

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

REGIONAL BENCH - COURT No. I

Service Tax Appeal No. 40677 of 2017

(Arising out of Order-in Appeal No.652/2016 (STA – I), dated 22.11.2016 passed by the Commissioner of Service Tax (Appeals I), Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai 600 040).

M/s. Thulsidas Khimji Pvt. Ltd.

1st Floor, No.16/21, Bharathiyar Street
Meenambakkam, Chennai 600 027

...Appellant

Versus

Commissioner of GST & Central Excise

26/1, Mahatma Gandhi Road
Nungambakkam, Chennai 600 034

...Respondent

APPEARANCE :

Ms. Vaishnavi Mahesh, Advocate for the Appellant

Mr. N. Satyanarayana, Authorised Representative for the Respondent

CORAM :

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

HON'BLE MR. AJAYAN T.V. MEMBER (JUDICIAL)

FINAL ORDER No.40581/2026

DATE OF HEARING: 09.03.2026

DATE OF DECISION:07.05.2026

Per AJAYAN T.V.

Thulasidas Khimji, the Appellant herein, has assailed the impugned Order in Appeal No.652/2016 (STA-I) dated 22.11.2016 (impugned order), whereby the Appellate Authority has allowed the Department's Appeal by way of remand.

2. Brief facts are that the appellants is licensed under Customs Act as Customs House Agent and registered with the Service Tax Commissionerate for providing Custom House Agent service. During the course of audit conducted by the Internal Audit party of the Service Tax Commissionerate, it was noticed that the Appellant, apart from collecting charges for providing CHA service, had also collected IAAI Charges, Delivery order charges/Air freight charges,

EDI charges, survey charges, warehousing charges, steamer agent charges, container freight station charges and terminal handling charges. The Appellant had not paid service tax on these charges claiming these to be reimbursable expenditure not leviable to service tax. The Department citing Rule 5(1) of the Valuation Rules to contend that expenditure or cost incurred by service provider in the course of providing taxable service is includible in the taxable value and contending that the Appellant had not fulfilled the conditions specified in Rule 5(2) *ibid* to claim exclusion of the above expenditure as a 'Pure Agent' issued a Show Cause Notice dated 28.09.2009 in respect of the reimbursable expenditure recovered from the Appellant's clients for the period from 19.04.2006 to 31.03.2009, invoking the extended period of limitation and demanding service tax along with applicable interest and proposing imposition of penalties under Section 76 and 78 of the Finance Act, 1994. After due process of law, the Adjudicator vide Order in Original No.52/2012 dated 15.05.2012 dropped service tax with respect to the reimbursable expenses that he found the Appellant had qualified as a 'Pure Agent' for exclusion of expenses taking into account the CA certificate produced by the Appellant. The Department preferred an appeal before the Commissioner of service Tax (Appeals-I) praying that the said Order in Original be set aside. The Appellate Authority, finding merits in the Department's contention that verification of the facts given in the CA Certificate was not carried out, vide the impugned order, remanded the matter to the lower adjudicating authority. Aggrieved, and having preferred this appeal the Appellant is now before this Tribunal.

3. Ms. Vaishnavi Mahesh, Ld. Advocate appearing for the Appellant contended that all these charges are treated in the SCN as reimbursable charges and service tax has been demanded invoking Rule 5(1) of the Valuation Rules 2006. Given that Rule 5(1) of the Valuation Rules has since been struck down by the Honourable Delhi High Court in the Intercontinental Technocrats case and was further

affirmed by the Honourable Supreme Court, the demands are untenable and there was no necessity to remand the matter for further verification. The learned counsel submits that the appellants did not discharge service tax on the reimbursable expenses as it is not a consideration for any services rendered. The learned counsel submits that only the service charges received as consideration for the services provided or to be provided would form part of the taxable value for the purposes of service tax and reimbursements are not liable to tax. The learned counsel submits that the Honourable Supreme Court has in the case of ***UOI v Intercontinental Consultants and Technocrats Pvt Ltd, reported in (2018) TIOL 76-SC-ST : 2018 (10) GSTL 401 (SC)***, affirmed the decision of the Delhi High Court 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. It was also contended that extended period of limitation could not have been invoked as the issue was one of interpretation. Reliance was also placed on the decisions in ***Sindhu Cargo Services Pvt Ltd v Commissioner of CGST & Service Tax, (2025) 30 Centax 383 (Tri-Mad)***, ***Balram Shipping Services v Commissioner of GST and Central Excise, vide Final Order No.41233041234/2025 dated 03.11.2025*** and ***M/s. Seher v. CST, Delhi-II, Final Order No.50509/2022 dated 13.06.2022***. It is therefore prayed that the impugned order be set aside and the Appeal allowed.

4. Mr. N. Satyanarayana, Learned Authorised Representative, appearing on behalf of the Respondent, reiterated the findings of the Appellate Authority in the impugned Order.
5. We have heard both sides, perused the appeal records and the case laws cited by the appellants.

6. We find that the SCN has been issued placing reliance on Rule 5(1) and Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006. We find that the issue is no more res-integra in view of the decision of the Honourable Supreme Court in the case of ***UOI v Intercontinental Consultants and Technocrats Pvt Ltd, 2018 (10) GSTL 401 (SC)*** which has considered the issue of liability to pay service tax on reimbursable expenses received by the service provider in the course of rendering services for the client, apart from the consideration received for rendering the services on which the client has discharged the liability to pay service tax. The Honourable Supreme Court affirmed the decision of the Delhi High Court in ***Intercontinental Consultants & Technocrats Pvt Ltd v UOI, 2013 (29) STR 9 (Del)***, wherein Rule 5(1) of the Service Tax Valuation Rules, 2006 which provided for inclusion of expenditures or costs incurred by the service provider in the course of providing taxable services, in the value of such taxable services, was 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 reimbursable expenses that arose for consideration in the facts of the case as well as that in connected appeals before it, 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 with 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 be 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 taxable 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.”*

7. In light of the Honourable Supreme Court’s decision reproduced supra, we are of the considered view that the impugned Order in Appeal cannot be sustained and is liable to be set aside. We find that the decisions in ***Sindhu Cargo Services Pvt Ltd v Commissioner of CGST & Service Tax, (2025) 30 Centax 383 (Tri-Mad), Balram Shipping Services v Commissioner of GST and Central Excise, vide Final Order No.41233041234/2025 dated 03.11.2025*** and ***M/s. Seher v. CST, Delhi-II, Final Order No.50509/2022 dated 13.06.2022***, are also in similar vein.
8. We also find force in the contentions of the learned counsel for the appellant that the issues involved were of interpretational nature and therefore the allegation of malafide made to invoke the extended period of limitation is untenable. We hold that the Department could not have invoked the extended period of limitation and the demand is also untenable on this count, to that extent.
9. In view of the foregoing facts borne out from the records and the discussions and findings stated above, we find that the appellants succeed in their Appeal on merits as well as on their plea against invocation of extended period of limitation. Hence the impugned Order in Appeal is set aside and the appeal is allowed with consequential relief(s) in law, if any.

(Order pronounced in the open court on 07.05.2026)

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

**(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)**