CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 52515 of 2018

[Arising out of Order-in-Appeal No. 218(SM) ST/JPR/2018 dated 27.03.2018 passed by the Commissioner of Central Excise & Central Goods and Service Tax, Jaipur]

M/s. SKJ Express **...Appellant**
Malpura House, 2529,
2nd Floor, M.S.B. Ka Rasta,
Johari Bazar, Jaipur-302003

VERSUS

Commissioner of Central Excise and Customs, Central Goods and Service Tax – Jaipur I **...Respondent**
N C R Building, Statue Circle,
C-Scheme, Jaipur,
Rajasthan - 302005

APPEARANCE:
Shri Alok Kothari, Advocate for the Appellant
Ms. Jaya Kumari, Authorized Representative for the Respondent

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

DATE OF HEARING: 10.07.2025
DATE OF DECISION: **06.11.2025**

FINAL ORDER NO. 51686/2025

DR. RACHNA GUPTA

The appellant herein is holding service tax registration for rendering services under the categories of Cargo Handling Service and Courier Service. During the audit of records of the appellant, it was observed that the appellant had paid service tax on the amounts charged towards transportation/courier charges but the service tax on the amount charged in respect of services like CHA Service, Insurance Service, Terminal Charges, Air-way Bill Charges have not been paid treating them the exempted services. On being enquired, the appellant vide letter dated 15.03.2012 conveyed that the gross bill amount includes the amount incurred by the appellant on CHA and other exempted services. Those amounts were received by the appellant as pure agent. However, alleging that the appellant do not qualify to be called as pure agent that the Show Cause notice No. 342/2010 dated 24.04.2012 was served upon the appellants proposing the recovery of service tax amounting to Rs.11,69,011/- on the taxable value of Rs.96,17,386/- received during the period from October 2006 to March 2010. The proposal has initially been confirmed vide Order-in-Original No. 164/2013 dated 07.01.2014. Appeal against the said order has been rejected vide Order-in-Appeal No. 218/2018 dated 27.03.2018. Being aggrieved the appellant is before this Tribunal.

2. We have heard Shri Alok Kumar Kothari, learned Advocate for the appellant and Ms. Jaya Kumari, learned Authorized Representative for the department.

3. Learned counsel for the appellant has submitted that the demand has been created on such an amount which is purely the reimbursement of expenses like fees of CHA etc. The expenses were incurred on behalf of the service recipients of the appellants and were charged on actual basis as per the bills raised by the CHAs on the appellants. Learned counsel has submitted that the demand has been confirmed wrongly denying appellant to be the pure agent and wrongly holding that the appellant failed to produce any evidence in support of their contention and also failed to produce the agreement with the service recipients authorizing appellant to procure the said services. Learned counsel has

submitted that all requisite documents were duly produced by the appellants showing that the actual amount of CHA bill has been deducted from the gross value of the bill issued by the appellant, while discharging the service tax liability. Confirmation of demand is therefore liable to be set aside.

3.1 Learned counsel further mentioned that while filing the service tax returns regularly, it was duly informed to the department that service tax not paid is with respect to the amount of exempted services. Hence the fact was in the notice of the department since the first return of the Year 2006. As already submitted the non-payment was due to *bona fide* belief and also for the reason that demand was raised invoking Rule 5 of Service Tax (Determination of Value) Rules, 2006 which was struck down by the Hon'ble court as being ultravires of Section 67 of the Finance Act, 1994. Accordingly, the department was not entitled to invoke the extended period of limitation while issuing the show cause notice. Confirmation of demand based on time barred show cause notice is liable to be set aside. With these submissions, the order under challenge is prayed to be set aside and appeal is prayed to be allowed.

4. Per contra learned Departmental Representative has reiterated the findings arrived at by the adjudicating authorities below. She further submitted that the appellant has raised bill for higher amount than that charged by the service provider. Further, the payment by the service provider on behalf of the recipient of services has not been separately indicated in the invoice issued by the service provider to the recipient of service as required as per

Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006. Therefore, it is clear that the appellant has not worked as a pure agent in the case. With these submissions, the appeal is prayed to be dismissed.

5. Having heard the rival contentions and perusing the case records, we observe and hold as follows:

5.1 The dispute in the present case is about the valuation. It is foremost necessary to look into the statutory provision for the purpose. 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."*

Section 67 of the Finance Act deals with valuations after its amendment w.e. f. May 01, 2006, a much shorter version was introduced which reads as under:

> *'67. Valuation of taxable services for charging service tax.*
>
> *(1) Subject to the provisions of this Chapter, where service tax is chargeable on any taxable service with reference to its value, then such value shall,*
>
> *(i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;*
>
> *(ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money as, with the addition of service tax charged, is equivalent to the consideration;*

(iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as ay be determined in the prescribed manner.

(2) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

(3) 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.

(4) Subject to the provisions of sub sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed.

Explanation: For the purpose of this section,

(a) "consideration" includes any amount that is payable for the taxable services provided or to be provided;

(b) "money" includes any currency, cheque, promissory note, letter of credit, draft, pay order, travelers cheque, money order, postal remittance and other similar instruments but does not include currency that is held for its numismatic value;

(c) "gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of accounts of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.'

5.2 It is an admitted fact that the demand in the present case has been confirmed invoking Rule 5 of Service Tax (Determination of Value) Rules brought into effect from June 1, 2007. The said rule reads as follows:

5. Inclusion in or exclusion from value of certain expenditure or costs.-

(1) *Where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging service tax on the said service.*

[Explanation*.- For the removal of doubts, it is hereby clarified that for the* ***2[****the value of the telecommunication service shall be the gross amount paid by the person to whom telecommunication service is actually provided.]*

(2) *Subject to the provisions of sub-rule (1), the expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely:-*

(i) the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured;

(ii) the recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;

(iii) the recipient of service is liable to make payment to the third party;

(iv) the recipient of service authorizes the service provider to make payment on his behalf;

(v) the recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party;

(vi) the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;

(vii) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and

(viii) the goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.

Explanation1.-*For the purposes of sub- rule (2), "pure agent" means a person who-*

(a) enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;

(b) neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service;

(c) does not use such goods or services so procured; and

(d) receives only the actual amount incurred to procure such goods or services. Explanation2.- For the removal of doubts it is clarified that the value of the taxable service is the total amount of consideration consisting of all components of the taxable service and it is immaterial that the details of individual components of the total consideration is indicated separately in the invoice.

5.3 Rule 5 was challenged before Hon'ble Supreme Court in the case of **Union of India Vs. Intercontinental Consultants and Technocrats Pvt. Ltd. reported as 2018 (10) GSTL 401 (SC).** It has been held that the aforesaid Rule 5 (1) as ultra vires of Section 67 of the Finance Act, 1994. The Legislature subsequently amended Section 67 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 64 itself, such reimbursable expenditure or cost would also form part of valuation of taxable services for charging service tax.

5.4 The period in dispute is prior 14.05.2015, hence it is clear that if the disputed amount is the amount of reimbursement, it was not the tax liability of the assessee. For adjudicating the said aspect, we have looked into the illustrations referred by appellant and the respective documents. Perusal thereof reveals as follows:

Appellant's Debit Note	CHA Bill on Appell	Description of Charges	Service Recipient

	ant		
SKJ-191 dated 01.05.2009	389 dated 01.05 .2009	Terminal Charges: Rs. 136 Gold/Siver Test: Rs.220 Parcel Insurance: Rs.173	M/s. Pinkcity Exports
SKJ-351 dated 26.05.2009	714 dated 26.05 .2009	Terminal Charges: Rs. 100 Gold/Silver Test: Rs.200 Parcel Insurance: Rs.129 GSP Charges: Rs.100	M/s. Shakshi Internatio nal

5.5 Similar kind of illustrations have also been given with respect to following:

Appellant's Debit Note to the client	Corresponding CHA Bill on Appellant
SKJ-307 dated 20.05.2009	641 dated 20.05.2009
SKJ-1999 dated 28.02.2009	9169 dated 28.02.2009
SKJ-338 dated 25.05.2009	696 dated 25.05.2009

5.6 This perusal reveals that the amount in question was received by the appellant from the service recipients to be equal to the actual amount which was paid by the appellant to the Customs House Agent for receiving the various other services. Apparently and admittedly, no service received against the said charges was utilized by the appellant as service provider while providing the Cargo Handling Service to its recipients. The appellant is still denied to be the pure agent only for want of a contractual agreement for the same with the service recipient. However, the agreement is not required to expressly mention that the service provider is pure agent. It is the definition of pure agent given under sub rule (2) of Rule 5 of Service Tax (Determination of Value) Rules, 2006 that has to be looked into. The provision reads as follows:

> ***"Rule 5(2):*** *Subject to the provisions of sub-rule (1), the expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely:-*
>
> *(i)the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured;*
>
> *(ii)the recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;*
>
> *(iii)the recipient of service is liable to make payment to the third party;*
>
> *(iv)the recipient of service authorises the service provider to make payment on his behalf;*
>
> *(v)the recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party;*
>
> *(vi)the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;*
>
> *(vii)the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and*
>
> *(viii)the goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.*
>
> *Explanation 1.- For the purposes of sub-rule (2), "pure agent" means a person who-*

(a)enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;

(b)neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service;

(c)does not use such goods or services so procured; and

(d)receives only the actual amount incurred to procure such goods or services.

Explanation 2.- For the removal of doubts it is clarified that the value of the taxable service is the total amount of consideration consisting of all components of the taxable service and it is immaterial that the details of individual components of the total consideration is indicated separately in the invoice."

Otherwise also, the absence of the agreement will be nothing beyond the procedural lapse. The substantial benefit of tax exemption cannot be withheld. The agreement were otherwise on record to prove that the appellant fulfills the criteria of being pure agent.

6. Finally coming to the plea of the appellant about demand being time barred, it is observed that the impugned show cause notice is dated 24.04.2012, the period of demand is October 2006 to March 2010. The issue is interpretational in nature. There arises no question of willful suppression of facts. Otherwise also, as already mentioned above, that the appellant was mentioning in the ST-3 returns about the exempted expenses. It is held that proviso to Section 73(1) of the Finance Act, 1994 has wrongly been invoked. The show cause notice is held to be barred by time. The demand on such show cause notice is liable to be set aside. For the same reason, there arises no occasion for the imposition of penalty.

With these findings, the order under challenge is hereby set aside. Consequent thereto, the appeal is allowed.

[Order pronounced in the open court on **06.11.2025**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

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