CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. I

Service Tax Appeal No. 40073 of 2016

(Arising out of Order-in-Appeal No. 259/2015(STA-II) dated 13.10.2015 passed by Commissioner of Service Tax (Appeals-II), Newry Towers, 3rd Floor, Plot No. 2054, I Block, II Avenue, Anna Nagar, Chennai – 600 040)

M/s. Sivaram and Swamy **...Appellant**
Door No. 100A, Alappakkam Main Road,
Porur,
Chennai – 600 116.

Versus

Commissioner of GST and Central Excise **...Respondent**
Chennai Outer Commissionerate,
Newry Towers, No. 2054-I,
2nd Avenue, 12th Main Road,
Anna Nagar,
Chennai – 600 040.

APPEARANCE:

For the Appellant : Mr. K. Dayananda, Chartered Accountant
For the Respondent : Mr. N. Satyanarayana, Authorised Representative

CORAM:
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No. 40498 / 2026

DATE OF HEARING : 12.03.2026
DATE OF DECISION : 17.04.2026

Per Mr. VASA SESHAGIRI RAO

The present appeal has been filed by M/s. Sivaraman & Swamy, Chennai against Order-in-Appeal No. 259/2015 dated 13.10.2015 passed by the Commissioner of Service Tax (Appeals-II), Chennai. The dispute pertains to the period January 2009 to November 2009 involving service tax demand of Rs. 43,550/- under the category of Clearing and Forwarding Agency service.

1.2 The facts briefly stated are that the appellant is engaged as a Clearing and Forwarding agent for M/s. Himalaya Drug Company and is registered with the Service Tax department. During audit of Accounts, it was noticed that apart from commission received, the appellant had also received reimbursements towards various expenses such as freight, telephone, packing, electricity, stationery and labour charges. The Department formed a view that such reimbursed expenses are includible in the taxable value in terms of Rule 5 of the Service Tax (Determination of Value) Rules, 2006 and accordingly issued show cause notice proposing demand of service tax. The adjudicating authority confirmed the demand along with interest and imposed penalties under Sections 76 and 78 of the Finance Act, 1994. The Commissioner (Appeals) upheld the demand and interest while setting aside penalty under Section 78 but sustaining penalty under Section 76 of Finance Act 1994.

2. Aggrieved by the Order of Commissioner (Appeals), the Appellant has filed the present appeal before this Tribunal.

3. The Ld. Chartered Accountant Shri Dayananda appeared on behalf of the Appellant. The Ld. Authorized Representative Shri N. Satyanarayanan, appeared for the Revenue.

4.1 The Ld. Consultant for the Appellant submitted that the impugned demand pertains exclusively to reimbursement of expenses incurred during the course of providing Clearing and Forwarding services. It is contended that as per Rule 6(1)(viii) of the Service Tax (Determination of Value) Rules, 2006, in the case of Clearing and Forwarding agents, only the commission or remuneration received constitutes the value of taxable service and not the reimbursed expenses.

4.2 It was further submitted that Section 67 of the Finance Act, 1994, prior to its amendment, did not permit inclusion of expenses not forming part of consideration for service. The appellant relied on the judgment of the Hon'ble Supreme Court in Union of India vs Intercontinental Consultants and Technocrats Pvt. Ltd. reported in 2018 (10) GSTL 401 (SC), wherein it was held that reimbursable expenses cannot be included in the taxable value.

4.3 The appellant also relied on the judgment of the Hon'ble Madras High Court in *Commissioner of Service Tax vs. Sangamitra Services Agency 2014 (33) STR 137 (Mad.),* wherein it was held that reimbursement of expenses cannot automatically form part of taxable value in the absence of evidence that such expenses are part of remuneration.

4.4 Further reliance was placed on the decision of the Tribunal in United India Shipping Services vs Commissioner of Service Tax Final Order No. 40417/2023, wherein it has been held that reimbursable expenses are not subject to service tax following the Supreme Court decision.

4.5 Finally, the Appellant submitted that they were acting as a pure agent and that the expenses incurred were reimbursed on actual basis. It was also contended that there was no suppression of facts and therefore penalty is not sustainable.

5. *Per Contra*, the Authorized Representative Shri N. Satyanarayana have reiterated the findings of the lower authorities and submitted that the expenses incurred by the appellant are integrally connected with the provision of Clearing and Forwarding service and hence form part of the value of taxable service.

6. We have carefully heard the submissions advanced by both sides, examined the appeal records in detail, and considered the statutory provisions and the case laws cited.

7. Upon consideration of rival submissions and the record, the following questions arise: -

i. Whether reimbursable expenses incurred by the appellant in the course of providing Clearing and Forwarding Agency service are includible in the value of taxable service under Section 67 of the Finance Act, 1994 read with the Service Tax (Determination of Value) Rules, 2006.
ii. Whether, in consequence, the demand of service tax, interest and penalties confirmed in the impugned order is sustainable in law.

8. We now proceed to examine the issues arising for determination in the present appeal, one by one, seriatim.

Issue (i): Includability of reimbursable expenses

9.1 We find that the principal issue for determination is whether reimbursable expenses received by the appellant are liable to be included in the assessable value for levy of service tax.

9.2 We observe that Section 67 of the Finance Act, 1994 provides that the value of taxable service shall be the gross amount charged for such service. The expression "for such service" restricts the valuation only to the consideration attributable to the service rendered. It is a settled principle that the charging provision must be strictly construed and no tax can be levied on amounts which do not fall within the scope of the charging section. It is settled law that valuation provisions cannot be expanded by delegated legislation beyond the scope of the charging section.

9.3 We find that the learned counsel for the appellant has relied upon the judgment of the Hon'ble Supreme Court in *Union of India vs Intercontinental Consultants and Technocrats Pvt. Ltd. 2018 (10) GSTL 401 (SC),* wherein it was held that reimbursable expenses cannot be included in the taxable value.

We note that the Hon'ble Apex Court has further held that the amendment to Section 67 introducing inclusion of reimbursable expenses is prospective, thereby making it clear that during the relevant period such expenses were not includible.

9.4 The appellant also relied on the judgment of the Hon'ble Madras High Court in *Commissioner of Service Tax vs Sangamitra Services Agency reported in 2014 (33) STR 137 (Mad.),* wherein it was held that reimbursement of expenses cannot form part of the taxable value in the absence of evidence that such expenses are part of remuneration.

9.5 We also note that the appellant has relied upon the decision of the Tribunal in United India Shipping Services vs. Commissioner of Service Tax. The Tribunal has held in Para 8 of the Order that: -

> *"8. It is settled position that the reimbursable expense is not subject to levy of service tax as per the decision of the Hon'ble Apex Court in the case of Union of India Vs Intercontinental Consultants and Technocrats Ltd. (supra). After analysing the facts and going through the evidence, we are of the considered view that the decision of Hon'ble Apex Court in Intercontinental Consultants and Technocrats Ltd. will be squarely applicable to the facts of the case. Following the same, we hold that the demand cannot sustain."*

9.6 In the present case, we find that the expenses sought to be included consist of freight, telephone charges, electricity, packing, stationery and labour charges which were incurred in the course of providing service and reimbursed by the principal.

9.7 We find that each of the expense heads sought to be included in the taxable value is specifically governed by the terms of the agreement. Freight, insurance and documentation expenses are expressly borne by the principal, while other expenses such as electricity, labour and telephone charges are in the nature of operational costs incurred by the appellant without any element of profit or remuneration. The agreement clearly identifies commission as the sole consideration for the service rendered. Therefore, none of the reimbursed expenses can be treated as part of the taxable value.

9.8 We further find from the agreement placed on record that the remuneration payable to the appellant is specifically defined as a percentage of net turnover, thereby clearly segregating the consideration for service from reimbursable expenses.

9.9 We observe that the agreement provides that certain expenses such as freight, insurance and documentation charges are to be borne by the principal and that the goods are insured by the principal at its own cost. The terms of the agreement clearly establish that the reimbursed expenses are distinct from the remuneration payable to the appellant and do not form part of the consideration for the service rendered.

More importantly, it is noted that the Department has not produced any evidence to establish that these amounts are not in the nature of reimbursement or that they constitute additional consideration for the service. The entire demand proceeds on the assumption that all expenses are includible, without examining the nature of such receipts or disproving the claim of reimbursement.

In taxation matters, the burden lies on the Department to establish that a particular receipt forms part of taxable value. In the present case, this burden has not been discharged. The mere fact that the appellant has received certain amounts towards expenses does not ipso facto make them taxable unless it is shown that such amounts are in the nature of consideration.

9.10 Applying the ratio of the decisions relied upon by the appellant, particularly the judgment of the Hon'ble Supreme Court in *Union of India v. Intercontinental Consultants and Technocrats Pvt. Ltd., 2018 (10) GSTL 401 (S.C.),* and taking note of Rule 6(1)(viii) of the Service Tax (Determination of Value) Rules, 2006, it is held that such reimbursed expenses cannot be included in the taxable value and consequently the demand raised on such inclusion is liable to be set aside, which we accordingly do so.

Issue (ii): Sustainability of demand, interest and penalties

10.1 We find that the entire demand in the present case is based on inclusion of reimbursable expenses in the taxable value and, having held that such inclusion is not permissible in law, the very foundation of the demand does not survive; it is also well settled that service tax, being a levy on the value of taxable service, cannot be extended to amounts which do not constitute consideration for such service.

10.2 We further note that penalty under Section 78 has already been set aside by the Commissioner (Appeals), and the penalty under Section 76 being consequential in nature cannot survive once the demand itself is set aside. The issue involved is interpretational in nature and has been subject to differing judicial pronouncements, and therefore no element of suppression or intent to evade tax can be attributed to the appellant.

10.3 We therefore hold that the demand of service tax, interest and penalties is not sustainable and is accordingly set aside.

11. In view of the foregoing findings, it is held that the amounts received by the appellant towards various expenses are in the nature of reimbursements and do not

form part of the consideration for the taxable service. The Department has not produced any evidence to establish that such amounts are not reimbursements or that they constitute additional consideration, and the demand has been raised merely on the basis of inclusion of such reimbursed expenses without discharging the burden of proof. It is further observed that the appellant had disclosed all relevant facts and the issue involved is interpretational in nature; accordingly, the demand of service tax, interest and penalties confirmed in the impugned order is held to be unsustainable both on merits as well as on limitation.

12. Accordingly, the appeal filed by the appellant is allowed and the impugned order is set aside with consequential relief, if any, in accordance with law.

(Order pronounced in open court on 17.04.2026)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

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