CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. I

Service Tax Appeal Nos. 40795 - 40796 of 2014

(Arising out of Order in Original Nos 34 & 35 of 2013 dated 29-03-2013 passed by the Commissioner of Service Tax, Chennai)

M/s. Sanmar Shipping, **.... Appellant**
No.9, Cathedral Road,
Chennai-600 086.

VERSUS

Commissioner of GST and Central Excise **...Respondent**
Chennai South Commissionerate
MHU Complex, No.692, Anna Salai,
Nandanam, Chennai-600 035.

Service Tax Appeal No. 42337 of 2016

(Arising out of Order in Appeal No.151/2016 (STA-II), dated 30.08.2016 passed by the Commissioner of Service Tax, Chennai)

M/s. Sanmar Shipping, **.... Appellant**
No.9, Cathedral Road,
Chennai-600 086.

VERSUS

Commissioner of GST and Central Excise **...Respondent**
Chennai South Commissionerate
MHU Complex, No.692, Anna Salai,
Nandanam, Chennai-600 035.

APPEARANCE:

Ms. Radhika Chandrasekhar, Advocate for the Appellant
Shri. M. Selvakumar, 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. 40321-40323/2026

DATE OF HEARING: 14.10.2025
DATE OF DECISION: 04.03.2026

Per AJAYAN T.V.

These appeals involving common issues, were heard together and are disposed of by this common order.

2. In Appeals ST/40795-40796/2014, Sanmar Shipping Limited, the Appellant herein, has called into question the Order in Original Nos. 34 & 35 of 2013 dated 29-03-2013 and in Appeal

ST/42337/16 the said Appellant has challenged the Order in Appeal No 151/2016 (STA-II) dated 30.08.2016 (hereinafter referred to collectively as impugned orders). By the Order in Original Nos. 34 & 35 of 2013 dated 29-03-2013 the Adjudicating Authority has confirmed the demand of service tax of Rs 2,38,03,876/- payable during the period from 18-04-2006 to 31-12-2010 along with applicable interest, under proviso to Section 73(1) of the Finance Act, 1994 (Act), as well as the demand of service tax of Rs 48,90,117/- for the period from 01-01-2011 to 31-03-2012 along with applicable interest under Section 73(1) of the Act. The said order appropriated an amount of Rs 70,217/- paid by the Appellant towards the demand for the period from 18-04-2006 to 31-12-2010. A penalty equivalent to the demand of Rs 2,38,03,876/- was imposed under section 78 of the Act along with applicable penalties under section 76 and a penalty of Rs 5,000 under section 77 (2) of the Act. By the Order in Appeal No. 151/2016 (STA-II) dated 30.08.2016, the Appellate Authority has upheld the Order in Original No.176/2015-16-ST-II dated 31.03.2016 of the Adjudicating Authority, except for setting aside the penalty imposed under section 77 of the Act. By the Order in Original dated 31.03.2016, the Adjudicating Authority had inter-alia, confirmed the demand of service tax of Rs.7,58,373/- along with applicable interest under section 73(1) of the Act and imposed a penalty of Rs.75,000/- under Section 76 of the Act.

3. The brief facts are that the Appellant is registered as a provider of supply of tangible goods service and for transportation through national waterways and inland water. The Appellant is also stated to be importing services of Consulting Engineers, Business Auxiliary Service, etc. During the course of Audit, it was noticed that the Appellant owns ships which are given for hire, an activity also known as 'chartering of ships'. It was also noticed that the Appellant has paid commission amount to foreign agents who are not having any permanent establishment in India for canvassing voyage for ships. It was further noticed that the Appellant has paid Protection and Indemnity Fees, to P & I Clubs, located outside India for covering third party liabilities. The Department was of the

opinion that the commission amount paid to the foreign agents was paid for providing the business to the Appellant and hence classifiable under Business Auxiliary Service (BAS). The services received by the Appellant from the P & I Clubs located abroad, in the opinion of the Department, was a taxable service being provided by an insurer, including a re-insurer carrying on general insurance business, in relation to general insurance business as per section 65 (105) (d) read with section 65 (58) of the Act. Since both these services were being received from service providers situated abroad, the Department was of the view that these services fall under category (iii) Rule 3 of Taxation of Services (provided from Outside India and Received in India) Rules, 2006 and therefore, the Appellant as a receiver of service is liable to pay the service tax on reverse charge basis in terms of section 66 A of the Finance Act, read with Rule 2 (1) (d) (iv), of Service Tax Rules 1994. It was also noticed that the Appellant was paying service tax on freight charges relating to ships sailing on national waterways and in some cases, the Appellant has paid commission to the brokers who arrange for the freight, such commission is not paid directly by the Appellant to the broker, but paid by the service recipient on behalf of the Appellant, it was further noticed that instead of taking the gross amount, the Appellant, without including the commission amount paid to the broker, has taken the net amount as taxable value and discharged service tax. The Department was therefore of the opinion that as per Rule 5 (1) of the Service Tax Determination of Value Rules 2006, the Appellant was required to include all expenditure as consideration for the taxable service provided and taken as the value for the purpose of charging service tax. On being pointed out, the Appellant paid an amount of Rs.70,217/- and contested the remaining amount on the ground that the expenses were related to address commission and not brokers commission. The Department therefore issued a show cause notice as well as the subsequent statements of demand, proposing to levy service tax on the commission paid to the broker under business auxiliary services and the protection and indemnity fee paid to the P&I Clubs under general insurance services and also demanded service tax for the short payment by non-inclusion of all the expenses incurred while paying service tax on freight charges related to ships sailing on national waterways. After due process of law, the respective adjudicating authorities passed the orders in original confirming the demands and imposing penalties as stated above, with the Order in Original dated 31.03.2016 being upheld by the Appellate Authority as stated above. Aggrieved, the Appellant has preferred these appeals.

4. Ms. Radhika Chandrasekhar, learned advocate appearing for the Appellant submitted that the Appellant has discharged service tax wherever applicable when the services are rendered within India. When the ships operate in the international waters on being given on hire by entering into contracts with the charterers, the ships are booked by foreign parties located outside India. Such foreign customers for voyage are identified by brokers who are outside India and the Appellant pays commission to the broker for canvassing voyage for ships. The Appellant has also made payment towards protection and indemnity fee to Protection and Indemnity (P & I) Clubs which are outside India. The Ld. Counsel states that P & I Club is a mutual insurance association that provides risk pooling, information and representation for its members. The cover includes, a carrier's third-party risks, for damage caused to cargo during carriage, war risks and risks of environmental damage such as oil spills and pollution. It is further submitted that the Appellant has incurred both the expenses in convertible foreign exchange. The Appellant did not discharge service tax with respect to the payments made to the broker outside India as well as to the P & I Club, as the entire activity is taking place outside India.

5. Ld. Counsel contends that the demand of service tax under BAS with respect to the commission paid to the ship brokers is not sustainable as the brokers do not act on behalf of either the ship owner or the charterer and they are only intermediaries for negotiations between the ship owners and charterers who require a particular type of ship. Reliance was placed on the decision in

Inter-Ocean Shipping Company versus CST, 2013 (30) STR 244, affirmed as reported in ***2015 (40) STR 210 (SC)***. It is further submitted that the show cause notice does not specify any specific clause of business auxiliary service under which the demand is proposed. Since, there are 7 clauses mentioned in section 65 (19), the definition of BAS, the demand of service tax under Rule 3 (iii) of Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 and section 66A of Finance Act, without specifying the sub clause under which the activity falls, renders the demand renders the demand unsustainable. Reliance in this regard is placed on the decisions in ***Balaji Enterprises versus C. Ex, & ST (2020) 33 GSTL 97, Reynolds Petrochem Limited versus Commissioner of C. Ex & ST (2023) 68 GSTL 292***.

6. As regards the demand of service tax under general insurance services with respect to the payments made to P & I Clubs. The Ld. Counsel submits that the P & I Clubs are mutual insurance associations that provide for pooling of risks, information and representation to its members. The Appellant is a member of the association. The members share the expenses necessary for mutual protection and all manner of risks and thus P & I Clubs work on the basis of mutuality. Unlike marine insurance, where the assured pays as premium to an insurance service provider for a particular time, say, a year, or a particular voyage, a P & I Club member instead pays a 'call'. This is a sum of money that is put into the club's pool, a kind of 'kitty'. If, at the end of the year, there are still funds in the pool, each member will pay a reduced call the following year. However, if the club has made a payout, club members will immediately have to pay a further call to replenish the pool. The Ld. Counsel points out that the show cause notices and statements of demand proposed to demand service tax under general insurance services with respect to the payments made in foreign currency to P & I Clubs situated outside India to cover third party liabilities. The impugned orders have upheld the demand on the ground that there is no dispute on the fact that the P & I Clubs are insurers who provide marine insurance cover in

respect of third-party liabilities. Therefore P & I Clubs are covered under the term 'Insurer' and the service is covered under the term 'General Insurance Business'. The Order in Original dated 29-03-2013 has also observed that vide Finance Act 2006 the words 'in India' contained in section 65 (58) of the act were removed with effect from 1-5-2006 and therefore, services provided by insurance agencies located abroad the service recipients in India, is covered. The Ld. Counsel argued that protection and indemnity paid to P & I Clubs cannot be considered as falling under the definition of general insurance business. In fact, they do not fall under the definition of insurer. When the classification itself is wrong, the question of liability does not arise. It was further argued that since the vessels are outside India and the payment made to P & I Clubs are also with respect to the services rendered outside India, the entire activity having taken place outside India, there cannot be a liability of service tax

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7. Without prejudice to the said contentions Ld. Counsel further submits that the appropriate head of classification would be 'Club and Association Services', even under which, there cannot be a liability as services are rendered only to members. Reliance is placed on the decision in ***State of West Bengal versus Calcutta Club Limited, (2019) 29 GSTL 545 (SC)*** wherein it has been held that in view of mutuality there is no service by a club to its members. It was also submitted that as per the principles of classification as is set out in section 65 A of the Finance Act, the specific description would prevail over general description. Reliance was placed on the decision ***Dr. Lal Path Lab Private Limited versus Commissioner of C. Ex, Ludhiana, (2006) 4 STR 527 affirmed by the High Court of Punjab and Haryana reported in (2007) 8 STR 337 (P & H)***. Reliance was also placed on the decision in the case of ***Bharat Petroleum Corporation,*** where the Mumbai bench of the tribunal ***vide Final Order No. A/85645/2020 dated 23-07-2020*** has held that there cannot be demand of service tax under BAS with respect to the commission paid to agents for handling vessels outside India as well as for out-charter of vessels. As regards the contested

demand on address commission, the Ld. Counsel argues at the Bar that the SCN has invoked Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 to treat such expenditure as consideration and since the said Rule has been struck down as ultravires Section 66 & 67 of the Act by the Delhi High Court in the Intercontinental Consultant's case since affirmed by the Apex Court, the demand is untenable.

8. Ld. Counsel further argued that the extended period could not be invoked as there is no suppression and all the details have been taken from the Appellant's books of accounts. The Appellant was also under bona fide belief as to non-applicability of service tax with respect to the commission paid to brokers and the payments made to P&I Club since the entire activity takes place outside India. It was also contended that the issues are on questions of interpretation and therefore extended period of limitation is not invokable. Ld. Counsel also submitted that the entire issue is revenue neutral since even if there is a service tax liability, the service tax paid would be available for the Appellant to be taken as Cenvat credit and hence the Appellant cannot be said to be achieving any benefit by suppressing any facts. It was also submitted that benefit of Section 80 of the Finance Act ought to be extended as the issue involved is of interpretation of the taxability of services provided from outside of India. Ld. Counsel prays that the appeal may be allowed.

9. Shri. M. Selvakumar, Ld. Authorized Representative appearing for the respondent reiterated the findings of the adjudicating authority in the impugned order. It was contended that in the instant case the Appellant has not declared the income from the said services in the prescribed returns and there is no reasonable cause for nonpayment of service tax. Therefore, the appellant is not entitled to exemption of penalty. It was also argued that as per Rule 3 (iii) of the Taxation of Services (provided from outside India received from inside India) Rules 2006, the services falling under the category of BAS are considered as import of service if the said service is received by a recipient located in India and only

the location of the recipient of service is considered and not the place of performance of services. In the instant case, the services received by the Appellant were used in relation to their business and the services were received by the Appellant in India and therefore constitute import of services. It was argued that consequent to the introduction of the Finance Act 2006, the words 'in India' contained in section 65 (58) of the Finance Act were removed with effect from 1-5-2006 and substituted with the words 'and includes a reinsurer'. The above amendment has been made apparently to cover the services provided by insurance agencies located abroad for service recipients in India. Since the P&I Clubs are located abroad and the Appellant receives the services for its business in India service tax is to be paid on reverse charge basis and has been rightly confirmed.

10. Ld. AR contended that the Appellant did not pay the service tax dues on the due dates and have also failed to show the details of value of services received by them under the said categories of service. There is no reasonable cause for the said failures and therefore the penalties have been rightly imposed and they cannot be granted the benefit of exemption from penalty under section 80 of the act.

11. We have heard the rival submissions, carefully perused the appeal records and the citations submitted.

12. The issues that arise for our determination are:

a) Whether the demand of service tax confirmed on the commission paid to the brokers for their activities of canvassing voyage for ships under Business Auxiliary Services is sustainable.
b) Whether the demand of service tax on the payments made by the appellant to P & I clubs under General Insurance Services is correct.
c) Whether the contested demand, premised on the allegation that the appellant had adopted the net amount instead of the gross amount and had eschewed adding the expenditure

incurred, and sought to be demanded by invoking Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006, to the extend it is contested by the appellant stating it to be address commission, is tenable.

d) Whether the appellant's contention that extended period of limitation could not have been invoked in the given facts and circumstances is correct.

13. The demand of service tax on the commission paid to the brokers for their activities of canvassing voyage for ships has been confirmed by the Ld. Adjudicating Authority on the finding that the Appellant's contention that the commission relates to services which are rendered outside India and that the services were not received in India is unacceptable as import of service as per Rule 3(iii) of the Taxation of Services (Provided from outside India and Received in India) Rules, 2006 effective from 19.04.2006 read with Section 66A effective from 18-04-2006, the services falling under the category of Business Auxiliary Service are considered as Import of Service if the said service is received by a recipient located in India.

14. It is the contention of the Appellant that the SCN ought to have pointed out the specific clause out of the seven clauses mentioned in Section 65(19) of the definition of Business Auxiliary Services under which the specific activity and the nature of service that is liable to be taxed is covered. Reliance is placed on the decisions in ***Balaji Enterprises versus C. Ex, & ST (2020) 33 GSTL 97,*** and ***Reynolds Petrochem Limited versus Commissioner of C. Ex & ST (2023) 68 GSTL 292*** in this regard.

15. We find that in the SCN No.521/2011 dated 19.10.2011 the relevant paras where the allegation in respect of the demand of service tax on the commission amount paid by the appellant is in para 4.0 and 4.1 as under:

> "4.0 On verification of the records, it was noticed that for the period 2006-07 to 2010-2011 (up to December 2010) the assessee paid commission amount for booking of voyages to foreign agents

who are not having any permanent establishment in India. It appears from the nature of transaction that the above commission amount was paid for providing the business to the assessee and hence classifiable under Business Auxiliary Service. As the assessee are located in India and received the service for performance of their business, they, as a receiver of service are liable to service tax on reverse charge basis in terms of Section 66A of the Finance Act, 1994 read with Rule 2(1)(d)(iv) of Service Tax Rules, 1994.

4.1 The assessee has however contended that their ships/vessels operate in international waters and the vessels are booked by foreign parties located outside India; that the foreign customers for voyage are identified by foreign agents who are paid commission. Since the commission pertains to services which are completely provided outside India, it cannot be considered as services provided from outside India and received in India for the purpose of service tax under reverse charge mechanism. The above stand of the assessee appears to be not correct. In as much as the assessee have availed the services of foreign agents to promote their business and have paid commission towards this end. As the above service is falling under category (iii) of Rule 3 of Taxation of Services (provided from outside India and Received in India) Rules, 2006, it appears that the assessee are liable to pay service tax as a receiver of service under Section 66A of the Service Tax Act, 1994. Consequently the assessee are liable to pay service tax of Rs.1,08,54,261/- as detailed in the Annexure I enclosed."

16. We find that the Ld. Adjudicating Authority also, despite recording the contentions raised on behalf of the appellant during personal hearing, namely, that the Department has not classified under which service their activity falls under Rule 3(iii) of Taxation of Service Rules and that in the absence of specific category of service, the demand of service tax is not justified; has not only not indicate under which sub-clause of the various sub-clauses of the definition of Business Auxiliary Service they are covered, but also has not even stated the applicable section defining the said service and also as to what would constitute taxable service of Business Auxiliary Service as per the Finance Act, 1994.

17. We notice that the Finance Act, 1994 under Section 65(19), during the relevant period, defined "business auxiliary service" as under:

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

18. Further, Section 65(105) (zzb) provided that the taxable service means any service provided or to be provided to a client by any person in relation to business auxiliary service.

19. Furthermore, Rule 3 of the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006, is as under:

> "3. Taxable services provided from outside India and received in India. — Subject to section 66A of the Act, the taxable services provided from outside India and received in India shall, in relation to taxable services, —

(i) specified in sub-clauses (d), (p), (q), (v), (zzq), (zzza), (zzzb), (zzzc), (zzzh) and (zzzr) of clause (105) of section 65 of the Act, be such services as are provided or to be provided in relation to an immovable property situated in India;

(ii) specified in sub-clauses (a), (f), (h), (i), (j), (l), (m), (n), (o), (s), (t), (u), (w), (x), (y), (z), (zb), (zc), (zi), (zj), (zn), (zo), (zq), (zr), (zt), (zu), (zv), (zw), (zza), (zzc), (zzd), (zzf), (zzg), (zzh), (zzi), (zzl), (zzm), (zzn), (zzo), (zzp), (zzs), (zzt), (zzv), (zzw), (zzx), (zzy), (zzzd), (zzze), (zzzf), and (zzzp) of clause (105) of section 65 of the Act, be such services as are performed in India :

Provided that where such taxable service is partly performed in India, it shall be treated as performed in India and the value of such taxable service shall be determined under section 67 of the Act and the rules made thereunder;

(iii) specified in clause (105) of section 65 of the Act, but excluding, —

(a) sub-clauses (zzzo) and (zzzv);

(b) those specified in clause (i) of this rule except when the provision of taxable services specified in clauses (d), (zzzc), and (zzzr) does not relate to immovable property; and

(c) those specified in clause (ii) of this rule,

be such services as are received by a recipient located in India for use in relation to business or commerce

20. It is thus seen that the SCN has not put the Appellant to notice as to the applicable definition of Business Auxiliary Service as provided in Section 65(19) of the Finance Act, 1994. The SCN has also not indicated under which sub-clause of the various sub-clauses of the definition of Business Auxiliary Service the service provided to the Appellant is covered. In fact, the SCN has not even taken care to put the Appellant to notice as to what would constitute taxable service of Business Auxiliary Service under section 65(105)(zzb) of the Finance Act, 1994. The Appellant has also not therefore been put to notice as to under which service their activity falls under Rule 3(iii) of the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 that has been invoked in the SCN.

21. It is a settled position in law that the show cause notice is the foundation in the matter of levy of duty, penalty and interest and if the SCN lacks the fundamental details and has not put the assessee to notice on the relevant applicable statutory provisions, the assessee would have no opportunity to meet the charges of the Department effectively. The decisions of the Apex Court in ***CCE Nagpur v Ballarpur Industries, 2007 (215) ELT 489 (SC), CCE v Gas Authority of India Ltd, 2008 (232) ELT 7 (SC) and CCE v H.M.M. Ltd, 1995 (76) ELT 497 (SC)*** refer in this regard. Such non remediable defects vitiate the notice as well as the consequent proceedings. We also find that the reliance placed by the Appellant on the decisions in ***Balaji Enterprises versus C. Ex, & ST (2020) 33 GSTL 97,*** and ***Reynolds Petrochem Limited versus Commissioner of C. Ex & ST (2023) 68 GSTL 292*** apposite in this regard. We notice that the Principal Bench of this Tribunal, at New Delhi, in the decision in ***Balaji Enterprises versus C. Ex, & ST (2020) 33 GSTL 97,*** after noticing the earlier decisions of this Tribunal in *Commissioner of Customs & Central Excise, Goa* v. *Swapnil Asnodkar* [2018 (10) G..S.T.L. 479 (Tri. - Mumbai)] and *United Telecoms Ltd.* v. *Commissioner of Service Tax, Hyderabad* [2011 (22) S.T.R. 571 (Tri. - Bang.), observed in para 24 as under:

> "**24.** The aforesaid two decisions of the Tribunal clearly hold that it is imperative for the Department to specify which specific service contained in the seven clauses of Section 65(19) of the Act is being provided and in the absence of any specific service pointed out in show cause notice, the demand cannot be confirmed as the noticee will not be aware as to which precise service contained in the sub-clause has been rendered by him."

22. The Principal Bench, after noting the contentions of the Authorised Representative and distinguishing the citations relied on, thereafter, went on to hold as under:

> "**29.** The impugned order, therefore, can be set aside only on this ground as the show cause notice does not mention which service out of the seven services specified in Section 65(19) of the Act was undertaken by the Appellant."

23. That apart, we also notice that while the SCN dated 19.10.2011 alleges that the appellant has availed the services of foreign agents to promote their business and have paid commission towards this end, the findings of the Ld. Adjudicating Authority in the impugned orders are that the Appellant has received the services of commission agents. Apart from the said dichotomy between the allegation in the SCN and the findings, it is also pertinent that neither the SCN nor the impugned order places any reliance on any other evidence to substantiate the findings that the appellant has received the alleged services of Business Auxiliary Services. The impugned orders also do not detail the manner in which the alleged services received by the Appellant would satisfy the requirement to come within the ambit of Section 65(105)(zzb). For the aforesaid reasons, we are of the firm opinion that the findings in the impugned orders on this count are unsustainable and are liable to be set aside.

24. The next issue for consideration is the demand of service tax on the payments made by the appellant to P & I clubs under General Insurance Services.

25. The Ld. Counsel had laid emphasis on the fact that the P & I Clubs are mutual insurance associations that provide for pooling of risks, information and representation to its members. The Appellant is a member of the association. The members share the expenses necessary for mutual protection and all manner of risks and thus P & I Clubs work on the basis of mutuality. It was submitted that unlike marine insurance, where the assured pays as premium to an insurance service provider for a particular time, say, a year, or a particular voyage, a P & I Club member instead pays a 'call'. This is a sum of money that is put into the club's pool, a kind of 'kitty'. If, at the end of the year, there are still funds in the pool, each member will pay a reduced call the following year. However, if the club has made a payout, club members will immediately have to pay a further call to replenish the pool.

26. It is seen that the show cause notice does acknowledge that Protection and Indemnity insurance commonly known as P & I, is

a form of marine insurance provided by a P & I Club which is a mutual insurance association that provides cover for its members mainly ship-owners, ship-operators and demise charterers. It also states that while marine insurers provide cover for known quantifiable risks mainly Hull & Machinery insurance for ship-owners, P & I clubs provide insurance cover for broader indeterminate risks, such as third party liabilities. The notice then proposes to demand service tax under general insurance services with respect to the payments made in foreign currency to P & I Clubs situated outside India to cover third party liabilities. The impugned order dated 29-03-2013 has upheld the demand on the ground that there is no dispute on the fact that the P & I Clubs are insurers who provide marine insurance cover in respect of third-party liabilities. Therefore P & I Clubs are covered under the term 'Insurer' and the service is covered under the term 'General Insurance Business'. The impugned order dated 29-03-2013 has also observed that vide Finance Act 2006 the words 'in India' contained in section 65 (58) of the act were removed with effect from 1-5-2006 and therefore, services provided by insurance agencies located abroad the service recipients in India, is covered. It is the contention of the Ld. Counsel for the appellant that protection and indemnity paid to P & I Clubs cannot be considered as falling under the definition of general insurance business and the classification of P & I club as insurer itself is wrong, as the nature of the club itself indicates that it is premised on mutuality qua its members and if at all, the classification apt would be 'club or association' and not as an 'insurer'. It is therefore contended that the question of liability does not arise.

27. We find that Section 65(25a) and 6525(aa) as was prevailing for the relevant period stipulated that 'club or association' means any person or body of persons providing services, facilities or advantages, primarily to its members for a subscription or any other amount, but does not include, inter-alia, as per stipulations in sub-clause (i) thereof, any body established or constituted by or under any law for the time being in force. Whereas, Section 65(58) defined 'insurer' as 'insurer' means any person carrying on

the general insurance business or life insurance business and includes a re-insurer. We also note that Section 65A(2)(a) of the Finance Act, 1994 stipulates that when for any reason, a taxable service is, prima facie, classifiable under two or more sub-clauses of clause (105) of section 65, the sub-clause which provides the most specific description shall be preferred to sub-clauses providing a more general description. We find that the SCN as well the Ld. Adjudicating Authority in the impugned order dated 29-03-2013 have proceeded on the basis that since the nature of service provided is mainly insurance oriented, the service would fall under General Insurance Business. However, the Department has not made out a case that these P & I clubs are rendering such insurance cover to all and sundry, which an insurer as defined in Section 65(58) would perfectly well provide. In fact, it is seen that the Ld. Appellate Authority has in the impugned OIA dated 30-08-2016, in order to hold that the P & I clubs are 'insurers', noted the claim of the International Group of Protection & Indemnity Clubs itself, namely, that " *Each Group Club is an independent, <u>non-profit making mutual insurance association</u>, providing cover for its shipowner and charterer members against third party liabilities relating to the use and operation of ships. Each club is controlled by its members through a board of directors, or committee, elected from the membership.*" It was therefore incumbent upon the authorities below to have examined whether or not there did exist a service provider and service receiver relationship between the P & I club and its members given the conceded position that their relationship inter se is based on mutuality without any profit motive. Therefore, to our mind, the adjudicating authorities as well as the appellate authority have erred in proceeding to determine the taxability of the service rendered without examining whether or not the relationship between the P & I club and its members premised on mutuality would have a bearing on the exigibility of the services provided to service tax, particularly when the services are conceded as being rendered to its members.

28. We are therefore of the considered view that given the fact that the SCN itself concedes the nature of P & I Club which is a mutual insurance association that provides cover for its members, we find that the more specific description under which such a P & I club merits classification would be under Section 65(25)(a)/65(25(aa) for the respective relevant periods and not under Section 65(58) which is more generic as to the type of insurance business carried out. We find that the Appellant has also produced documents such as the Articles of Association of Steamship Mutual Underwriting Association Ltd, Rules and connected certificate of entry and acceptance issued to the Appellant as well as the Articles of Association-UK P & I, the relevant rules and the related certificate of entry and acceptance issued to the Appellant, perusal of which indicates that they detail, inter-alia, the objects of the association, the voting rights being available only to the members, that the funds required to meet all claims, liabilities, costs, expenses and other outgoings are provided by way of contributions to be made by the Members insured etc., thereby evidencing the emphasis on the mutuality principle governing the relationship between these P & I clubs and its members. In such circumstances, we find the reliance placed by the Appellant on the decision in ***State of West Bengal v. Calcutta Club Ltd, 2019 INSC 1111: 2019 (29) G.S.T.L. 545 (S.C.),*** to be appropriate.

29. In the aforesaid decision, the issue of exigibility to service tax, of services rendered by an incorporated club to its members, both prior to 01-07-2012 and post 01-07-2012 after introduction of Section 65B(44) with effect from 01-07-2012 was elucidated in extenso by the Honourable Supreme Court. In this decision, the Apex Court has dealt with the amendments to the Finance Act, 1994 post 01-07-2012, especially noticing the Explanation 3 that had been incorporated in Section 65B(44). The relevant portions are reproduced below:

> "72. The definition of "club or association" contained in Section 65(25a) makes it plain that any person or body of persons providing services for a subscription or any other amount to its members would be within the tax net. However, what is of importance is that any body

"established or constituted" by or under any law for the time being in force, is not included. Shri Dhruv Agarwal laid great emphasis on the judgments in **DALCO Engineering Private Limited v. Satish Prabhakar Padhye and Ors. Etc.** (2010) 4 SCC 378 (in particular paragraphs 10, 14 and 32 thereof) and **CIT, Kanpur and Anr. v. Canara Bank** (2018) 9 SCC 322 (in particular paragraphs 12 and 17 therein), to the effect that a company incorporated under the Companies Act cannot be said to be "established" by that Act. What is missed, however, is the fact that a Company incorporated under the Companies Act or a cooperative society registered as a cooperative society under a State Act can certainly be said to be "constituted" under any law for the time being in force. In R.C. Mitter & Sons, Calcutta v. CIT, West Bengal, Calcutta (1959) Supp. 2 SCR 641, this Court had occasion to construe what is meant by "constituted" under an instrument of partnership, which words occurred in Section 26A of the Income Tax Act, 1922. The Court held:

> "The word "constituted" does not necessarily mean "created" or "set up", though it may mean that also. It also includes the idea of clothing the agreement in a legal form. In the *Oxford English Dictionary*, Vol. II, at pp. 875 & 876, the word "constitute" is said to mean, inter alia, "to set up, establish, found (an institution, etc.)" and also "to give legal or official form or shape to (an assembly, etc.)". Thus the word in its wider significance, would include both, the idea of creating or establishing, and the idea of giving a legal form to, a partnership. The Bench of the Calcutta High Court in the case of *R.C. Mitter and Sons v. CIT* [(1955) 28 ITR 698, 704, 705] under examination now, was not, therefore, right in restricting the word "constitute" to mean only "to create", when clearly it could also mean putting a thing in a legal shape. The Bombay High Court, therefore, in the case of *Dwarkadas Khetan and Co. v. CIT* [(1956) 29 ITR 903, 907] , was right in holding that the section could not be restricted in its application only to a firm which had been created by an instrument of partnership, and that it could reasonably and in conformity with commercial practice, be held to apply to a firm which may have come into existence earlier by an oral agreement, but the terms and conditions of the partnership have subsequently been reduced to the form of a document. If we construe the word "constitute" in the larger sense, as indicated above, the difficulty in which the learned Chief Justice of the Calcutta High Court found himself, would be obviated inasmuch as the section would take in cases both of firms coming into existence by virtue of written documents as also those which may have initially come into existence by oral agreements, but which had subsequently been constituted under written deeds."

73. It is, thus, clear that companies and cooperative societies which are registered under the respective Acts, can certainly be said to be constituted under those Acts. This being the case, we accept the argument on behalf of the Respondents that incorporated clubs or

associations or prior to 1st July, 2012 were not included in the service tax net.

74. The next question that arises is - was any difference made to this position post 1st July, 2012?

75. It can be seen that the definition of "service" contained in Section 65B(44) is very wide, as meaning any activity carried out by a person for another for consideration. "Person" is defined in Section 65B(37) as including, *inter alia*, a company, a society and every artificial juridical person not falling in any of the preceding sub-clauses, as also any association of persons or body of individuals <u>whether incorporated or not</u>.

76. **<u>What has been stated in the present judgment so far as sales tax is concerned applies on all fours to service tax; as, if the doctrine of agency, trust and mutuality is to be applied qua members' clubs, there has to be an activity carried out by one person for another for consideration. We have seen how in the judgment relating to sales tax, the fact is that in members' clubs there is no sale by one person to another for consideration, as one cannot sell something to oneself. This would apply on all fours when we are to construe the definition of "service" under Section 65B(44) as well.</u>**

77. **<u>However, Explanation 3 has now been incorporated, under sub-clause (a) of which unincorporated associations or body of persons and their members are statutorily to be treated as distinct persons.</u>**

78. The explanation to Section 65, which was inserted by the Finance Act of 2006, reads as follows:

"Explanation: For the purposes of this section, taxable service includes any taxable service provided or to be provided by any unincorporated association or body of persons to a member thereof, for cash, deferred payment or any other valuable consideration:"

79. It will be noticed that the aforesaid explanation is in substantially the same terms as Article 366(29-A)(e) of the Constitution of India. Earlier in this judgment qua sales tax, we have already held that the expression "body of persons" will not include an incorporated company,

nor will it include any other form of incorporation including an incorporated co-operative society.

80. **It will be noticed that "club or association" was earlier defined under Section 65(25a) and 65(25aa) to mean "any person" or "body of persons" providing service. In these definitions, the expression "body of persons" cannot possibly include persons who are incorporated entities, as such entities have been expressly excluded under Section 65(25a)(i) and 65(25aa)(i) as "any body established or constituted by or under any law for the time being in force". "Body of persons", therefore, would not, within these definitions, include a body constituted under any law for the time being in force**.

81. When the scheme of service tax changed so as to introduce a negative list for the first-time post 2012, services were now taxable if they were carried out by "one person" for "another person" for consideration. "Person" is very widely defined by Section 65B(37) as including individuals as well as all associations of persons or bodies of individuals, whether incorporated or not. **Explanation 3 to Section 65B(44), instead of using the expression "person" or the expression "an association of persons or bodies of individuals, whether incorporated or not", uses the expression "a body of persons" when juxtaposed with "an unincorporated association".**

82. **We have already seen how the expression "body of persons" occurring in the explanation to Section 65 and occurring in Section 65(25a) and (25aa) does not refer to an incorporated company or an incorporated cooperative society. As the same expression has been used in Explanation 3 post-2012 (as opposed to the wide definition of "person" contained in Section 65B(37)), it may be assumed that the legislature has continued with the pre-2012 scheme of not taxing members' clubs when they are in the incorporated form. The expression "body of persons" may subsume within it persons who come together for a common purpose, but cannot possibly include a company or a registered cooperative society. Thus, Explanation 3(a) to Section 65B(44) does not apply to members' clubs which are incorporated**.

83. The expression "unincorporated associations" would include persons who join together in some common purpose or common action – see **ICT, Bombay North, Kutch and Saurashtra, Ahmedabad v. Indira Balkrishna** (1960) 3 SCR 513 at page 519-520. The expression "as the case may be" would refer to different groups of individuals either bunched together in the form of an association also, or otherwise as a group of persons who come together with some common object in mind. **<u>Whichever way it is looked at, what is important is that the expression "body of persons" cannot possibly include within it bodies corporate</u>**.

84. We are therefore of the view that the Jharkhand High Court and the Gujarat High Court are correct in their view of the law in following Young Men's Indian Association (supra). We are also of the view that from 2005 onwards, the Finance Act of 1994 does not purport to levy service tax on members' clubs in the incorporated form.

85. The appeals of the Revenue are, therefore dismissed. Writ Petition (Civil) No.321 of 2017 is allowed in terms of prayer (i) therein. Consequently, show-cause notices, demand notices and other action taken to levy and collect service tax from incorporated members' clubs are declared to be void and of no effect in law." **<u>(emphasis supplied)</u>**

30. It is thus seen that the Hon'ble Apex Court, in para 80 of the Calcutta club case reproduced above, after noticing that "club or association" was earlier defined under Section 65(25a) and 65(25aa) to mean "any person" or "body of persons" providing service, has gone on to hold that in these definitions, the expression "body of persons" cannot possibly include persons who are incorporated entities, as such entities have been expressly excluded under Section 65(25a)(i) and 65(25aa)(i) as "any body established or constituted by or under any law for the time being in force". The Apex Court has in the said para 80 categorically held that "Body of persons", therefore, would not, within these definitions, include a body constituted under any law for the time being in force.

31. Thereafter, the Apex Court has in para 82 after noticing that the expression "body of persons" occurring in the explanation to

Section 65 and occurring in Section 65(25a) and (25aa) has been used in Explanation 3 post-2012 (as opposed to the wide definition of "person" contained in Section 65B(37)), held that it may be assumed that the legislature has continued with the pre-2012 scheme of not taxing members' clubs when they are in the incorporated form given that the expression 'body of persons', in the earlier definition does not refer to an incorporated company or an incorporated cooperative society.

32. Furthermore, the Apex Court has also held that the expression 'body of person' in the earlier definitions would not include a body constituted under any law for the time being in force, and has granted its imprimatur to the assumption that even post 01-07-2012, the legislature has continued with the pre-2012 scheme of not taxing members' clubs when they are in the incorporated form. We are of the considered view that, on a parity of reasoning, equally the assumption would be contextually available also to a body established by or under any law for the time being in force even post 2012, in as much as such entities had also stood expressly excluded given that the erstwhile Section 65(25a)(i) and 65(25aa)(i) stipulated "any body established or constituted by or under any law for the time being in force".

33. It cannot be that mutuality, premised on the principle that no one can make a profit out of themselves and thus the members' clubs which are incorporated and the members are considered the same, is any different when it comes to the relationship of such a statutory body established by or under any law for the time being in force, and its members when indisputably the members of such P & I club merely share the expenses required for their mutual protection. This too would fortify our view that in the case such as that of the Appellant, it only stands to reason that the aforesaid decision of the Apex Court in Calcutta Club would squarely apply. We are therefore of the considered view that the phrase 'body of persons' does not apply to any body established by or under any law in force so as to attract the application of Explanation 3(a) of Section 65B(44) in the like manner as it has been held in ***State of West Bengal v. Calcutta Club Ltd, 2019 INSC 1111: 2019***

(29) G.S.T.L. 545 (S.C.) that the said Explanation 3(a) does not apply to members' clubs which are incorporated.

34. In any event, as we have observed above, right from the SCN, the fact that the protection was extended by the said P & I clubs on the basis of mutuality is undisputed. Therefore, the finding of the Apex Court as stated in para 79 of the said Judgement of Calcutta Club that the doctrine of mutuality applies on all fours when the definition of "service" under Section 65B(44) is construed, is squarely in the Appellant's favour. We also notice that a coordinate bench of this Tribunal, after taking note of the aforesaid decision of the Apex Court in Calcutta club case, has vide *Final Order Nos.41375-41378/2025 dated 26.11.2025 in the case of M/s. ITC Ltd v. Commissioner of GST & CE, Chennai*, held that services provided by a club or association to its own members remain outside the ambit of service tax, notwithstanding the amendments introduced in the statute. We find the reliance placed by the Appellant on the decisions in ***Indian Medical Association v. UOI, (2025) 29 Centax 232 (Ker)*** and in ***Karnataka Co-operative Milk Producers Federation Ltd v. Commissioner of C.Ex, Bangalore-II, 2022 (61) GSTL 39 (Tri-Bang)*** to bolster its contentions, to be appropriate as they too further fortify the views expressed by us above. For the aforesaid reasons, the findings in the impugned orders that the P & I clubs are providing General Insurance Services to the Appellant and the consequent demand of service tax on the payments made by the appellant in this regard cannot sustain and are liable to be set aside.

35. The third issue is whether the contested demand, premised on the allegation that the appellant had adopted the net amount instead of the gross amount and had eschewed adding the expenditure incurred, and sought to be demanded by invoking Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006, to the extend it is contested by the appellant stating it to be address commission, is tenable. We find that it is no more res integra that a demand premised on Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006, as was prevailing for the

relevant period, is unsustainable for the reason that the Honourable Supreme Court has upheld the findings of the Honourable Delhi High Court striking down the said Rule 5(1) as ultravires Section 66 & 67 of the Act in the Intercontinental Consultant's case. The relevant portions of the Apex Court decision in ***UOI v Intercontinental Consultants and Technocrats Pvt Ltd, 2018 (10) GSTL 401 (SC) ,*** is reproduced below:

> "***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.*
>
> ***22.*** *Section 66 of the Act is the charging Section which reads as under:*
>
> > *"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."*

36. In view of the above decision of the Apex Court, we are of the considered view that the demand of service tax that has been contested by the appellant as address commission, which was demanded invoking Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 and has been confirmed vide the impugned order, is untenable and liable to be set aside.

37. As regards the last issue of whether the invoking of extended period of limitation in the facts and circumstances of this case is tenable, the impugned order finds that the appellant had not provided details of the services received from abroad in its returns which is indicative of wilful suppression of facts with intent to evade payment of duty and that but for the visit of audit it would not have been known. The Appellant on the other hand has contended that all the details have been taken from the Appellant's books of accounts. The Appellant was also under bona fide belief as to non-applicability of service tax with respect to the commission paid to brokers and the payments made to P&I Club since the entire activity takes place outside India. Further, the issue is a question of interpretation and therefore extended period

of limitation is not invokable. It was also contended that the entire issue is revenue neutral since even if there is a service tax liability, the service tax paid would be available for the Appellant to be taken as Cenvat credit and hence the Appellant cannot be said to be achieving any benefit by suppressing any facts.

38. We find that the show cause notice itself has not let in evidence of any positive act of wilful misstatement or suppression of facts with intent to evade payment of duty on the part of the Appellant. It is no more res-integra that it must be alleged in the show cause notice that the service tax has not been paid by reason of fraud, collusion or wilful mis-statement or suppression of fact on the part of the Appellant with intent to evade its payment. Mere non-declaration cannot be said to be wilful withholding of vital information. The appellant's claim of bonafide belief is also not implausible. There is a catena of decisions that hold that in the aforesaid circumstances, extended period of limitation is not invokable. The decisions in ***Continental Foundation Joint Venture v. CCE, 2007 (216) ELT 177, CCE v. HMM Ltd, 1995 (76) ELT 497 (SC), Uniworth Textiles Ltd v. CCE, Nagpur, 2013 (288) ELT 161 (SC),*** to cite a few, refer in this regard. We are therefore of the considered view that extended period of limitation could not have been invoked in these facts and circumstances. The findings in the impugned order on this aspect also would therefore not sustain and is liable to be set aside.

39. In the light of our aforesaid discussions and for the reasons given above, we hold that the impugned orders, to the extent contested on the demands confirmed along with applicable interest and penalties imposed, cannot be sustained and are liable to be set aside. Ordered accordingly.

The Appeals are allowed in the above terms with consequential relief(s) in law, if any.

(Order pronounced in open court on 04.03.2026)

(AJAYAN T.V.)
MEMBER (JUDICIAL)

(M.AJIT KUMAR)
MEMBER (TECHNICAL)

psd