)MMR iii)MMR iv)MMR	i)April 2012 to June 2012 ii)July 2012 to March 2013 iii) April 2013 to March 2014 iv) April 2014 to March 2015	i)Rs.2,69,858 ii)Rs.1,35,896/- iii)Rs.1,80,674/- iv)Rs.11,170	Demands set aside with consequential benefits
	PROMAGS: 9 CESTAT APPEALS , 9 OIA, 9 OIO, 5 SCNS AND 4 SOD 'S				

16. The Appeals are disposed of with consequential benefits if any as above.

(Order pronounced in open court on 29.10.2025)

Sd/-	Sd/-
(VASA SESHAGIRI RAO)	**(P. DINESHA)**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

MK