

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT No. I

Service Tax Appeal Nos. 40485 - 40486 of 2017

(Arising out of Order in Original Nos. CHS-SVTAX-001-COM-10 & 11/2016-17 dated
29.07.2016 passed by the Pr. Commissioner of Service Tax -I, Chennai)

M/s. Seaport Lines India (P) Limited,

.... Appellant

Dheen Estate, 3rd Floor,
New No:85, Old No.42, Moore Street,
Chennai-600 001.

VERSUS

Commissioner of GST and Central Excise

...Respondent

Chennai Outer Commissionerate
Newry Towers, No.2054, I Block,
II Avenue, 12th Main Road,
Anna Nagar, Chennai-600 040.

APPEARANCE:

Shri. S. Janakiraman, 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 No.40367-40368/2026

DATE OF HEARING: 19.11.2025

DATE OF DECISION: 16.03.2026

Per AJAYAN T.V.

The above appeals arising out of the same impugned order, were heard together and are disposed of by this common order.

2. Brief facts are that M/s. Seaport Lines India (P) Limited, the appellant herein is a registered service provider of "Business Auxiliary Services" and "Goods Transport Agency Services". The Department was of the view that the nature of the activity of the Appellant includes coordinating with importers/exporters from the time of picking containers till delivery at the destination port and till consignees take delivery of cargo. While arranging the container for shippers, the Appellant collects ocean freight and local charges like terminal handling charges, documentation charges. They also avail Cenvat credit on such charges and pay service tax on the invoice amount raised on their customers. On perusal of balance sheets and

invoices, it was noticed that the Appellant collected ocean freight charges higher than the actual amounts charged by the shipping lines/steamer agents. The Appellant informed vide letters dated 19.03.2014 and 23.03.2015 that they did not collect service tax on Ocean Air Freight as freight was exempted under Service Tax Law, Verification of the invoices raised by the Appellant during the relevant period revealed that the freight invoices have been raised by the Airlines/ Sea Liners on the Appellant and not on the Appellant's customers. It appeared that all the expenditure incurred by the Appellant including Ocean Freight are for performing logistics service and hence the Appellant were liable to pay service tax on the gross amount including various reimbursable expenditures.

3. The Department was further of the view that the Appellant was rendering service within the meaning of Section 65B(44) of the Finance Act, 1994 (the Act) inasmuch as the said service was neither a specified service under those specified in the Negative List of Services in Section 66D of the Act nor was an exempted service under Notification No.25/2012-ST dated 20.06.2012 and it appeared to be covered under the definition of Support Services as per Section 65B(49).
4. Citing Section 67(1) of the Act it was contended that the service tax chargeable on any taxable service with reference to its value shall in a case where the provision of service is for a consideration of money, be the gross amount charged by the service provider for such service provided or to be provided by him. That as per Section 67 (3) of the Act, the gross amount charged for the shall include any amount received towards the taxable service before, during or after provision of such service. To claim exclusion of certain expenditure or cost from the value the conditions laid down under Rule 5(2) of Service Tax (Determination of Value) Rules, 2006 are to be satisfied. That in the instant case the Appellant has not satisfied the conditions specified under Rule 5(2) of the said Service Tax (Determination of Value) Rules, 2006 to claim exclusion of the expenditure incurred by them in the course of providing service as a "Pure Agent". For instance, as per the first condition stipulated under the said Rule, the

service provider shall act as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured. In the present case the Appellant had procured the services for themselves i.e. they incurred the expenses towards procurement of input services for providing taxable service and made payment to the third parties as a recipient of service and not 'Pure Agent'. Further, as per another condition envisaged in the said Rule, the service provider shall recover from the recipient of service only such amount as has been paid by them to the third party. It appeared that the Appellant collected freight charges in excess than the freight charges incurred by them and hence the Appellant ceases to be a "Pure Agent" as defined under Rule 5(2) of Service Tax (Determination of Valuation) Rules, 2006.

5. The Department observed that the Appellant had collected ocean freight charges for the period from April, 2013 to March, 2014 to the tune of Rs.12,80,36,958/- and the service tax thereon worked out to Rs.1,58,25,373/-. It was also noticed that the Appellant had collected Rs.20,73,64,340/- for the period from April, 2014 to March, 2015 and the service tax thereon came to Rs 2,56,30,208/-. Hence alleging contravention of various provisions of the Act the following show cause notices were issued to the Appellant proposing to demand the differential Service tax amount under Section 73(1) of the Act along with interest amount at the appropriate rate under Section 75 of the Act besides proposal to impose penalties under Sections 76 & 77 of the Act, as detailed under:

Sl. No.	SCN/SOD No. & date	Taxable Value (Rs.)	ST amount payable (Rs.)
1.	46/2015 dated 10.04.2015	12,80,36,988	1,58,25,373
2.	12/2016-ST-I dated 22.02.2016	20,73,64,140	2,56,30,208

6. Shri. S. Janakiraman, learned advocate, appearing on behalf of the appellant contended as under:
 - a) Both the appeals challenged Service Tax demand on the "Ocean Freight charged by the appellants on the exporters for the relevant periods for the sale of cargo space in containers.

- b) The appellant's transactions with the Shipping Lines for procuring cargo space in containers were on Principal to Principal basis. The transaction between the appellant and their clients who were all exporters were again on principal to principal basis.
- c) Purchase and sale of cargo space does not partake of the nature of taxable service during the relevant period.
- d) Ocean freight became liable to service tax with effect from 01.06.2016 only and that too concerning import cargo. Clause 146 of the Finance Act, 2016 brought changes to Section 60D so as to levy service tax on "Ocean freight" pertaining to shipment of goods from a place outside India up to Customs Station of clearance.
- e) The appellant concerning the cargo space sold did not act as "intermediary" or as a "commission agent" of the Shipping Lines.
- f) The clients of the appellant viz., the exporters are not privy to the contract between the appellant and the shipping liners.
- g) Neither the shipping line would be able to enforce their rights concerning ocean freight from the exporters nor would the exporters be able to enforce their rights from the Shipping liners.
- h) The activity of the appellant was one of trading in Cargo space in containers. In other words, it was only a purchase and sale of space in the Containers for export of goods and that too on principal to principal basis. Further purchase and sale of space in no way can be treated as a Service, much less a taxable service at all.
- i) In anticipation of receipt of orders, the appellant pre-books space in containers from the liners. It may result in profit to the appellant or loss if sufficient bookings cannot be obtained leading to wastage of space booked.
- j) CBEC has issued a Circular No: 197/7/2016- Service Tax dated 12.08.2016 in which it has been made abundantly clear that a Freight Forwarder when acting as a principal will not be liable to pay service tax when the destination of the goods is to a place from India to a place outside India.
- k) Department did not provide any evidence to show that the appellant is an agent of either the Shipping liners or the exporters as the onus is on the Department.

- l) In as much the ocean freight on export itself is outside the purview of the Service tax liability and such transactions are only purchases and sales of space in the containers for export, the imposition of penalty is untenable. The transactions are specifically covered under negative list of services under Section 66D of the Finance Act, 1994.
- m) The issue involved in the appeal is no longer res integra as it has been affirmatively held in a number of cases decided by various Benches of CESTAT that the difference between the purchase price and selling price of cargo space is nothing but profit or loss which cannot be subjected to service tax. The cases listed inter alia include the appellant's own case covering the immediately preceding period.

1.Seaport Lines (P) Ltd Vs Commissioner GST & Central Excise, Chennai - Final Order No:42304-42305/2021 dated 7.09.2021 (Tri. Che)

2.Marinetrans India (P) Ltd Vs CST, Hyd 2020 (33) GSTL 241 (Tri. Hyd)

3.TVS Dynamic Global Freight Services Ltd Vs Commissioner GST & CE, Chennai - Final Order No: 42355 to 42358 & 42034 to 42036/2019 dt 04.03.2020

4.Nilja Shipping (P) Ltd, Commissioner of Central Excise, Chennai II - ST Appeal No. 362 of 2012 dt 10.02.2020

5.Tiger Logistics India Ltd Vs Commissioner of Central Tax, Delhi Order dated 12.7.23 in Appeal No. 51621-51622 of 2022

6.Haiko Logistics India (P) Ltd Vs Commissioner of Service Tax, Delhi- Final Order dated 10.8.2013 in Appeal No 53001 & 53022

7.Pawan Cargo Forwarders (P) Ltd Vs PR. Commissioner ST, Chennai- I 2020 (34) G.S.T.L.559 (Tri. Che)

8.PVGT Freight Forwarders Vs Service Tax, Chennai - Appeal No.ST/000500/2012 Order dtd 04,07.2018 CESTAT, Chennai

9.Commissioner of Service Tax, New Delhi Vs Karam Freight Movers 2017(4) G.S.T.L. 215 (Tri. Del)

**10.Bax Global India Vs CST, Chennai 2017 (9) TMI 1264
CESTAT, Chennai**

It is therefore prayed that the appeals be allowed.

5. Ms. Anandalakshmi Ganeshram, learned authorised representative appearing for the respondent, while reiterating the findings of the learned adjudicating authority, contended that the appellant merely acts as an intermediary and organizes the transportation of goods across the oceans. Therefore, this representation of the charge as 'ocean freight' that too with a mark-up is a mis-representation of their service to their clients. As per Section 67(3) of the Finance Act, 1994, the gross amount charged shall include any amount received towards the taxable service before, during or after provision of such service. In this case, it is not contested that the amount has been charged towards the provision of taxable service. Therefore, the entire amount of consideration received towards the gross amount charged for the taxable service is required to be taxed. That as per the letter dated 19.07.2012 of the appellant, they stated that they are providing Logistics Service. They fall under "Business Support Service" and mistakenly registered their service under "Business Auxiliary Service". They have been carrying out the following business activities viz. (i) providing containers (boxes) to exporters and collecting ocean freight on behalf of principals and (ii) arranging Ocean freight from main line operators to their customers, which is a part of the logistics provider.

6. Ld. A.R. contends that it is to be noted that, in addition to the wording of Section 65(105) (zzzq) as stated above, the inclusive portion of the definition under Section 6b(104c) refers to certain activities being tracking of delivery schedule, Managing distribution and Logistics etc. That the activities along with the nature of services provided by the said service provider had been categorized most appropriately under "support services" and not under "Business Auxiliary Services" as contended by the appellant. It is also contended that as per Section 67(3) of the Finance Act, 1994, the gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after

provision of such service. Read with Rule 67(1)(i) of the Finance Act, 1994 in this case, which prescribes that where the provision of service is for a consideration in money, it would be the gross amount charged by the service provider for such service provided, it has to include all elements charged towards the taxable service including those amounts represented as 'ocean freight'. Reliance is placed on the judgement in the case of M/s. Progeon Global Forwarding P Ltd reported in 2023 (8) TMI 941 - CESTAT CHENNAI., wherein it has been held that the appellant whose activity has failed to establish his credential as a freight forwarder is found to satisfy the classification of Business Support Service. This judgement is squarely applicable to the present case.

7. In Rejoinder, it is submitted that the appellant has been duly registered with the Directorate General of Shipping as a "Multimodal Transporter" (MTO) under Multimodal Transport Operators Rules, 1992 which facilitates goods sought to be exported or imported as the case may be by a consignor to a consignee at minimal costs. MTO's may also act as clearing agents licensed under the Customs Act, 1962). MTO handles the cargo from its origin to the final destination by different modes of transport. That procuring and selling of space in containers is not a "service" in the manner in which it is understood in "service Tax" parlance leave alone construing it as a "taxable service" as has been the ratio laid down in several authoritative pronouncements by various Benches of the Hon'ble CESTAT.
8. It is submitted that the reliance placed on the letter dated 19.07.2012 of the Appellant in the impugned Order in Original is traversing beyond the scope of Show Cause Notice as the said letter was not relied on in the show-cause notices. The appellant has obtained Registration under "Business Auxiliary Service" and "Goods Transport Agency Service" and contentions to the contra to hold the cargo space purchased from the shipping liners and sold to exporters by the appellant is in the nature of "Business Support Service" is self-serving in nature and contrary to the true purport of legal provisions and decisions rendered on this subject. That the plain fact

is that the appellant had dealt with the shipping liners and the exporters on 'principal to principal' basis only. This activity of trading in cargo space certainly is not in the nature of rendering of service in the first place and a "taxable service" in the next place. The cargo space so procured by the appellant were sold to the exporters by clearly mentioning the element as "ocean freight". The shipping liners from who space in containers were procured did not charge service tax over and above the ocean freight charges as "ocean freight" have not been subject to levy of service tax. Whether terming it as falling under "BAS" or "BSS" by the Department does not alter the legal position that they do not come within the scope of service for levy of service tax which is more so concerning exports.

9. That in short, the appellant had procured cargo space from liners in anticipation of demand on their own account and sold the same to exporters at rates depending upon the market fluctuations resulting in either making out a gain or incurring a loss by taking the attendant risk. That it has been held in various decisions of the Division Bench including the one delivered in the case of ***M/s. Maintrans India Private Limited Vs CST, Hyderabad reported in 2020 (33) GSTL 241(Tri. Hyd)*** that "buying and selling space on ships does not amount to rendering a service and any profit or income earned through such transactions would not be liable to service tax". As a matter of fact, the ratio of the said decision stood quoted by the Single Member of Hon'ble CESTAT, Chennai in Para 4.1. vide ***its Final Order No: 42304-42305/2021 passed in Appellant's own case relating to the immediate preceding period***. The contentions of the Appellant as to its role as "intermediary", needs to be seen in the context of averments and true nature of relationship subsisting between the parties inter se in the procurement and supply of space, whether the transactions between the parties involved were on principal to principal basis or otherwise by acting as an agent for others. Tax liability cannot be ascribed to by picking out words in isolation and nature of transaction as revealed in the documents which alone would matter. It would be necessary to take in to account the true and exact role of the appellant in arranging cargo space viz., whether procurement of

space in containers was made on his own account from the liners by the appellant or acted on behalf of the liners by getting a commission thereof. Records in the form of invoices/bills as well as treatment in the audited Annual Financial Accounts of the appellant would ipso facto reveal the true position that the activity on the part of appellant concerning ocean freight were one of buying and selling on appellant's own account and they all relate to export consignments and the destination of the goods involved was outside the taxable territory. As to the reliance placed on the decision in the case of *M/s Progen Global Forwarders (P) Ltd -2023(8) TMI 941 Tri. Chennai*, it is a standalone judgment concerning facts peculiar to the case of the party not producing documents convincingly for proving the point of principal to principal transactions and also non-production of documents solicited at the adjudication stage has been recorded. On the contrary, the present appeal relate to two SCN's issued in a periodical manner while mentioning about the earlier SCN's covering the period 2007-08 to 2010-11 and April, 2011 to March, 2013 and the issue agitated ended in Single Member of the Hon'ble CESTAT, Chennai deciding the issue that buying and selling of space in containers by the appellant herein by acting on principal to principal basis with the shipper as well as with the exporters is not a service and in rendering the said decision reliance has also been placed on two Member Bench decisions.

10. Ld. Counsel further contends that seven Division Bench decisions of Hon'ble Tribunal and that of Tribunals in other jurisdiction including the one delivered by the Principal Bench of the CESTAT which are later in point of time consistently holding that buying and selling of container space is not a service at the first place and taxable service at the next place. Perusal of those decisions would point out to reliance placed on several other decisions as well on the underlying issue which would undoubtedly settle the case in favour of the appellant herein. Clearly the appellant's transaction with the liners in the matter of procuring space in containers were on principal to principal basis as also their transactions with the exporters which has been amply demonstrated before the adjudicating authority in the earlier proceedings and the impugned appeals concerns two

SCN's of periodic nature. In view of clear-cut decisions on the subject rendered by Division Bench of Hon'ble CESTAT in several cases and the Single Member's Order concerning the appellants own case relating to the earlier periods, the issue has attained finality in the appellant's favour.

11. We have heard both sides, perused the appeal records and the citations submitted.
12. The only issue that arises for our consideration is whether the demand of service tax on the appellant on the allegation that the ocean freight collected from its customers is includible in the taxable value for the services rendered by the appellant, is tenable.
13. The undisputed facts are that the Appellant is registered with the Department as a service provider of Business Auxiliary Service and Goods Transport Service. There is no dispute that the Appellant is not discharging the applicable service tax for the services rendered by the Appellant under the above categories. The SCN No.46/2015 dated 10.04.2015 alleges that the nature of the activity of the Appellant includes coordinating with importers/exporters from the time of picking containers till delivery at the destination port and till consignees take delivery of cargo. While arranging the container for shippers, the Appellant collects ocean freight and local charges like terminal handling charges, documentation charges. They also avail Cenvat credit on such charges and pay service tax on the invoice amount raised on their customers. On perusal of balance sheets and invoices, it was noticed that the Appellant collected ocean freight from their customers. However, the Appellant did not include the ocean freight charges collected in the taxable value for the purpose of payment of service tax. The Department was of the view that all the expenditure incurred by the Appellant including Ocean Freight are for performing logistics service and hence the Appellant are liable to tax on the gross amount including various reimbursable expenditure. Referring to the definition of "service" under Section 65B(44) of the Act with effect from 01-07-2012 and particularly the definition of "support services" under Section 65B(49) it is alleged that the Appellant's services appear to be "support services". Since,

in the instant case as the Appellant had collected the said charges in excess of that paid by them and further it also appeared that the appellant had procured the services for itself, incurring the expenses paid to third parties as a recipient of service the Appellant was not a pure agent as defined under Service tax (Determination of Value) Rules, 2006 under Rule 5(2) and therefore the Appellant had contravened Rule 5 in as much as they failed to determine the appropriate value of taxable service by including such expenditure. The SOD dated 12/2016-I dated 22.02.2016 also states the issue to be the non-inclusion of freight charges collected from their customers in the taxable value for the purpose of payment of service tax. The Notice and SOD incidentally refers to the earlier SCNs for non-inclusion of Ocean Freight in the taxable value vide SCN No.302/2012 dated 15.10.2012 for the period from April 2008 to March 2011 and SCN No.359/2013 dated 31.10.2013 for the period from April 2011 to March 2013.

14. It is seen that the Department is ambivalent in its allegations, in that, while it notices that the appellant has collected markup on the freight charges, the Department concedes that such freight charges are being reimbursed by the customer of the Appellant. However, since the freight collected is in excess of the actuals, it is the view of the Department that the Appellant cannot be treated as a pure agent under Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006 and that apart the Department has also formed a view that the Appellant had incurred the expenses towards procurement of input services for providing taxable service and made payment to the third parties as recipient of service and therefore on that count too, the Appellant is not a pure agent under Rule 5(2) *ibid* and the expenditure on this count is includible in the taxable value. The OIO has gone on to hold that the Appellant merely acts as an intermediary and organizes the transportation of goods across the oceans and therefore the representation of the charge as 'ocean freight' that too with a markup is a misrepresentation of their service to their clients. That as per Section 67(3) of the Act, the gross amount charged shall include any amount received towards the taxable service before, during or after provision of such service and

therefore the entire amount of consideration received towards the gross amount charged for the taxable service is required to be taxed. To our mind, when the Show Cause Notice concedes that the Appellant has collected "ocean freight" which is sought to be added to the taxable value and admits that the customers have reimbursed the amount so charged for transporting the goods, irrespective of the fact that the Appellant has charged a markup, it is not divested of its character as ocean freight to transmogrify into a consideration received as intermediary. The reasons in the Show Cause Notice and the subsequent SOD for taxing the said amount thus appears to be contradictory and inconsistent.

15. Be that as it may, we find that the issue on levy of service tax on expenses that are reimbursed by the customers to the Service Provider, 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 such 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 struck 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 such expenses that arose for consideration in the facts of the case as well as that in connected appeals before it, which is seen to include Air and Sea Freight, 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 assesseees. 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.

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."* **(emphasis supplied)**

16. Thus, the law of the land as laid down by the Apex Court in its decision in ***Union of India v Intercontinental Consultants and Technocrats Pvt Ltd, 2018 (10) GSTL 401 (SC)***, puts it beyond the pale of any controversy that Section 67 which deals with valuation of taxable services for charging service tax does not provide for inclusion of the aforesaid expenditure or cost incurred while providing the services as they cannot be treated as element/components of service, till the amendment to Section 67 made effective from May 14, 2015. Concededly, the period involved in the present Appeals are from 01-04-2013 to 31-03-2015, and hence the aforesaid decision would squarely apply, rendering the entire demand confirmed in the impugned order unsustainable and liable to be set aside on this count alone.

17. That apart, it is indisputable that Services by their very nature are intangible, being experiences, performances or activities, which cannot be physically touched or held. Services cannot also be inventoried and stored or transported for future use. Services are produced and consumed simultaneously. Their value is gleaned through the very experience, the tangible cue being their quality, which makes one qualify the service as clean or fast, efficient or tardy etc. Therefore, what exactly is the service rendered and received are best known to the service provider and the service receiver. The SCN does not rely on any statement or any other correspondence that would evidence as to what was the service rendered by the Appellant and what it is that the Appellant's client's understood when they were invoiced for the said service. When the Department proposes to change the classification of services from that which was hitherto being adopted, by the Appellant, it is a settled position in law that the onus is on the Department to prove with evidence that such a change in classification is warranted and that the classification is as what is being contended by the Department. The decisions in ***Jetlite (India) Ltd v. CCE, New Delhi, 2011 (21) STR 119 (Tri-Del)*** and ***Dewsoft Overseas v CST, New Delhi, 2008 (12) STR 730 (Tri-Del)*** refers in this regard. Thus, the allegations in the SCN that a change in classification is warranted are on assumptions without any evidence, all the more when the Appellant is already registered and paying service tax under a particular category.

18. Furthermore, it is seen that the Adjudicating Authority has gone on to rely on a letter dated 19.07.2012 of the Appellant seeking categorisation of its services as "Business Support Service". However, nothing has been brought on record to show that the Department has acted upon the request when it was made and had agreed to the Appellant's contention, and amended the Registration Certificate issued to the Appellant. Evidently, the request was not acceded to and the letter never given effect to and the Appellant continued to remit service tax under the category of Business Auxiliary Service for which it was registered. The said letter was never relied upon in the show cause notice. It is a settled principle

in law that reliance cannot be made on a document behind the Appellant's back without putting the Appellant to notice of such intention to rely on a document. Neither can the SCN which has been issued in the present form, be subsequently improved upon. The decisions of the Hon'ble Apex Court in ***CCE Nagpur v. Ballarpur Industries Ltd, 2007 (215) ELT 489 (SC)***, and ***Dhakeshwari Cotton Mills v CIT, West Bengal, 1955 SCR (1) 941***, refers in this regard. It is a settled position in law that the principles of natural justice have to be complied at every stage and violation at the initial stage can't be cured through additional reasons incorporated in the final order, thereby rendering the impugned order sustaining such demand untenable on this ground alone. The decision in ***Mulchand Malu v. UOI and others, [2016]383 ITR 367 (Gauhati)*** refers in this regard.

19. That apart, while the Show Cause Notice relies on Section 65B(49) to contend that the appellant is rendering "support services", the Adjudicating Authority has gone on to rely on Section 65(105)(zzzq) read with Section 65(104c) to find that the Appellant's services are appropriately classifiable under "support services" and not under "Business Auxiliary Services" as contended by the Appellant. We are of the firm opinion, that when Section 65 of the Finance Act, 1994 itself had ceased to apply with effect from 01-07-2012 vide Notification No.20/2012-ST dated 05-06-2012, the Adjudicating Authority could not possibly have relied upon redundant provisions to determine the nature of the activity of the Appellant. Thus, for all the aforesaid reasons we are of the considered view that the impugned order does not provide justifiable reasons for dislodging the classification that has been adopted by the Appellant hitherto and hence the findings on this count are unsustainable and liable to be set aside.
20. It is the contention of the Appellant that it is a multimodal transporter and that the appellant's transactions with the Shipping Lines for procuring cargo space in containers were on principal to principal basis. The transaction between the appellant and their clients who were all exporters were again on principal to principal

basis. In anticipation of receipt of orders, the appellant pre-books space in containers from the liners. It may result in profit to the appellant or loss if sufficient bookings cannot be obtained leading to wastage of space booked. The activity of the appellant was one of trading in Cargo space in containers. In other words, it was only a purchase and sale of space in the Containers for export of goods and that too on principal to principal basis. The Department has not shown that the appellant is an agent either of the Shipping liners or the exporters. As we had observed supra, there is no evidence let in in the Show Cause Notice that would warrant a change in classification as was proposed in the Show Cause Notice.

21. In any event, we also find that a coordinate bench of this Tribunal has already analysed the nature of such transaction of collection of Ocean Freight with markup by the assessee/appellant therein who was a multimodal transporter, as is the case of the Appellant herein, in the case of ***M/s. Geodis Overseas Private Limited v Commissioner of Service Tax, Chennai, 2022 (6) TMI 1085-CESTAT CHENNAI***, relied upon by the Appellant. The relevant portions are as under:

"8.1 The first issue is whether the charges collected by the appellant from its customers in the nature of ocean freight are subject to levy of Service Tax under Business Support Services.

8.2 This issue has been considered in various decisions of the Tribunal wherein the Tribunal has held that ocean freight charges are not subject to levy of Service Tax under Business Support Services or Business Auxiliary Services. The relevant discussion in the case of M/s. Greenwich Meridian Logistics (I) Pvt. Ltd. (supra) is reproduced as under:

"10. The original authority has proceeded on the assumption that there is only one payment and, that too, for freight charged by the shipping line. He has rejected the possibility of trading in space or slots on vessels by holding that trading in space or slots is a figment and freight is all that is transacted. This is a patent misconstruing of the usage of that expression. Freight, though used colloquially to describe all manner of carriage, is the nomenclature assigned to the consideration for space provided on a vessel for a particular voyage. Freight is charged by the entity that is in possession of space on a vessel from an entity that requires the space for carriage of cargo.

11. Slots may be contracted for by the shipper or its agent with the shipping line through the steamer agent. Implicit is a uni-directional flow of consideration because the space belongs to the shipping line. Steamer agent or agent of shipper may earn commission in such a transaction. Leaving that situation aside, the contention of the appellant is that it is a 'multi-modal transport operator' which entails a statutorily assigned role in cross-border logistics. According to Section 2 of the Multi-modal Transportation of Goods Act, 1993.

(m) "multimodal transport operator" means any person who -

(i) concludes a multimodal transport contract on his own behalf or through another person acting on his behalf;

(ii) acts as principal, and not as an agent either of the consignor, or consignee or of the carrier participating in the multimodal transportation, and who assumes responsibility for the performance of the said contract; and

(iii) is registered under sub-section (3) of section 4;

and

(a) "carrier" means a person who performs or undertakes to perform for a hire, the carriage or part thereof, of goods by road, rail, inland waterways, sea or air;

12. The appellant takes responsibility for safety of goods and issues a document of title which is a multi-modal bill of lading and commits to delivery at the consignee's end. To ensure such safe delivery, appellant contracts with carriers, by land, sea or air, without diluting its contractual responsibility to the consignor. Such contracting does not involve a transaction between the shipper and the carrier and the shipper is not privy to the minutiae of such contract for carriage. The appellant often, even in the absence of shippers, contract for space or slots in vessels in anticipation of demand and as a distinct business activity. Such a contract forecloses the allotment of such space by the shipping line or steamer agent with the risk of non-usage of the procured space devolving on the appellant. By no stretch is this assumption of risk within the scope of agency function. Ergo, it is nothing but a principal to- principal transaction and the freight charges are consideration for space procured from shipping line. Correspondingly, allotment of procured space to shippers at negotiated rates within the total consideration in a multi-modal transportation contract with a consignor is another distinct principal-to principal transaction. We, therefore, find that freight is paid to the shipping line and freight is collected from client-shippers in two independent transactions.

13. The notional surplus earned thereby arises from purchase and sale of space and not by acting for a client who has space or slot on a vessel. Section 65(19) of Finance Act, 1994 will not address these independent principal-to-principal transactions of the appellant and, with the space so

purchased being allocable only by the appellant, the shipping line fails in description as client whose services are promoted or marketed.

14. We, therefore, find no justification for sustaining of the demand and, accordingly, set aside the impugned order. Demands, with interest thereon, and penalties in both orders are set aside. Crossobjections filed by the department are also disposed of."

22. As regards the decision in the case of Progeon Global Forwarding P Ltd, 2023 (8) TMI 941-CESTAT CHENNAI, cited by the Ld. A.R. we notice that the decision has been rendered in the peculiar facts and circumstances of that case, as seen from the fact that the nature of the Appellant's activities therein was unclear, and hence in the said decision the matter was remanded for examination afresh. On the contrary, the SCN in the instant case itself concedes that the activity of the Appellant includes coordinating from the time of picking containers till delivery at the destination port and till consignees take delivery of cargo, corroborating their stand that they are as a multimodal transporter. This decision is therefore clearly distinguishable from the facts of the instant case and is thus inapplicable. It is also seen that repeatedly and consistently coordinate benches of this Tribunal has gone on to hold similar transactions as not exigible to service tax as is evidenced by the plethora of decisions cited by the Appellant supra, and we refrain from reproducing from these decisions to avoid prolixity. In such circumstances, judicial discipline mandates us to adhere to the view taken by the coordinate benches and we find no compelling reason to take a different view. In any event, it is also a settled proposition in law that in case of a conflict between equal bench strength judgements, the earlier view alone should be followed as conclusively stated by a constitution bench of the Hon'ble Supreme Court in *National Insurance Company Limited v. Pranay Sethi*, (2017) 16 SCC 680
23. Thus, when the appellant has obtained Registration under "Business Auxiliary Service" and "Goods Transport Agency Service" and when it is uncontroverted that the appellant had dealt with the shipping liners and the exporters on 'principal to principal' basis the activity of

trading in cargo space certainly is not in the nature of rendering a taxable service as has been held in the decision in Geodis Overseas noted supra. In any event, whether the Appellant's service falls under "BAS" or "BSS" is rendered inconsequential in as much as that would not alter the legal position that the ocean freight so collected would not be includible in the taxable value so as to be exigible to service tax during the relevant period.

24. Finally, undisputedly in the appellant's own case for the earlier period this Tribunal vide ***Final Order No:42304-42305/2021 dated 7.09.2021*** has held in the Appellant's favour. Revenue has not shown that the said decision has been appealed against or stayed by the Jurisdictional High Court or the Apex Court. Therefore, when the lis regarding the nature of the particular transaction and its exigibility to service tax inter se the parties has attained finality and all the more when there is no allegation or evidence that the present transactions are of a different nature, that forms yet another compelling reason to decide the present dispute in the Appellant's favour. Given our aforesaid findings in the Appellant's favour, addressing the alternate contentions advanced by the Appellant become superfluous.

25. In light of our discussions and for the reasons stated above, we are of the considered view that the impugned order is wholly unsustainable and liable to be set aside. Ordered accordingly.

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

(Order pronounced in open court on 16.03.2026)

(AJAYAN T.V.)
MEMBER (JUDICIAL)
psd

(M. AJIT KUMAR)
MEMBER (TECHNICAL)