CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI
REGIONAL BENCH – COURT No. I

Service Tax Appeal Nos. 42310 & 42311 of 2016

(Arising out of order in appeal no. 450/2016 (STA-I), dated 29.07.2016 passed by. Commissioner of Service Tax (Appeals-I), Newry Towers, Anna Nagar, Chennai)

M/s. Balram Shipping Services **.... Appellant**
No.268, Linghi Chetty Street
Chennai 600 001

VERSUS

Commissioner of GST and Central Excise **...Respondent**
26/1, Mahatma Gandhi Road
Nungambakkam, Chennai 600 034

APPEARANCE:

Ms. Radhika Chandrasekhar, Advocate for the Appellant
Ms. Anandalakshmi Ganeshram, Authorised Representative for the Respondent

CORAM:

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

FINAL ORDER Nos.41233-41234/2025

DATE OF HEARING: 28.10.2025
DATE OF DECISION:03.11.2025

Per Mr. AJAYAN T.V.

The appellant has preferred these two appeals, assailing the impugned Order in Appeal No.450/2016 (STA-1) dated 29.07.2016(OIA in short) whereby the appellate authority has allowed the appeal preferred by the Revenue and set aside the Order in Original No.44 and 45/2012 dated 24.04.2012(OIOs in short) of the adjudicating authority, dropping the proceedings initiated in the SCN No.336/2009 dated 28.08.2009 for the period 19.04.2006 to 31.03.2008, and SCN No.429/2009 dated 12.10.2009 for the period 2008-2009, and remitted the matter to the adjudicating authority finding that the correctness of the chartered accountant’s certificates submitted by the appellant herein requires thorough verification.

2. Brief facts are that the appellant is registered with the service tax department for providing Customs House Agent service (CHA). During the course of Audit, it was noticed by the Department that the Appellant apart from collecting service charges for providing CHA service, also collected various charges such as Harbour/CFS dues, IAAI Charges, Loading and unloading, surveyor fees, freight/steamer agent charges and insurance charges, from their clients, in the course of rendering Custom House Agent’s service. It was seen that the appellant had excluded the said charges and did not pay service tax on the same claiming that the said charges being reimbursable expenditure, are not leviable to tax.

3. The Department was of the view that as per section 67(1) of the Act, where the provision of service is for a consideration in money, the taxable value of service is the gross amount charged by the service provider for providing service and according to Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 (Valuation Rules in short), expenditure or cost incurred by the service provider in the course of providing taxable service shall be treated as consideration for the taxable service and is includible in the taxable value. Again, Rule 5(2) of the Valuation Rules provided that the expenditure or costs incurred by the service provider as a” Pure Agent” of the recipient of service is liable to be excluded from the taxable service, subject to the service provider qualifying as a “Pure Agent” by satisfying the conditions specified in explanation 1 to Rule 5(2) of the Valuation Rules.

4. The Department was of the opinion that the appellant has not acted as a "Pure Agent" and since the appellant has not fulfilled the conditions specified in Rule 5(2) of the Valuation Rules read with explanation 1 of the said rules so as to qualify as a pure agent, the above charges collected from the clients are to be treated as expenditure or costs incurred by the appellant in the course of providing taxable service and are liable to be included in the gross value for the purposes of charging service tax on the taxable service rendered by the appellant as per provisions of Section 67 of the Act read with Rule 5(1) of the Valuation Rules. Therefore, alleging contravention of provisions of Section 68 of the Act read with Rule 6 of Service Tax Rules, 1994 for failing to pay appropriate amount of service tax and invoking extended period of limitation on the grounds that the fact of receipt of such charges were not disclosed in the service tax returns or in any other manner and have thus suppressed the fact of receipt of the subject income with intent to evade payment of duty; show cause notice 336/2009 dated 28.08.2009 was issued demanding the aforementioned service tax payable along with appropriate interest as well as proposals to impose penalties. For the subsequent period, without invoking extended period, but on similar charges, SCN No.429/2009 dated 12.10.2009 was issued. Consequent to the replies filed by the appellant, a personal hearing was granted, after which the adjudicating authority issued the impugned Order in Original No.44 and 45/2012 dated 24.04.2012rendering a finding that the appellant had collected the said amounts on actuals without any markup acting only as a pure agent and that the appellant had submitted two certificates issued by a chartered accountant certifying that these were reimbursable expenses billed to their clients on net to net basis without

any markup. The adjudicating authority further placed reliance on the Final Order No.1153-1156/2011 dated 21.10.2011 whereby this Tribunal had dismissed the Departmental appeal filed on a similar issue of reimbursable expenses incurred as a pure agent and rendered a finding that the allegations made in the show cause notice failed and consequently the demands proposed also fail and the question of imposing penalty does not arise. Finding thus, the adjudicating authority dropped all the proceedings initiated under the aforementioned show cause notices. Aggrieved by the said impugned order in original the department preferred an appeal before the Commissioner of Service Tax (Appeals-I), who however, vide the impugned OIA set aside the impugned OIOs of the adjudicating authority, and remitted the matter to the adjudicating authority as aforementioned. Aggrieved and dissatisfied by the impugned OIA, the appellant having preferred the present appeals is thus before this Tribunal.

5. The learned counsel, Ms. Radhika Chandrashekar, appeared and argued for the appellant. The learned counsel submitted that the appellant is in the business of providing service as a CHA and has discharged service tax on the consideration received for providing CHA services. It is submitted that while providing CHA services the appellant has excluded the aforementioned reimbursable charges, while computing the value of taxable income, as these were not part of consideration received for providing services. These expenses are reimbursed by the client on actuals. The appellant did not discharge service tax on the reimbursable expenses as it is not a consideration for any services rendered. The learned counsel submits that only the service charges received as consideration for the

services provided or to be provided would form part of the taxable value for the purposes of service tax and reimbursements are not liable to tax.

6. The learned counsel submits that the Honourable Supreme Court has in the case of UOI v Intercontinental Consultants and Technocrats Pvt Ltd, reported in (2018) TIOL 76-SC-ST : 2018 (10) GSTL 401 (SC), affirmed the decision of the Delhi High Court 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 Ld. Counsel stated that the issue is settled in the appellant's favour by various decisions and submitted the decision in ***UOI v Intercontinental Consultants and Technocrats Pvt Ltd, 2018 (10) GSTL 401 (SC)*** as well as the orders of this Tribunal in ***Sindhu Cargo Services Pvt Ltd v Commissioner of CGST & Service Tax, Chennai North, (2025) 30 Centax 383 (Tri-Mad)*** [02-05-2025].
7. Learned Authorised Representative, Ms. Anandalakshmi Ganeshram appeared for the Department and reiterated the findings in the impugned order in appeal.
8. We have heard both sides, perused the appeal records and the case laws provided as relied upon.
9. 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."*
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> ***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.*
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> *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.*
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> *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."*

10. In the light of the Honourable Supreme Court's decision reproduced supra, which has been followed by this Tribunal in several other decisions including ***Sindhu Cargo Services Pvt Ltd v Commissioner of CGST & Service Tax, Chennai North, (2025) 30 Centax 383 (Tri-Mad)***,

cited by the appellant, we are of the considered view that the impugned order in appeal cannot sustain.

11. In view of the foregoing facts borne out from the records and the discussions and findings stated above, we find that the appellant succeeds in its Appeals and the impugned Order in Appeal No.450/2016 (STA-1) dated 29.07.2016 is set aside.

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

(Order pronounced in open court on 03.11.2025)

(AJAYAN T.V.)
MEMBER (JUDICIAL)

(M.AJIT KUMAR)
MEMBER (TECHNICAL)

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