IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Service Tax Appeal No. 42272 of 2015

(Arising out of Order in Appeal No. 196/2015 (STA – II) dated 10.08.2015 passed by the Commissioner of Service Tax (Appeals – II), Chennai)

M/s. Broekman Logistics (India) Pvt. Ltd. **Appellant**
Jamal Chambers, 3rd Floor
New No. 49, Old No. 26
Mount Road, Saidapet
Chennai – 600 015.

Vs.

Commissioner of GST & Central Excise **Respondent**
Chennai South Commissionerate
MHU Complex, Nandanam,
Chennai – 600 035.

APPEARANCE:

Shri Raja Praveen P, Chartered Accountant for the Appellant
Shri N. Satyanarayanan, Authorised Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NO. 40629/2026

Date of Hearing: 02.02.2026
Date of Decision: 29.05.2026

Per M. Ajit Kumar,

This appeal is directed against Order-in-Appeal dated 10.08.2015 passed by the Commissioner of Service Tax (Appeals-II), Chennai, (impugned order).

Factual Matrix

2. The brief facts are that the appellant is engaged in providing taxable services under Clearing and Forwarding Agency Service, Cargo Handling Service, Business Auxiliary Service and Goods Transport Agency Service. On verification of accounts, the department alleged short-payment of service tax under three heads, namely: (i) non-

payment of service tax on reimbursable expenses; (ii) non-payment of service tax on GTA service under reverse charge; and (iii) irregular availment of exemption in respect of services provided to SEZ units. A show cause notice was issued and, after adjudication, the original authority confirmed demands aggregating to Rs. 71,925/-, appropriated amounts already paid, and imposed penalty under Section 76 of the Finance Act, 1994. The appeal before the Commissioner (Appeals) was rejected. Hence, the present appeal.

3. Heard Shri Raja Praveen P, Learned Chartered Accountant for the appellant, and Shri N. Satyanarayanan, Learned Authorized Representative for the revenue.

Submissions of the Appellant

3.1 Shri Raja Praveen P, Learned Counsel for the appellant has stated that the dispute in the present appeal is as under:

S. No.	Issue	Period	Tax Demand (Rs.)
1	Reimbursable expenses	Dec. 2008 to Dec. 2009	36,181
2	GTA service under RCM	Apr. 2009 to Dec. 2009	9,437
3	Supplies made to SEZ units	Apr. 2009 to Dec. 2009	26,307
Total			**71,925**

He further submitted that:

A. The demand on reimbursable expenses is unsustainable as the amounts recovered towards Terminal Handling Charges, CFS charges, Delivery Order charges, demurrage and similar expenses were incurred on behalf of customers and recovered on actual basis. For the period in dispute, i.e. prior to 14.05.2015, such reimbursable expenses were not includible in the taxable value in view of the decision of the Hon'ble Supreme Court in **Union of India Vs Intercontinental Consultants and Technocrats Pvt. Ltd.** [(2018 (10) G.S.T.L. 401 (S.C.)], which held that Rule 5 of the Service Tax (Determination of Value) Rules, 2006 was ultra vires to the extent it included reimbursable expenditure in the value of taxable services.

B. As regards GTA the amount of Rs. 3,66,448/- paid to M/s. SSK Transport represented vehicle hire charges and not freight for transportation by a goods transport agency. Further Service Tax under GTA can arise only where the service provider issues a consignment note. In the absence of any evidence of issuance of consignment notes, the demand cannot survive. Reliance was placed on **Bothra Shipping Services Vs CCE & ST, Visakhapatnam**, wherein it was held that absence of consignment note is fatal to a GTA demand.

C. As regards the demand relating to services rendered to SEZ units, the appellant submitted that, for the period up to 13.03.2009, service tax along with interest and penalty had already been paid upon being pointed out by the department. For the subsequent period from 14.03.2009 onwards, the appellant had charged and remitted service tax and disclosed the same in ST-3 returns. It was therefore contended that confirmation of the impugned demand results in double taxation and the demand is liable to be set aside.

Submissions of the Revenue

4. Learned Authorized Representative reiterated the findings in the impugned order. He submitted that,

A. In terms of Circular No. 119/13/2009-ST dated 21.12.2009 and Rule 5(1) of the Valuation Rules, exclusion of reimbursable expenses is available only subject to fulfillment of prescribed conditions. According to the revenue, the appellant had not established that it acted as a pure agent and was therefore not entitled to exclusion of such amounts from taxable value.

B. Being a Ltd. Company the appellant was covered by notification No. 35/2004 – ST dated 03.12.2004 and were liable to pay Service Tax on such freight charges paid.

C. As regards the Freight Forwarding Service the same was not consumed within the SEZ hence they were not eligible for the exemption under notification 04/2004 ST dated 31.03.2004 as superseded by notification No. 09/2009 dated 03.03.2009.

He hence prayed that the appeal may be rejected.

Discussion and Analysis

5. We have considered the rival submissions and perused the records. We examine the individual issues separately below.

Reimbursable Expenses

6. The first issue relates to inclusion of reimbursable expenses in the taxable value. The period involved is December 2008 to December 2009. It is no longer res integra that, for the period prior to amendment of Section 67 with effect from 14.05.2015, reimbursable expenditure could not be included in the gross value of taxable services merely by virtue of Rule 5 of the Valuation Rules. In **Intercontinental Consultants and Technocrats Pvt. Ltd. Vs Union of India** [2012 (12) TMI 150 - DELHI HIGH COURT], the Delhi High Court held that Rule 5(1) of the Service Tax Valuation Rules was ultra vires Sections 66 and 67 of the Finance Act, 1994, since reimbursed expenses cannot be treated as the “gross amount charged” for the service. The Court therefore held that service tax was not payable on actual reimbursements. On Revenue’s appeal against the judgment, the Hon’ble Supreme Court in **Union of India Vs. Intercontinental Consultants & Technocrats (P.) Ltd.** [2015 (2) TMI 593 - SUPREME

COURT OF INDIA], upheld the Delhi High Court's ruling. It also clarified that it was only from 14.05.2015, after the amendment to Section 67 by the Finance Act, 2015, that reimbursable expenditure became includible in the taxable value of services. Therefore, the demand of Rs. 36,181/- on reimbursable expenses for the period December 2008 to December 2009, is unsustainable and is set aside.

Goods Transportation Agency

7. The second issue concerns service tax demand of Rs. 9,437/- under reverse charge on alleged GTA service. As per Section 66D of the Finance Act, 1944 services specified under the Negative List are exempted from the levy of Service Tax. As per section 66D(P)(i) services by way of transportation of goods, except the services of a goods transportation agency, are exempted from the levy of Service Tax. The appellant's specific case is that the payments were towards hire of vehicles and not freight charges. Further, no material has been produced by the department to establish issuance of consignment notes by the service provider. Since issuance of a consignment note is an essential requirement for classification of the service provider as a goods transport agency, the absence of such evidence is fatal to the demand made. A Coordinate Bench of this Tribunal at Hyderabad, in the case of **M/s Bothra Shipping Services Vs Commissioner of Central Excise & Service Tax, Visakhapatnam**, vide Final Order No. A/30362/2025 dated 11.09.2025, held that the issue is no longer res-integra that when there is no issuance of consignment note, there cannot be a GTA service and therefore, no demand can be made from either consignor or consignee. However, if GTA service has been provided, then they are liable to pay Service Tax. Therefore, it is

already settled that when there is no issue of consignment note no demand can be raised. Hence in the absence of the department relying on a consignment note, the demand in this case merits to be set aside

Service provided to SEZ

8. The third issue relates to demand of Rs. 26,307/- concerning services provided to SEZ units for the period from Apr. 2009 to Dec. 2009. The appellant has consistently contended that the tax liability for the relevant period had already been discharged, partly on being pointed out by the department and partly through regular payment reflected in returns. Once tax has already been paid, the same amount cannot be demanded again. We find that the exigibility of the service is not disputed by the appellant. The appellant's claim is that the duty has already been discharged. The amount being very small we do not deem it necessary to remand the matter to the Original Authority for confirmation and accept the submission made by the appellant.

Conclusion

9. In view of the above, the impugned order is set aside. The appeal is allowed in favour of the appellant with consequential relief, if any, as per law.

(Order pronounced in open court on 29.05.2026)

Sd/-
(**AJAYAN T.V.**)
Member (Judicial)

Sd/-
(**M. AJIT KUMAR**)
Member (Technical)

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