CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. I

Service Tax Appeal No. 40311 of 2016

(Arising out of Order-in-Appeal No. 68/2016(STA-I) dated 20.01.2016 passed by Commissioner of Service Tax (Appeals-I), Newry Towers, 3rd Floor, Plot No. 2054, I Block, II Avenue, Anna Nagar, Chennai – 600 040.)

M/s. Sri Raghavendra Shipping Co. Pvt. Ltd. **...Appellant**
Old No. 170, New No. 32,
Sai Kirpa Building, 1st Floor,
Thambu Chetty Street,
Chennai – 600 001.

Versus

Commissioner of GST and Central Excise **...Respondent**
Chennai Outer Commissionerate,
Newry Towers, 3rd Floor,
Plot No. 2054, I Block, II Avenue,
Anna Nagar,
Chennai – 600 040.

APPEARANCE:

For the Appellant : Mr. N. Viswanathan, Advocate
For the Respondent : Ms. G. Krupa, Authorised Representative

CORAM:
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No.41429/2025

DATE OF HEARING : 26.11.2025
DATE OF DECISION : 05.12.2025

Per Mr. AJAYAN T.V.

Sri Raghavendra Shipping Co. Pvt. Ltd., Chennai (the Appellant herein) is aggrieved by the impugned Order-in-Appeal No. 68/2016(STA-I) dated 20.01.2016 passed by the Commissioner (Appeals-I).

2. Brief facts are that the appellant is registered as a service provider of Custom House Agent (CHA) Service. During the course of audit, the Department noticed that the appellant has collected reimbursable charged such as insurance charges, bond/godown rent, fumigation charges, survey charges, miscellaneous charges, *etc.* from the their clients during the period from 2004-2005 to 2008-2009. The Department was of the opinion that the said charges collected from the clients are to be treated as expenditure or cost incurred by them in the course of providing taxable service and as per Rule 5(1) of the Service Tax (Determination of Value of Service) Rules, 2006, such expenditure or costs shall be treated as consideration for the taxable service and is liable to be include in the gross value for the purpose of charging service tax on the CHA service provided by the Appellant. The appellant was therefore issued with the Show Cause Notice No. 501/2009 dated 19.10.2009.

3. After due process of law, the demand stood confirmed *vide* Order-in-Original No. 27/2011 dated 25.03.2011. Aggrieved by the same, the appellant has preferred an appeal before the Appellate Authority. However, *vide* the impugned Order-in-Appeal No. 68/2016(STA-I) dated 20.01.2016, the appeal was rejected. Hence, this appeal.

4. Shri N. Viswanathan, the Ld. Counsel appearing on behalf of the appellant contended that the appellant had raised appropriate bills separately for rendering his services as CHA and had paid appropriate service tax on the same. However, the

appellant had incurred the aforesaid expenses on behalf of his customers and since payments were made on behalf of the client, the appellant was collecting these reimbursable charges on actual basis by raising separate bills. It is submitted among other things, that the provisions of the Service Tax (Determination of Value of Service) Rules, 2006 invoked was set aside by the Hon'ble Delhi High Court in the decision of *Intercontinental Consultants & Technocrats Pvt Ltd v UOI, 2013 (29) STR 9 (Del),* which has since been upheld by the Hon'ble Supreme Court reported in *2018 (10) GSTL 401 (SC)* and the issue therefore stands settled in the appellant's favor.

5. Ms. G. Krupa, the Ld. Authorized Representative appearing on behalf of the Respondent reiterated the findings in the impugned Order-in-Appeal No. 68/2016(STA-I) dated 20.01.2016.

6. Heard both sides, perused the appeal records and the decisions submitted.

7. We find that the issue of levy of service tax on reimbursable expenses invoking Rule 5(1) of the Service Tax (Determination of Value of Service) Rules, 2006 for the period up to 14.05.2015, is no more *res integra* and has come up for consideration by this very Bench recently in the case of *A.S. Cargo Movers (P) Ltd. Vs. Commissioner of GST and Central Excise [F.O.No. 41333/2025 dated 14.11.2025]*. The relevant portion is reproduced as under: -

"10. We find that the issue on levy of service tax on reimbursable expenses is no more res-integra in view of the decision of the Honourable Supreme Court in the case of UOI v Intercontinental Consultants and Technocrats Pvt Ltd, 2018 (10) GSTL 401 (SC) which has considered the issue of liability to pay service tax on reimbursable expenses received by the service provider in the course of rendering services for the client, apart from the consideration received for rendering the services on which the client has discharged the liability to pay service tax. The Honourable Supreme Court affirmed the decision of the Delhi High Court in Intercontinental Consultants & Technocrats Pvt Ltd v UOI, 2013 (29) STR 9 (Del), wherein Rule 5(1) of the Service Tax Valuation Rules, 2006 which provided for inclusion of expenditures or costs incurred by the service provider in the course of providing taxable services, in the value of such taxable services, was stuck down as ultra vires Section 66 and Section 67 of the Act and as travelling beyond the scope of the said sections. The Honourable Supreme Court had also noticed the nature of reimbursable expenses that arose for consideration in the facts of the case as well as that in connected appeals before it, and has gone on to hold as under:

> *"21. Undoubtedly, Rule 5 of the Rules, 2006 brings within its sweep the expenses which are incurred while rendering the service and are reimbursed, that is, for which the service receiver has made the payments to the assessees. As per these Rules, these reimbursable expenses also form part of 'gross amount charged'. Therefore, the core issue is as to whether Section 67 of the Act permits the subordinate legislation to be enacted in the said manner, as done by Rule 5. As noted above, prior to April 19, 2006, i.e., in the absence of any such Rule, the valuation was to be done as per the provisions of Section 67 of the Act.*
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> *22. Section 66 of the Act is the charging Section which reads as under:*
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> > *"there shall be levy of tax (hereinafter referred to as the service tax) @ 12% of the value of taxable services referred to in sub-clauses of Section 65 and collected in such manner as may be prescribed."*
>
> *23. Obviously, this Section refers to service tax, i.e., in respect of those services which are taxable and specifically*

referred to in various sub-clauses of Section 65. Further, it also specifically mentions that the service tax will be @ 12% of the 'value of taxable services'. Thus, service tax is reference to the value of service. As a necessary corollary, it is the value of the services which are actually rendered, the value whereof is to be ascertained for the purpose of calculating the service tax payable thereupon.

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 1, 2006) or after its amendment, with effect from, May 1, 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 1, 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 byelaw, 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 Limited [(2015) 1 SCC 1] 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-a-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 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."

***11**. In the light of the Honourable Supreme Court's decision reproduced supra, which has been followed by this Tribunal in several other decisions including Balram Shipping Services v. Commissioner of GST and Central Excise, vide Final Order*

No.41233-41234/2025 dated 03.11.2025, Sri Runadasan Freight Services v Commissioner of GST and Central Excise, vide Final Order No.40187/2025 dated 07.02.2025 and M/s. Seher V. Commissioner of Service Tax, Delhi -II, Final Order No.50509/2022 dated 13.06.2022, cited by the appellant, we are of the considered view that the impugned order in appeal cannot be sustained. Given our findings on merits that the issue is settled in the appellant's favour, the contentions on limitation are not examined."

8. Inasmuch as the issue stands settled in appellant's favor as evident from our decisions cited above, we find that that impugned Order-in-Appeal No. 68/2016(STA-I) dated 20.01.2016 cannot sustain and is liable to be set aside. Ordered accordingly.

9. The appeal is allowed with consequential relief(s), if any, in law.

(Order pronounced in open court on 05.12.2025)

(AJAYAN T.V.)
MEMBER (JUDICIAL)

(M. AJIT KUMAR)
MEMBER (TECHNICAL)

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