

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

REGIONAL BENCH – COURT No. I

Service Tax Appeal No.40703 to 40705 of 2015

(Arising out of Order-in-Appeal Nos. 04 to 06/2015 (STA-II), dated 02.01.2015 passed by the Commissioner of Service Tax, (Appeals – II), 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai 600 034)

M/s. Airlift Associates

23, Thanikachalam Road
T.Nagar, Chennai 600 017

...Appellant

Versus

Commissioner of GST & Central Excise

MHU Complex
No.692, Anna Salai
Nandanam, Chennai 600 035

...Respondent

AND

Service Tax Appeal No. 40366 of 2016

(Arising out of Order-in-Appeal No.359/2015 (STA-II) dated 30.11.2015 passed by the Commissioner of Service Tax, (Appeals – II), Newry Towers, 3rd Floor, Plot No.2054, I Block, II Avenue, Anna Nagar, Chennai 600 040)

M/s. Airlift Associates

23, Thanikachalam Road
T.Nagar, Chennai 600 017

...Appellant

Versus

Commissioner of GST & Central Excise

MHU Complex
No.692, Anna Salai
Nandanam, Chennai 600 035

...Respondent

APPEARANCE:

Shri S. Adithya, Chartered Accountant

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. 40403-40406/2026

DATE OF HEARING : 24.11.2025
DATE OF DECISION : 20.03.2026

Per Mr. AJAYAN T.V.

These four appeals, the details of which are tabulated below, preferred by M/s. Airlift Associates, the Appellant herein, involving common issues that are substantially identical, are being heard together and are being decided by this common order.

Appeal No.	Order in Appeal No.	Period	Service Tax Demand
ST/40703 to 40705/2015	04 to 06/2015 (STA-II), dated 02.01.2015	July 2003 - March 2011	Rs.19,17,514/-
ST/40366/2016	359/2015 (STA-II) dated 30.11.2015	April 2011 to March 2012	Rs.59,944/-

2. The brief facts are that the appellant is a registered service provider providing services under the categories of air travel agents, customs house agents, cargo handling services and engaged in booking and sale of cargo space exporters. During the course of audit of accounts of the appellant and scrutiny of the balance sheet, it was noticed that the appellant was in receipt of airway bill fees towards providing documentation work. It is also seen that the appellant are in receipt of commissions, discounts, incentives from the airlines on the sales turnover towards trade and from the difference in the taxable income reported in the ST- 3 returns and its income as per the balance sheet trial balance. It appeared that the appellant has not discharged service tax liabilities on the amounts received under these heads. It was also seen that the appellant had not paid service tax on certain reimbursable expenses collected from the clients towards terminal charges due carrier etc. The department being of the view that the appellant is liable to pay service tax, on the airway bill fees; and on the commission earned in booking cargo space and in the commission / discounts / incentives for the booking and selling cargo space, under the category of business auxiliary services; as well as on the reimbursable charges, issued various Show Cause Notices.

3. After due process of law, the respective Adjudicators passed the Orders in original, aggrieved by which, the appellant preferred appeals before the Commissioner appeals. However, vide the impugned Order in appeals (impugned orders), the Appellate Authorities rejected the appeals and upheld the Orders in Original. Hence these appeals.
4. Shri S Adithya, Ld. Chartered Accountant appearing on behalf of the appellant stated that in the appeal Nos. ST/40703 – 40705/2015 preferred against the Order in Appeal 04-06/2015, dated 02.01.2015 whereby the demands were confirmed on the issues of reimbursable expenses, freight margins pertaining to booking and sale of cargo space, and airway bills, the appellant has already paid the service tax on the airway bill charges along with applicable interest and the same is not contested considering the materiality of the demand. Ld. Consultant submits that the demands therein are contested only to the extent of that made on freight margins and reimbursable expenses.
5. Ld. Consultant submits that the appellant is registered as a multi model transporter and books cargo space with airline or shipping line which are offered to customers for transporting their cargo and they also do cargo consolidation, that is book cargo space with the particular airline and offer the same at piecemeal to various exporters and later consolidate the cargo. In case of consolidation, the master airway bill or a master bill of lading is issued by the airlines / shipping lines, as the case may be, showing the appellant as the consignee for the cargo. The appellant in turn, issue the transport documents (house airway bill or house bill of lading) to the customers to whom they have offered cargo space. Ld. Counsel would submit that in the process of booking cargo space and offering to customers, the appellant is liable to pay airlines / shipping lines for the cargo space booked; whether they are able to sell the cargo space or not, whether they are able to recover freight from the customers or not, and whether they are able to sell cargo space at a higher price than at which they booked. It is the margin earned by this activity of the appellant that the department seeks to levy service tax. Ld. Counsel submits that the difference between price at which the cargo space is purchased and the price at which it is offered to the customers is a profit margin for their

entrepreneurial activity and therefore not liable to service tax. He would submit that it is settled by a catena of decisions that this activity of the Appellant is not exigible to tax and places reliance on the decisions in ***Skylift Cargo Private Limited Vs. Commissioner of Service Tax, Chennai – Final Order No.42242-42244/2017; La Freight Pvt. Ltd. Vs. Commissioner of Service Tax, Chennai – Final Order Nos. 40464-40467/2018; Pawan Cargo Forwards Pvt. Ltd. Vs. Pr. Commr. Of Service Tax, Chennai I - 2020 (34) GSTL 559 (Tri. – Mad); Principal Commissioner of Service Tax, Chennai - I Vs. Pawan Cargo Forward Pvt. Ltd. (2025) 33 Centax 227 (SC); M/s. Nilja Shipping Pvt. Ltd. Vs. The Commissioner of Central Excise – Final Order Nos.40273-40274/2020; M/s. Geodis Overseas Private Limited Vs. The Commissioner of Service Tax Final Order Nos.40265 – 40266/2022; Direct Logistic India Pvt. Ltd. Vs. Commr. Of S.T., Bangalore S.T.-1-2012 (55) GSTL 344 (Tri.- Bang); Commr. Of Service Tax, New Delhi Vs. Karam Freight Movers – 2017 (4) GSTL 215 (Tri. Del); Bax Global India Ltd. Vs. Commr. Of Service Tax, Chennai – Final Order No.42113/2017.***

6. As regards service tax demanded on reimbursable expenses, Ld. Consultant submits that these expenses were recovered by the appellant on actuals and the Show Cause Notice itself has invoked Rule 5 of the Service Tax (Determination of Value) Rules, 2006 and the demand is being sought to be sustained alleging that such reimbursable expenses are includable in the gross amount charged by the appellant as per Section 67 of the Act read with the said Rule 5 and alleging contravention of Rule 5 (2) of the Service Tax (Determination of Value) Rules, 2006. The Ld. Counsel argued that in view of the decisions of the Apex Court in the matter of ***Union of India Vs. Intercontinental Consultants and Technocrafts Pvt. Ltd. 2018 (10) GSTL 401 SC*** finding Rule 5 to be ultra vires Section 67 of the Finance Act 1994, the said demand is unsustainable.
7. Shri M Selvakumar, Ld. Authorised Representative appearing for the Respondent reiterated the findings in the impugned orders.

8. We have heard both sides, perused the appeal records and the case laws submitted.
9. We find that the demands confirmed in the impugned orders are being contested by the appellant only in so far as they pertain to demand on reimbursable expenses and the freight margin that has arisen due to the difference between the price at which cargo space is booked/bought/purchased by the appellant and the price at which it is offered to their customers.
10. Recently, we had an occasion to deliberate on both of these issues in the case of ***M/s. Seaport Lines India (P) Limited Vs. Commr. Of GST & CE, Chennai, in our Final Order No.40367-40368/2026 dated 16-03-2026***. The relevant portions of our discussions therein, as would be applicable to the issues at hand in these Appeals, are reproduced here under.

"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.

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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. Cross objections 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"
11. It is also seen that, repeatedly and consistently, Co-ordinate Benches of this Tribunal, irrespective of whether the Department has sought to categorize the activity of the assessee therein, as Business Auxiliary Services or Business Support Services, or Cargo Handling Services or Freight Forwarder Services etc., have gone on to hold that the activity of booking/purchasing and sale of cargo space, and the margin of profit that is earned while booking and selling cargo space for export goods, are not exigible to service tax, as is evidenced by the plethora of decisions cited by the appellant supra. We refrain from reproducing from these decisions to avoid prolixity. Therefore, adhering to judicial discipline, in light of the

view taken by the co-ordinate Benches that is binding on us, we follow the same.

12. In light of our discussions and for the reasons cited above, we are of the considered view that, save for the demands confirmed on the airway bill fees that was stated as not contested considering the materiality of the demand, the findings in the impugned orders to the extent they uphold the remaining contested demands are wholly untenable and liable to be set aside. In the peculiar facts and circumstances, we are also of the view that imposition of penalties under section 76 and 77 are untenable and therefore the penalties imposed that were upheld, are hereby set aside.

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

(Order pronounced in open court on 20.03.2026)

(AJAYAN T.V.)
MEMBER (JUDICIAL)
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(M. AJIT KUMAR)
MEMBER (TECHNICAL)