IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 41993 of 2015

(Arising out of Order-in-Appeal No. 96/2015 (STA-II) dated 01.04.2015 passed by the Commissioner of Service Tax (Appeals-II), Chennai)

Translanka Air Travels (P) Ltd., **...Appellant**
No.4, Vijaya Towers, Kodambakkam High Road,
Nungambakkam, Chennai 600 034

Versus

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

APPEARANCE:

For the Appellant : Ms. Radhika Chandra Sekhar, Advocate
For the Respondent : Shri. M. Selvakumar, Authorised Representative

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

FINAL ORDER No.40174/2026

DATE OF HEARING: 25.09.2025
DATE OF DECISION: 03.02.2026

Per AJAYAN T.V.

Translanka Air Travels (P) Ltd., the appellant herein, is aggrieved by the Order-in-Appeal No. 96/2015 (STA-II) dated 01.04.2015 whereby, the appellate authority has rejected the appeal and has upheld the order-in-original no. 127/2011 dated 31.10.2011 of the adjudicating authority demanding service tax on the services of 'Manpower recruitment and supply agency service" stated to have been rendered by the appellant, along with appropriate interest and imposing equivalent penalty under section 78 of the Finance Act, 1994.

2. Brief facts are that the appellant is registered as a service provider of Airport Service. During Audit, it was noticed that as per the

agreement dated 10.12.2003 entered into by the Appellant with Sri Lankan Airlines Private Limited (SAPL), the Appellant provided manpower (staff) to SAPL and had received consideration for the same. The Appellant had classified the same under 'Airport Service' and paid service tax after availing abatement. The Department being of the view that the activity of the appellant was classifiable under 'Manpower Recruitment and Supply Service vide Section 65(68) of the Finance Act and that service tax was payable on the full taxable value issued a Show Cause Notice dated 21.04.2010 demanding service tax of Rs.6,60,631/- along with applicable interest, invoking extended period of limitation and proposing imposition of penalties.

3. After due process of law, the adjudicating authority by the order-in-original no. 127/2011 dated 31.10.2011 confirmed the demand of service tax along with appropriate interest and imposed equivalent penalty under section 78 of the Act. Aggrieved by the same, the appellant preferred an appeal before the appellate authority. However, vide the impugned order in appeal, the appellate authority has rejected the appeal and upheld the order in the original. In the aforesaid background, this appeal arises for our consideration.

4. Ms. Radhika Chandra Sekhar, Advocate, appeared on behalf of the appellant and submitted that the Appellant is a General Sales Agency (GSA) for SAPL and is registered with the Department under the category of Air Travel Agent Service and 'Airport Services'. Ld. Counsel contended that in terms of the agreement entered into with SAPL the appellant had to recruit staff in various categories as per the requirement of the SAPL for which a fixed amount per employee was paid on which the Appellant had discharged service tax. Apart from the said consideration in terms of the Agreement, SAPL reimbursed salary, conveyance, house rent allowance, provident fund etc payable to the staff which was being so reimbursed without any markup It was further submitted that the SCN had proposed to levy service tax on the expenses conceded as reimbursable expenses by referring to Section 67 of the Finance Act, 1994 for the period prior to 18-04-2006 and Rule 5 of the Service Tax (Determination of

Value) Rules, 2006 for the period post 18-04-2006. The Adjudicating Authority has held that these charges ought to have been assessed to service tax liability as the gross value of receipts in terms of Section 67 of the Finance Act, 1994 read with Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 and in the impugned order the Appellate authority has also held that these expenses are includible in the taxable value. It is further submitted that the appellate authority has also not controverted their submissions on inapplicability of extended period of limitation. Ld. Counsel submits that the issue as to whether reimbursable expenses are liable to be taxed or not is settled by the decision of the Supreme Court in the case of ***UOI v. Intercontinental Consultants and Technocrats Pvt Ltd, (2018) TIOL-76-SC-ST*** wherein the Supreme Court has affirmed the decision of the Delhi High Court wherein Rule 5(1) of the Valuation Rules, 2006 was struck down which provides for inclusion of expenditure or costs incurred by the service provider in the course of providing taxable service on the ground that it is ultra vires Section 66 and 67 and travel beyond the scope of the said sections. Ld. Counsel further contends that the Trade Notice No.53-CE (ST)/97 dated 04-07-1997 continued to hold the field during the relevant period and which had clarified that expenses incurred on behalf of the client are excludable when reimbursed on actual basis. Ld. Counsel further argued that none of the ingredients incurred for invoking the extended period is present and furnishing details of various SCNs issued by the Department for the same period. Reliance was also placed on the decision in ***Paro Food Products v CCE (2005), 184 ELT 50*** to contend that all grounds possible should be taken by the Department in initiating one proceeding and that after conclusion of a proceeding for the same period the Department cannot issue SCN on another ground as then there would be no end to proceedings against a party, which would be against public policy.

5. Shri. M. Selvakumar, Learned A.R, appearing for the respondent, reiterated the findings of the appellate authority.

6. Heard the rival submissions, perused the appeal records as well as the case laws submitted as relied upon.

7. The solitary question which arises for our consideration is whether the expenses reimbursed by SAPL to the appellant are to be included in the gross value as per Section 67 of the Finance Act, and the consequent demand of service tax along with appropriate interest and imposing of penalty under section 78 of the Finance Act, 1994, is tenable.

8. Concededly the SCN itself characterises the expenses as that being reimbursed by SAPL to the Appellant and the allegation is that as per Section 67 read with Rule 5 of the Service Tax (Determination of Value) Rules, 2006, service tax is liable to be paid on the gross amount charged for the taxable service provided. We also find, as rightly contended by the appellant, that the appellate authority has also essentially upheld the order of the Adjudicating Authority that has confirmed the demand invoking Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006.

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. Therefore, when the very basis of the demand in the SCN issued in this case, as well as its confirmation was premised on Rule 5 of the Service Tax Valuation Rules ibid, which has been found by the Hon'ble Supreme Court to be much beyond the mandate of Section 67, we have no hesitation in holding the demand of service tax in this case is untenable and that the impugned order is liable to be set aside.

10. That apart, we also find merit in the appellant's contention that the CBEC Circular No.B/43/5/97-TRU dated 02-07-1997 had clarified that the amount incurred by the manpower recruitment agency on behalf of the client towards expenses, which are reimbursed on actual basis, shall be excluded from the value of taxable service, as has also the Trade Notice No.53-CE (Service Tax)/97 dated 04-07-1997 that was prevalent during the disputed period and that therefore malafide cannot be attributed to the appellant. It is also seen that the appellant's contention that the appellant had been issued multiple SCNs earlier demanding service tax on various counts, all of which show cause notices stood adjudicated subsequently, and that therefore the Department could not have alleged suppression has been negated by the Appellate Authority holding that the issue involved herein is different from that raised in the earlier SCNs. The Appellant has contended that the said finding is in the teeth of what has been held by this Tribunal ***in Paro Food Products v CCE, Hyderabad, 2005 (184) ELT 50 (Tri-Bang)***, wherein it has been held that all grounds possible should be taken by Department when initiating the proceeding. We find that in the said decision in Paro Food Products, a coordinate bench has held thus, "Another important point should be borne-in-mind by the Revenue. It is possible that show cause notice for demand can be issued on several grounds say A, B, C, etc. When proceedings are initiated, the Revenue should take into account all the grounds. They cannot issue show cause notice on one ground, A. conclude the proceedings and latter cannot issue another show cause notice on another ground, B. for the same period and so on. If this is allowed, then there would not be an end to the number of proceedings against a party. This is definitely

against the public policy. In this connection we would like to recall maxim - ***"Res judicata pro ventate accipitar*** - *A matter adjudged is taken for truth. A matter decided or passed upon by a court of competent jurisdiction is received as evidence of truth". - (Black's law Dictionary)*." We find the reliance placed by the appellant on the said decision to be apposite. In any event, there is no evidence of any positive act of wilful suppression or misstatement of facts with intent to evade payment of duty let in in the show cause notice. We therefore hold that the Department has erred in invoking the extended period of limitation and the demand to that extent is, in any event, decidedly untenable. Given that we have found that the demand of service tax is unsustainable, resultantly the demand of consequential interest as well as the imposition of penalty under Section 78 is also held as untenable.

11. In view of the discussions and reasons above, we hold that the impugned Order-in-Appeal No. 96/2015 (STA-II) dated 01.04.2015 cannot sustain and is liable to be set aside. Ordered accordingly. The appeal is allowed with consequential reliefs in law, if any.

(Order dictated and pronounced on 03.02.2026)

(AJAYAN T.V.)	**(M. AJIT KUMAR)**
Member (Judicial)	Member (Technical)

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