CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 51158 of 2020

[Arising out of Order-in-Original No. 02-COMMR/CGST Audit-I/2020dated24.06.2020 passed by the Commissioner of CGST, Audit-I, Delhi

M/s. Premair **...Appellant**
A unit of Afimac Associates (P)Ltd.
A-10, Okhla Industrial Area, Phase-I
Okhla Industrial Area,
Delhi 110020

VERSUS

Commissioner, CGST, New Delhi **...Respondent**
Central Revenue Building, I.P. Estate
New Delhi

APPEARANCE:
Shri, Aashish Chauhan,Advocates for the Appellant
Shri, Rajeev Kapoor, Authorized Representative for the Respondent

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MRS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 13.03.2026
DATE OF DECISION: **13.07.2026**

FINAL ORDER NO. 51212/2026

DR. RACHNA GUPTA

The present appeal has been filed to assail the Order-in-Original (O-I-O) No.02/2020 dated 24-06-2020 passed by the Commissioner of CGST, Audit I, Delhi in respect of two Show Cause Notices issued by the Commissioner of Service Tax, Service Tax Commissionerate, Delhi as detailed below:-

i) Show Cause Notice No. 361/ 2013-14 dated 23-10-2013[1] for the period from 2008-09 to 2011-12

ii) Show Cause Notice No.01 /2015-16 dated 28-07-2015[2] for the period from 2012-13 to 2013-14

2. The facts in brief, relevant for the present adjudication are that M/s Premair[3] were registered for providing various taxable services viz., Tour operator, renting of immovable property services, Business Auxiliary Services, Pandal or Shamiana Services and Supply of Tangible Goods Services[4] as defined under the provisions of the Finance Act, 1994. Intelligence was gathered that the appellant was supplying the Aircraft/Helicopter belonging to/owned by them to various entities for their use. The said services were being rendered as per the Agreements entered with the service recipients on mutually agreed terms and conditions. While providing the said aircraft/helicopter on charter hire, the appellant provided the crew thereby keeping an effective control and possession of the said the aircraft/helicopter with them. The Department opined that the said activity was in the nature of taxable service under the category of SOTG which was brought into tax net with effect from 16.05.2008. The appellant was also registered for rendering the said service. The Department alleged that the appellant had not paid service tax on the full consideration received for providing the aircrafts/helicopters. Summons/letters were issued by the department and the respective responses submitted by the appellants based whereupon the following two impugned SCNs were issued:-

During investigations, the department issued several summons as tabled below:-

Sr. No.	Date of Summon/ Letter Sent by The	Date of Reply/ Response of The Appellant

1 **SCN 1**
2 **SCN 2**
3 **the Appellant**
4 **SOTG**

	Department	
1	18.06.2009	20.07.2009
2	25.08.2009	31.08.2009 through CA and 05.09.2009
3	17.11.2009	30.11.2009
4	03.06.2010	23.06.2010
5	19.05.2011	10.06.2011
6	02.08.2013	08.08.2013
7	07.10.2013	10.10.2013

3.1 On the scrutiny of the documents submitted by the appellant along with the aforementioned responses including agreements etc. the department observed that the appellant had supplied their aircrafts/helicopters with licensed trained pilots and necessary engineering crew to operate the said helicopter to the service receiver/s on a "wet lease" and not on a "dry lease". The aircrafts/helicopters were provided to M/s SAR Aviation Pvt. Ltd., M/s Aviation India, New Delhi, Air Charter Services, New Delhi etc., who were engaged in chartering services. As such, the Department formed the opinion that the services rendered by the appellants fulfill the essential criteria of being taxable under the taxable category of SOTG in as much as they were supplying/Chartering/ giving on hire their helicopter/ aircraft, without transferring right of possession and effective control. The Department also observed that the appellant had also booked foreign currency expenditure incurred in respect of taxable services received in India from service provider being non-resident/outside India.

3.2 On scrutiny of the invoices, Financial statements, Annual Report / Balance Sheets etc, for the period F.Y. 2008-09 to F.Y. 2011-12, the Department observed that they have earned Rs. 25,70,83,545/- in relation to providing the SOTG service to their clients and had also booked foreign currency expenditure of Rs. 14,39,68,954/- towards lease payments, purchase of spare parts and on account of maintenance of the aircrafts/helicopters to the foreign company. The Department alleged that this was the consideration for providing Management Maintenance and Repair services[5]. The Department also observed that the appellant had wrongly availed and utilized cenvat credit of Rs. 16,59,225/- for payment of service tax. Alleging that no proper bifurcation was provided by the appellant, service tax amounting to Rs. 4,29,29,520/- was proposed to be recovered along with along with interest at the appropriate rate alongwith proportionate penalties.

4. Show Cause Notice- (ii)

4.1 This SCN acknowledged the issuance of the earlier SCN dated 23.10.2013 and was in continuation thereof. Various summons/letters of the department and the respective responses submitted by the appellants are as follows:

Sr. No.	**Date of Summon/ Letter sent by the department**	**Date of Reply/ Response of the Appellant**
1	30.01.2014	11.02.2014
2	25.02.2014	28.02.2014
3	01.04.2014	29.04.2014
4	21.01.2015 & 03.02.2015	06.02.2015
5	19.02.2015	03.03.2015
6	25.06.2015 & 06.07.2015	14.07.2015

5 MMR Service

7	07.10.2013	10.10.2013

4.2 The department sought details regarding the payment of service tax against the issues covered under the SCN-1 specifically in relation to supply of aircraft on hire basis to various entities for chartering services and services received in relation to Management Maintenance and Repair services from abroad during the period 01.04.2012 to 31.03.2013. The appellant vide their aforesaid letters responded regarding the payment of tax vis-à-vis supply of aircraft activity during the said period and about ST-3 Returns for the year 2012-2013 to 2013-2014, as has been acknowledged in para 14 of this SCN. Further, the appellant denied that the foreign currency received for hiring the helicopter was taxable under MMR Service stating that the arrangement was merely DRY Lease. Similarly , the foreign currency received against provisions of spare parts was also denied to be taxable. The department invoked Section 66A of the Finance Act, 1994 alleging that the MMR services were being received by the appellant from outside India. Hence, service amounting to Rs. 60,00,551/- was proposed to be under this SCN to be recovered from the appellants along with interest and the appropriate penalties.

4.3 Both the proposals of the two aforesaid SCNs were confirmed vide the Order-in-Original dated 24.06.2020. Being aggrieved the appellant is before this Tribunal.

5. We have heard Mr. Aashish Chauhan, Ld. Counsel for the Appellant, and Mr. Rajiv Kapoor, Ld. DR for the Department.

6. Learned counsel for the Appellants submitted that the appellant was engaged in non-scheduled air transport operations including Charter Services. He mentioned that the demand was primarily based on misclassification of Aviation Charter Operations and incorrect treatment

of certain foreign currency expenditure. To elaborate the same ld. Counsel made following submissions:

a. That the entire demand of services tax as was raised in the SCN 1 and SCN2 had been wrongly confirmed in the impugned order under the two broad service categories, namely, SOGT for all the revenue from operations (for the output side) and Management, Maintenance and Repair services for all expenditure made in the foreign currency (for the input side). Learned counsel submitted that the respective revenue and forex expenditure pertained to various service categories and other heads as the appellants were registered for service tax under many service categories other than SOTG or Charter Hire & MMR Service like Renting/ Leasing, Tour Operator Service, Pandal or Shamiana/ Mandap keeper Service etc. Ld. Counsel impressed that the respective revenue from all such services was clearly reflected in the Service tax returns filed by them. Similarly, on the input side, their expenses in foreign exchange pertained to several heads such as purchase and repair of spare parts, security deposit for the helicopters taken on lease, rent pertaining to DRY LEASE etc.

b. That despite producing all related information and documents including bifurcation of income and expenditure into different heads, invoices pertaining to the CENVAT credit and, Bill of Entries.Agreements etc. pertaining to the purchase of goods, repair of spare parts, lease payments etc. to the Department from time to time throughout from 2009 to 2015 and also during the adjudication process for the Show Cause Notices, the demand was confirmed in the impugned order disregarding the submissions made and documents submitted by the Appellant without giving any reasons. Learned counsel contended that the mechanical clubbing of entire operational revenue as SOTG and entire forex as Management, Maintenance and Repair Service chargeable to RCM was factually incorrect and legally unsustainable. He relied on the judgments of Hon’ble Apex Court in **Commissioner of**

Central Excise & Customs vs. Larsen & Toubro Ltd.[6] **and Union of India v. Martin Lottery Agencies Ltd**[7] were relied upon.

c. That the appellant was inter alia providing air transport services with two helicopters, taken on lease from foreign companies. The services were provided for a period/ tenure to the service recipients against consideration; destination, route, flying hours etc. are negotiated and aircraft was chartered. The Appellant operated helicopters under a DGCA-issued Non-Scheduled Operator Permit and provided charter flights for transportation of domestic passengers, where the aircraft, crew, maintenance and operational control remained with the Appellant. The essence of the transaction was therefore the service of carriage of passengers and not supply of aircraft as tangible goods. The Department had erroneously classified the Appellant's helicopter charter operations under "Supply of Tangible Goods" (SOTG), which is contrary to the statutory scheme and settled judicial precedents, wherein activities similar to that of the Appellant have been classified as 'transport of passenger by air services' for domestic operations which were made taxable only with effect from 01.07.2010.

d. That the legal position in the aviation sector now stands conclusively settled by the Larger Bench of the Tribunal in **VRL Logistics Ltd. vs. Commissioner**[8] which clarified that non-scheduled air transport operations inherently include charter operations for carriage of persons for remuneration. Following the said principle, the Tribunal in **Karnavati Aviation Pvt. Ltd. v. Commissioner of Service Tax**[9], **EON Aviation Pvt. Ltd. v. Commissioner of Service Tax**[10], and **Deccan Charters Ltd. v. Commissioner of Service Tax**[11] has consistently held that charter aviation operations by licensed operators constitute transport of passengers by air and cannot be classified as SOTG.

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6 **(2015 (39) STR 913 SC)**
7 **(2009 14 STR 593 SC)**
8 **(2023 (3) CENTAX 168 Tri-LB)**
9 **Final Order No. 10552-553/2024 dated 08.03.2024 – CESTAT (AHM)**
10 **(2025 27 CENTAX 186 Tri-Mum)**
11 **(Final Order No.20536/2024 dated 14.06.2024 CESTAT-Bengaluru)**

e. That the Impugned Order passed by the Respondent heavily relied on the decision of this Hon'ble Tribunal in the case of **Global Vectra Helicorp Ltd. vs. Commissioner, Mumbai**[12]and **MescoAirlines Ltd. vs. CST, Delhi**[13] wherein CBEC Circular No. 20/2009 was interpreted to conclude that services will be rightly classified under SOTG. A perusal of the Order of this Tribunal in Re *Karnavati Aviation* and subsequent judgments in*Re Deccan Charters and EON Aviation*clearly invalidate the said findings and the clarificatory circular. Moreover, those decisions i.e. re *Global Vectra*and re *Mesco Airlines* have been turned down as bad law by this Hon'ble Tribunal in case of **EON Aviation Pvt. Ltd. vs. Commissioner of Service Tax (supra).**

f. The legislature subsequently expanded a distinct taxable service for "transport of passengers by air", for domestic passengers w.e.f. 01.07.2010, which was not carved out of the entry of SOTG but created as an independent charging provision. It is well settled that where a specific taxable service is introduced, the same activity cannot be artificially brought within the scope of a general entry for the earlier period, as held by the Supreme Court in **Commissioner of Central Excise & Customs vs. Larsen & Toubro Ltd.**[14] *and* **Union of India vs. Martin Lottery Agencies Ltd**[15]**.**Accordingly, the classification adopted in the impugned order was legally untenable.

g. That the adjudicating authority summarily had denied the benefit of Section 64(1) of the Finance Act, 1994 in respect of air charter operations performed in the State of Jammu & Kashmir, on the ground that both the service provider and recipient were based in Delhi. The authority had concluded this without examining the Appellant's evidence, including flight logs demonstrating that embarkation and disembarkation of passengers occurred in Jammu & Kashmir, where the service was actually performed. It is settled law that the Finance Act,

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12 (2016 (42) STR 118)
13 (2018 TIOL 1761 CESTAT DEL)
14 (2015 (39) STR 913 SC)
15 (2009 14 STR 593 SC).

1994 did not extend to the State of Jammu & Kashmir, and therefore services rendered in that State fell outside the taxable jurisdiction of service tax law. Mere location of the service provider or recipient in Delhi was irrelevant when the taxable activity itself was carried out in a non-taxable territory. The Tribunal in **Cox & Kings India Ltd. v. Commissioner of Service Tax**[16] had held that service tax is a destination-based levy, and where the services are actually performed in a non-taxable territory, no service tax can be demanded notwithstanding the location of the contracting parties.

h. That the adjudicating authority had disallowed the CENVAT credit of ₹16,59,225 on the bald assertion that the Appellant had failed to produce supporting documents such as invoices and payment proofs. The impugned order has ignored the fact that relevant records and documents were produced before the Department during investigation as well as adjudication, and no specific deficiency or discrepancy had been identified. The finding proceeds on a generalised allegation without examining the documents on record or dealing with the Appellant's submissions.

7. The Appellant also challenged the invocation of extended period of limitation in context of SCN 1 submitting that the entire demand was barred by limitation. The additional written submissions were also filed pursuant to the directions of this bench to demonstrate that all material particulars relating to the alleged SOTG turnover for the period FY 2008-09 till FY 2011-12 and other transactions were duly disclosed to the Department from time to time. Learned counsel further as follows:-

a. During the relevant period, the Department was in continuous correspondence with the Appellant, and the Appellant had furnished all information, documents and clarifications as and when called for. Thus, allmaterial facts were fully within the knowledge of the Department and

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16 (2014 (35) STR 817 (Tri. – Del)

there was complete transparency in the conduct of the Appellant.In such circumstances, the allegation of suppression is wholly untenable.

b. The Supreme Court has consistently held that "mere non-payment of tax does not amount to suppression and something positive is required for Invoking the extended period" (Uniworth Textiles Ltd. v. CCE), and that suppression must be willful with intent to evade duty" (Cosmic Dye Chemical v. CCE). In **Pushpam Pharmaceuticals Co. v. CCE** has further clarified that the term "suppression of facts must be construed strictly and means a deliberate act of withholding information.

7.1 Learned counsel also mentioned that the impugned demand was liable to be set aside on the ground of limitation alone. Specifically, the demand of 4,58,76,631/-under SCN dated 23.10.2013 (SCN-1), covering period of FY 2008-09 to FY 2011-12, forming the substantial portion of the impugned demand was entirely premised on the allegation of suppression of facts, which was factually incorrect. The Appellant had, at all material times, fully and truly disclosed all relevant information relating to its operations, turnover and transactions. Consequently, the invocation of extended period of limitation in the present case is objected being wholly illegal. With these submissions the impugned order/ 0-1-0 dated 24.04.2020 was prayed to be set aside and the appeal be allowed.

8. While rebutting these arguments, learned AR reiterated the findings made in the impugned order (O-I-O dated24.06.2024). It is submitted:

a. Appellant's activity constitutes the supply of tangible goods for use because effective control and possession was not transferred to the customer/lessee. It rejects the classification as ATPS and upholds the department's classification under STGS.

b. Benefit of exemption under section 64(1) is not available as claimed by the appellant, in respect of the charter hire service in state of

Jammu and Kashmir because the service provider, i.e., the appellant and the service recipient, i.e., Parbhatam Aviation (P) Ltd were established and registered business entities based in Delhi and engaged in the charter hire business.

c. Regarding the demand of service tax on Maintenance and Repair service, under reverse charge, learned AR stated that the appellant could not corroborate their claim that the foreign expenditure pertains to non-taxable activities, with the sufficient documentary evidence.

d. The Order confirmed the denial of Cenvat credit amounting to Rs. 16,59,225/-, finding it was irregularly availed or utilized without proper documents.

8.1 Thus, the department's contention was that the activity of chartering helicopters fell in the category of "Supply of Tangible Goods for Use" because effective control and possession was not transferred to the customer/lessee. It was contended that the issue of coverage of air charter services under SOTG was already settled vide the following decisions:

- **M/s Mesco Airlines vs. CST, Delhi**[17]
- **Global Vector Helicopter vs. CC, Mumbai**[18]
- **EIH Ltd. Vs. Commissioner of Central Excise, Delhi-I**[19]
- **Chimes Aviation P Ltd. vs. Commissioner Service Tax, New Delhi II**[20]

8.2 Ld. Authorized Representative further submitted that the benefit of exemption under Section 64(1) was not available to the appellant as claimed by them, in respect of the charter hire service provided in the State of Jammu & Kashmir because the service provider and the service recipient were established and registered business entities based in Delhi and engaged in the charter hire business. As regards the demand of service tax on Maintenance and Repair Service, under Reverse Charge, Mechanism, learned AR submitted that the Appellants could not corroborate their claim with the sufficient documentary evidence, that

17 **(2018 TIOL 1767 CESTAT delhi)**
18 **(2015 TIOL 380 CESTAT Mumbai)**
19 **(2019 24 GSTL 592 Tri-Delhi)**
20 **(2022 1 TMI 1016 CESTAT Delhi)**

the foreign expenditure pertains to the non-taxable activities, As for the denial of CENVAT credit, it was reiterated that the credit was irregularly availed or utilized without proper documents.

9. We have heard the rival contentions and have perused the entire record of the appeal memo. we have observed as follows:

9.1 The appellant operates helicopters under a DGCA-issued Non-Scheduled Operator Permit and provides charter flights for transportation of domestic passengers, where the aircraft, crew maintenance and operational control remained with the Appellant. The Department has denied that the service of carriage of passengers, which came into tax net with effect from 01.07.2010. The said activity was alleged as supply of aircraft to be supply of tangible goods, taxable since 16.05.2008.For rendering the said activity, the appellants had taken on lease two aircrafts/helicopters from foreign company. The appellant was alleged to be liable under RCM for receiving MMR Service from such foreign companies. The impugned order has also been denied Cenvat Credit to the appellant. The proposal of two SCNs as confirmed vide the impugned order can be summarized as below:

<table>
<tr><th>SCN</th><th>Period Involved</th><th>Details</th><th>Demand Amount</th></tr>
<tr><td rowspan="4">SCN 1-dated 23.10.2013</td><td rowspan="4">FY 2008-09 Till FY 2011-12</td><td>Output Service Under SOTG</td><td>₹ 2,76,56,123/-</td></tr>
<tr><td>On Reverse Charge on Import of Services</td><td>₹ 1,65,61,283/-</td></tr>
<tr><td>Cenvat Disallowed</td><td>₹ 16,59,225/-</td></tr>
<tr><td>Total</td><td>₹ 4,58,76,631/-</td></tr>
<tr><td rowspan="2">SCN 2-dated 28.07.2015</td><td rowspan="2">FY 2012-13 Till FY 2013-14</td><td>On Reverse Charge on Import of Services</td><td>₹ 60,00,551/-</td></tr>
<tr><td>Total</td><td>₹ 60,00,551/-</td></tr>
</table>

10. In the light of these observations following issues are framed to be adjudicated in this order:

A. Whether the Appellant's helicopter charter operations are liable to be classified under "Supply of Tangible Goods", as alleged by the department or whether the same constitute "Transport of passengers by air service" as claimed by the appellant.

B. Whether the charter operations performed in the State of Jammu & Kashmir, where the embarkation and disembarkation of passengers took place, are outside the taxable jurisdiction of the Finance Act, 1994?

C. Whether the foreign currency expenditures relied upon by the Department can at all be construed as taxable "import of services" under the category of Management, Maintenance or Repair Service under the Finance Act, 1994, particularly when such expenditures pertain to transactions such as purchase of spares, training and lease-related payments which do not constitute taxable services?

D. Whether CENVAT credit can be disallowed in the absence of any specific finding of ineligibility, particularly when the relevant supporting documents were duly furnished by the Appellant before the Department?

E. Whether the demand is barred by limitation and the invocation of the extended period and imposition of penalties are legally sustainable?

<u>11. ISSUE NO. A:</u>

At the outset, we have perused Section 65 (105) (zzzo) of the Finance Act, 1994 (in short the Act‟) which defines the Aircraft Operator Services to mean as follows:

> "To any passenger, by an aircraft operator, in relation to scheduled or non-scheduled air transport of such passenger embarking in India for domestic journey or international journey;"

Supply of tangible goods for use service is defined under Section 65 (105) (zzzzj) of the Act which reads as follows: -

> "To any person, by any other person in relation to supply of tangible goods including machinery, equipment and appliances for use, without transferring right of possession and effective control of such machinery, equipment and appliances."

11.1Further the Department vide D.O.F. No.334/I/2008-TRU dated 29th Feb., 2008, issued a clarification regarding the introduction of the levy of SOTG. The relevant portion of the said clarification is extracted hereunder for ready reference:

> "4.4. Supply of Tangible Goods for use: ....
>
> 4.4.2. Excavators, wheels loaders dump trucks, crawler carriers companion equipment, cranes etc. offshore construction vessels & barges, geo-technical vessels, tug and barges flotillas, ring and high value machineries are supplied for use, with no legal right of possession and effective control. **Transaction of allowing another person to use the goods, without giving legal right of possession and effective control, not being treated as sale of goods, is treated as service."**

11.2The learned counsel for the appellant has argued that the Appellant operated the helicopters under a DGCA-issued Non-Scheduled Operator Permit and provided charter flights for transportation of domestic passengers, thus the essence of the transaction was therefore the service of carriage of passengers and not supply of aircraft as tangible goods. They contended that the legal position in the aviation sector now stands conclusively settled by the Larger Bench of the Tribunal in **VRL Logistics Ltd. vs. Commissioner**[21], which clarified that non-scheduled air transport operations inherently include charter operations for carriage of persons for remuneration; and following the said principle, the Tribunal in **Karnavati Aviation Pvt. Ltd. vs. Commissioner of Service Tax**[22], **EON Aviation Pvt. Ltd. vs. Commissioner of Service Tax**[23], and **Deccan Charters Ltd. vs. Commissioner of Service Tax**[24], has consistently held that charter aviation operations by licensed operators

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21 (2023 (3) CENTAX 168 Tri-LB)
22 Final Order No. 10552-553/2024 dated 08.03.2024 – CESTAT (AHM)
23 (2025 27 CENTAX 186 Tri-Mum)
24 (Final Order No.20536/2024 dated 14.06.2024 CESTAT-Bengaluru)

constitute transport of passengers by air and cannot be classified as SOTG.

11.3We are unable to accept the said contention of the appellant. We note that an identical issue regarding charter hire of helicopter came up before the Tribunal in the case of **Global Vectra Helicorp Ltd. vs. CC (Import) Mumbai -2016 (42) STR 118 (Tri. Mum.),** wherein the appellant had claimed the classification of their service as Transportation of Passengers by Air Service. However, the Tribunal after very detailed discussions of the facts and case laws on the subject as well as CBEC Circular No. 20/2009 dt. 09.02.2009 came to the conclusion that the services would be rightly classifiable under the category of "Supply to Tangible Goods Service". The observations of the Tribunal are reproduced below: -

> "6. We have carefully considered the submissions made by both the sides. We have also perused the contracts/agreements entered into by the appellants in respect of the transaction which is under dispute.
>
> 6.1 From the preamble of the contract entered into by the appellant with M/s. ONGC, it is seen that ONGC was interested in charter hiring of helicopters for offshore operations being carried out by them and the appellant agreed to provide the required services against the Corporation's order in this regard. As per clause 3 of the agreement the appellant undertook to deliver/mobilize the helicopters at charterer's helibase in Mumbai or at other bases in India as may be designated by the charterer in fully operational condition for the charter service. In clause 4 relating to service, it was provided that the appellant shall ensure that the helicopters are available and fully operational for the exclusive use of the charterer and the persons authorized by the charterer and the daily flight schedule was to be provided by the charterer. The contract also envisaged that the appellant shall provide experienced IFR licensed aircrews for the operation and qualified maintenance crews for servicing of the helicopters as per the prescribed standards. Passengers and/or cargo as required by the charterer was to be carried in the helicopter. All necessary clearances, permission to hold helicopter licence to operate the helicopter, compliance with all laws, rules, regulations, orders, standards and schedules as specified by the Directorate General of Civil Aviation was to be complied with by the appellant, who is the service provider. The appellant was also obligated to provide to the charterer, the helicopters daily in airworthy condition regularly on all 365 days of the year. For the services rendered the appellants were eligible for remuneration on a fixed monthly charge basis for thirty-six months plus flying hourly charges. The helicopters were to be operated upon by the crew provided by the appellant and such crew have complete control over the actual flying operations. The agreement with Trans Ocean

> Offshore Deepwater Drilling Inc. was also for providing charter service to the company by the appellant. The said agreement also envisaged operation of the aircraft for the transportation of the passengers and passenger baggage as per the instructions and requirements of the client, the crew was to be provided by the appellant and all approvals, licences, permits was the responsibility of the appellant. For the services rendered consideration was paid to the appellant in terms of the said agreement. In both these agreements the liability to pay taxes and dues was on the appellant and also the liability to insure the goods. From the tenor of the agreement and the terms and conditions provided therein, especially those specified in clauses - 1.11 relating to "equipment/materials/goods, 1.14 relating to mobilization, 3 relating to delivery, 4 relating to services, 6 relating to availability, maintenance and 8 relating to safety, etc. - it is seen that the appellant was engaged in charter-hiring of helicopters to the clients for a consideration.
> The possession and control of the helicopters remained with the appellants.
>
> 6.2 Section 65(105) (zzzj) defines supply of tangible goods for use service as "any service rendered to any person by any other person in relation to supply of tangible goods including machinery, equipment and appliances for use, without transferring the right of possession and effective control of such machinery, equipment or appliances." There is no dispute that helicopters were mobilized/delivered by the appellant to their clients without transferring the right of possession and effective control for use by the clients. Therefore, the services rendered by the appellant to their clients in respect of charter-hire of helicopters would come under the purview of supply of tangible goods for use as defined in Section 65(105)(zzzj) of the Finance Act, 1994."

11.4This Tribunal in **EIH Ltd. vs. Commissioner of Central Excise, Delhi-I**[25] also dealt with this issue and held as follows:

> "As can be seen, case, the definition specifically provides that the service is in relation to scheduled or unscheduled air transport of the service provided by the appellant cannot be covered by transport of passengers by air service since in that passengers. The thrust in the definition is on transport of passengers. In the case of the appellant, the service is provided to various companies, who chartered the aircraft for specific time or for specific journey. The payment is not based on number of passengers. No tickets are issued to the passengers and no charges are collected from Therefore, the service provided Considered as charter of aircraft. There is no doubt that the right of possession and effective control while in use by the charterer is not parted with. Thus, the charter hires of helicopters to ONGC and other clients for flight operations as per their requirements cannot be said to be "non-scheduled (passenger) services." Therefore, we reject the contention of the appellant in this regard. Consequently, we hold that the services rendered by theappellant in the instant case cannot be treated as air transport services for the transport of passengers. The C.B.E. & C. had also occasion to examine the issue and vide Circular No. 20/COMMR.

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25 2019(24) GSTL 592 (Tri. Del.)

(S.T.)/2009, dated 9-2-2009 the Board clarified, inter alia, as follows:

"*With effect from 16-5-2008, service provided to any person by any other person in relation to supply of tangible goods including machinery, equipment and appliances for use, without transferring right of possession and effective control of such machinery, equipment and appliances is taxable service under section 65(105) (zzzj). Chartering of aircrafts by a client only confers him with the right to use the aircraft and the owner of the aircraft in such case does not transfer right of possession. As to whether effective control over the aircraft is transferred or not would be a question of fact to be determined in each case. Where the crew is also provided by the owners of the aircrafts and in a wet lease of aircraft effective control is not transferred.*"

Thus, as per the C.B.E. & C. Circular also, the services of charter hire of helicopters merits classification under supply of tangible goods for use services."

Similar views have been expressed by the Tribunal in the case of M/s Mesco Airlines Ltd. vs. CST, New Delhi (F. O. No. 51387/2018 dt. 18.04.2018)."

11.5 In the light of the decisions referred above it is clear that this issue no. A is no more res integra. The facts of present case being identical, it is held that the service provided by the appellant is classifiable under SOTG Service, as alleged by the department.

11.6 In addition, it is observed that the entire revenue from operations has erroneously being treated by the department as taxable under SOTG. The said revenue comprises distinct services as is apparent from the table as provided in the CA Certificate. The table is reproduced in the impugned order in para 43 thereof-

Particulars	2008-09 (upto 23rd Feb 2009)	24th Feb 09 to 31st March 2009	2009-10	2010-11	2011-12	Total	Service Tax payable	
Helicopter Hiring	23529875	10083961	63249902	31191536	43071034	171126308	16627173	1684282
Flight Handling	96264	457931	1259236	3799038	3154702	8767171	914435	9433
Tour Operator	19579679	2146665	15488165	17276115	14246032	68736656	2993287	4534151
Renting (Commercial)	269121	-	390225	570341	568046	1797733	190710	-
Renting (Residential)	151200	-	167640	185600	204600	709040	-	76145
Rent-a-cab	200000	100000	858782	208800	378172	1745754	73575	112418
Ticketing Income	497829	-	155746	485111	1515615	2654301	283648	-
Hotel Booking	-	-	422397	566825	132189	1121411	115505	-
Pandal or Shamiana and Other services	-	-	381090	44000	-	425090	43784	-
							21242117	6416429
	44323968	12788557	82373183	54327366	63270390	257083464	30866919	13327690

11.7 It is the settled position of law that during the relevant period, the demand of service tax was implicitly linked to the specific classification of the taxable service as each charging entry operates within its own defined scope and position and it is not possible to examine the tax position of one class of service category considering it as another class of service. In our view, since the demand pertains to the activities, other than aircraft charter operations and covered under SOTG, the same cannot be sustained. We draw our support from the decision of Hon'ble Supreme Court in the case of **Union of India vs. Martin Lottery Agencies Limited**[26] wherein it was held that the taxies entries are to be construed strictly and their scope cannot be expanded by interpreted excise.

11.8 All the details were duly disclosed by the appellants in their ST-3 Returns and tax thereon was also discharged under the respective tax categories as is apparent from the voluminous documents produced by the appellant and also referred to by the Ld. Counsel. Those documents were before the adjudicating authority which have been ignored in the impugned order. The impugned order merely reflects the mechanical clubbing of entire operational revenue under one SOTG, without correlating the alleged taxable category. Consequently, the entire demand cannot be upheld, except for the demand relating to SOTG.

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26 2009 (14) STR 593

12.1 **ISSUE NO. B:**

The fact is not under dispute that a part of services covered under SOTG in the SCN 1 has been provided by the Appellant in the State of Jammu & Kashmir for Amarnath Yatra. It was argued from the Appellant's side that the services were beyond the scope of Section 64(1) of the Finance Act, 1994, as the embarkation of passengers for these services was made from within J&K and the journey also ended within the State. The reason for confirming the demand of service tax on these services in the impugned order is that the registered office of the service provider and the recipient was in Delhi. The question is whether mere location of the service provider or recipient in Delhi is relevant when the taxable activity itself was carried out in a non-taxable territory. This issue has been clarified by this Tribunal in **Cox & Kings India Ltd. v. Commissioner of Service Tax**[27]wherein it was held that service tax is a destination-based levy, and where the services are actually performed in a non-taxable territory, no service tax can be demanded notwithstanding the location of the contracting parties. In our view since these services were actually rendered in the State of Jammu & Kashmir (Baltal), these are beyond the jurisdiction of Section 64(1) of the Finance Act, 1994, and are not subject to service tax. Hence it is held that the confirmation of demand for service tax for providing SOTG service innon-taxable territory merely for the reason that the service provider is located in the taxable area is liable to be set aside.

13. **ISSUE NO. C:**

The demand on this issue is with respect to expenditure of foreign currency incurred in respect of taxable service received in India by the appellant from service provider situated outside india (para 26 of the SCN-I). It is observed from the relied upon documents as also referred in the impugned order that the foreign currency is not merely associated with the Lease agreement for getting aircrafts/helicopters from foreign

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27 2014 (35) STR 817 (Tri. – Del)

lessors but is associated with several other issues as tabulated below for SCN-(ii) (also recorded in para 42.1D & para 43 of the O-1-0):

Particulars	**Year 2012-13**	**Year 2013-14**	**Total**
Lease Rental (Dry Lease)	1,70,84,404/-	2,42,73,399/-	4,13,57,803/-
Purchase of Spare Parts	38,45,664/-	21,19,272/-	59,64,936/-
Repair of Spare Parts	--	11,91,136/-	11,91,136/-
Interest on Lease Rental	--	34,280/-	34,280/-
Total	2,09,30,068/-	2,76,18,085/-	4,85,48,153/-

We find that in SCN-(i) as well the amount of foreign exchange relates to security deposit and lease rental for dry lease, purchase of spare parts, repair of spare parts, pilot training, foreign travel for training and membership fees aggregating to ₹14,39,68,065/-,

13.2 We note that all the relevant documents, including the dry lease agreement, invoices for spare parts, pilot training records etc., were furnished to the Department at the very initial stage of investigation vide their first letter dated 30.11.2009.Subsequently as and when the Department sought information, vide letters dated 24.02.2010, 23.06.2010, 10.06.2011, 10.04.2013, the information was provided. The receipt thereof has not been denied by the department but it is noted that none of those documents is, discussed in the impugned order. Consequently, we hold that the impugned order is non-speaking.

13.3 The perusal of the Lease Agreement dated 13.08.2008 with the foreign company, Cessna Finance Corporation (input side as referred above) reveals that it was an agreement for dry lease where the aircraft was given on lease by the foreign company to the Appellant for a couple of years. Thereafter, the Appellant got it registered with DGCA in their name for the provision of non-scheduled air transport services. Further, no crew was given along with the Helicopter by the lessor to the lessee, i.e., Appellant, under the agreement. Even the maintenance was also agreed to be at the lessee's/appellant's expense though by Cessna Finance, the Lessor. We do not find merits in the view of the adjudicating authority that the restrictions placed in the lease agreement by the lesser regarding the area of operation of aircraft under the lease or other restrictions on the manner to use will amount to retaining control of aircraft by the Lessor. It is rather observed that the impugned order-in-original has hypothetically vivisected the said Dry Lease agreement into two: one being for Maintenance and Repair, the other being the agreement of Lease. We observe that the Hon'ble Apex Court in the case of **Super Poly Fabriks Ltd. vs. Commissioner**[28] laid down the principle of how to read an agreement or contract as under.

> "There cannot be any doubt whatsoever that a document has to be read as a whole. The purport and object with which the parties thereto entered into a contract ought to be ascertained only from the terms and conditions thereof. Neither the nomenclature of the document nor any particular activity undertaken by the parties to the contract would be decisive."

13.4 In view thereof, the Maintenance Clause of the Dry Lease agreement dated 13.08.2008 cannot be considered as separate and independent of the said lease agreement executed between the foreign company as lessor and appellant as lessee for leasing aircrafts/helicopters to appellants with possession and effective control thereof. The arrangement was different when appellant gave those to the aircrafts/helicopters, to their clients in India for Chartering purposes as the effective control was retained with the appellant. As already discussed above, this arrangement is held to be the Taxable Service of Supply of Tangible Goods. In view of this discussion it is held that agreement dated13.08.2008 itself falsifies the allegation that appellant received Maintenance and Repair Services from the Foreign Company. Neither the amount of Lease nor the interest thereupon, paid in forex by the appellant is liable to service tax.

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28 2008 (10) S.T.R. 545 (S.C.)

13.5 It is further observed that the service tax demand under Reverse Charge Mechanism (RCM) for rendering Management, Maintenance and Repair (MMR) Service has been confirmed on the entire forex spending under the service category of MMR Services which includes the amount for the purchase of spare parts, as is clear from the table above. The related details clearly show that the forex spending is related to the purchase of goods. The settled position of law is that there cannot be the demand of service tax on sale/purchase of Goods. We observe that all the details, as provided by the appellants have already been recorded in the impugned order and even the tables have been drawn therein showing the invoice wise Bill of Entry. With all these documents and detail, the adjudicating authority hasconsider the related expenditure as expenditure for the services stating that there was no collaborative evidence to establish that the spare parts were actually used in helicopters. We do not find any merit in this view as regardless of the use of spare parts, in no case forex spent on purchase of spare parts be considered as forex spent on procurement of services.

13.6 A part of demand confirmed for MMR Services (under RCM) also pertains to the repair and maintenance of spare parts outside India. There is no dispute to the fact that the goods were sent outside India for repair and re-imported back herein. To ascertain the taxability of repair services here, Rule 4 of the Place of Provision of Services Rules, 2012 is relevant which reads as:

> "where the services in question are in respect of goods which are made available by the service recipient to the service provider, the place of provision of such services would be the location where the services are actually performed."

13.7 As the service tax is a destination-based tax, if the place of provision of a service was outside India, it was not taxable in India. In the present matter as the repair took place outside India, the same was not taxable in India.In totality of discussion on this issue, we hold that the appellant did not receive MMR Service from the foreign Company. The agreement of Dry Lease between appellant and foreign lessor (input side) is incorrectly held as the activity of providing Management Maintenance and Repair Services. Also, the amount of forex paid for purchase of goods/spare parts of the aircrafts and also for repairs got done outside India has wrongly been included for confirming the demand.

13.8 it is settled judicial principal that mere responsibility to maintaining and repairing machines does not mean that transaction does not involve transfer of the right to use goods. We rely on the decision of Hon'ble Apex Court in **Great Eastern Shipping Company Ltd. Vs State of Karnataka[29],** wherein it has been held:

> **"33.** When we peruse the various terms and conditions of the Charter Party Agreement (Annexure I), clause 1 provides that the contractors "let" and the charterer "hire" the goods vessel for six months. The expression 'let' has been used, and the vessel most significantly during the charter period has been placed at the "disposal" of the charterers and under their control in every respect. The charterers have been given the right to use all outfits, equipment, and appliances on board the vessel at the time of the delivery, including the whole reach, burthen, and deck capacity. Thus, in our considered opinion, merely by providing the staff, insurance, indemnity, and other responsibilities of bearing officials costs. Effective control for the entire period of six months has been given to the charterers. It is a case of transfer of right to use the vessel for which certain expenses and staff are to be provided by the contractor, which is not sufficient to make out that the control and possession of the vehicle are with the contractor. The possession and control are clearly with the charterer. As in essence, it has to be seen from a conjoint reading of various conditions whether there is a transfer of right to use the vessel. In our considered opinion there is not even an iota of doubt that under the charter agreement coupled with the instructions to tenderers, general conditions and special conditions for the contract as specified in the tender documents and charter-party clauses, there is a transfer of right to use the vessel for the purposes specified in the agreement."

The Tribunal in **Express Engineers and Spares Pvt. Ltd. Vs Commissioner of CGST Ghaziabad[30]**held as follows:-

> **"38.**The finding in the impugned order that since the appellant was responsible for the maintenance and repair of the diesel generator sets, the appellant has retained effective control, cannot also be sustained because once the control

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29 **2020 (32) GSTL 3 (S. C)**
30 **2022 (64) G.S.T.L 112 (Tri-All.)**

and possession of the diesel generator sets was transferred to the customers, mere maintenance or repair work will not change the nature of the transaction. This is clear from the decisions of the Gauhati High Court in *Dipak Nath* and of the Tribunal in *Petronet LNG Ltd."*

This Tribunal in **Petronet LNG Ltd. vs Commissioner of Service Tax, New Delhi**[31]observed as under:-

> **"28.** Another contention in the written submission by Revenue is that since the Manager, Master, personnel and other crew of the tankers are employees of the owner; are paid overtime, etc., by the owner; under Clause 7 the owner is required to maintain the tanker with regard to wear and tear; under Clause 12 it is obligation of the owner to pay for provisions of the vessel, wages of the personnel and other employees, bear the expenses, stores lubricants, spares, water, etc., and the cost of expenses for survey and overhauling, there is no transfer of the possession and effective control of tankers by the owner to the assessee.
>
> **29.** It requires to be noticed that this contention adverted to in the written submissions is not among the reasons recorded by the adjudicating authority for coming to the conclusion that there was no transfer of the right to use, of the tankers. It is axiomatic that it is impermissible for the respondent-Revenue to invent new grounds, not forming part of the adjudication order to sustain the adjudication order. As pointed out by the Supreme Court in *Commissioner of Police, Bombay* v. *GordhandasBhanji* - AIR 1952 SC 16; a public order publicly made must be tested on the basis of reasons recorded therein and cannot be supplemented by reasons contrived in a later affidavit or as in this case by way of written submissions in the appellate forum. In the adjudication order the analysis of law and consideration of the relevant facts of the transaction occurs only in paragraph 37.3, in relation to taxability of the transaction, under Section 65(105)(zzzzj). Further the mere fact that the Manager, Master, personnel and other crew are employed by the owner does not in any manner derogate from the fact that the transaction constitutes transfer of the right to use the tangible goods, including possession and effective control of the tankers. This is so since there are several other clauses in the agreements between the parties (referred in para 10 supra), which disclose that the personnel on board the tankers function and operate strictly in terms of detailed instructions, guidelines and directives issued or to be issued by the assessee in terms of the authority of the assessee to do so, under the agreements. The personnel and crew must also be replaced by the owners on valid compliant about their misbehaviour lodged by the assessee. On a true and fair analysis of the several clauses of the charter - agreements, considered as a whole, mere employment of the personnel and crew by owners does not derogate from the reality of transfer of possession to and effective control by the assessee over the tankers, for the use of these tangible goods."

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31 2016. (46) S.T.R. 513 (Tri-Del.)

The Mumbai Bench of the Tribunal in **Gimmco Ltd. Vs. Commissioner of C. Ex. & S.T., Nagpur**[32] held as under:-

> **"5.2** Revenue's contention is based on the clauses in the agreement relating to restrictions of use by the lessee, provision of skilled operator by the lessor and maintenance and repairs of the equipment by the lessor. Merely because restrictions are placed on the lessee, it can not be said that there is no right to use by the lessee. Such a view of the revenue does not appear to be tenable when we read carefully the provisions of the agreement. Cl. 13 of the agreement provides for Hirer's Covenants. As per Cl. 13.1, the hirer will use the equipment only for the purpose it is hired and shall not misuse or abuse the equipment. Similarly in Cl. 13.3, it is provided that the hirer will ensure the safe custody of the equipment by providing necessary security, parking bay, etc., and will be responsible for any loss or damage or destruction. Cl. 13.5 provides that the hirer shall be solely responsible and liable to handle any dispute entered with any third party in relation to the use and operation of the equipment. Further Cl. 14 dealing with title and ownership specifically provides that "equipment is offered by GIMMCO Ltd. only on 'rights to use' basis". Cl. 15 relating to damages provides for compensation to be paid by the hirer to the assessee in case of damage to the equipment during the period of use. These responsibilities cast on the hirer clearly show that the right of possession and effective control of the equipment rest with the hirer; otherwise the hirer cannot be held responsible for misuse/abuse, safe custody/security, liability to settle disputes with third parties in relation to use etc. Further Cl. 4.3 of the agreement provides for charging of VAT at 12.5% on the monthly invoice value which shall be payable by the hirer. These terms and conditions stipulated in the agreement, lead to the conclusion that the transaction envisaged in the agreement is one of "transfer of right to use" which is a deemed sale under Section 2(24) of the Maharashtra Value Added Tax Act, 2002. The Finance Minister's speech and the budget instructions issued by the C.B.E. & C. also clarify that if VAT is payable on the transaction, then service tax levy is not attracted."

Krushna Chandra Behera vs. State of Orissa[33]

Relying upon the Martin Lottery (Supra) as already discussed above. The demand on discount (MMR) is the result of clubbing the demand under various other activities as discussed above.

14. ISSUE NO. D:

14.1 The reversal of CENVAT credit of Rs.16,59,225 has been ordered in the impugned order, for want of sufficient evidence as that of invoices. Rule 9(1) of the CENVAT Credit Rules, 2004 read with Rule 3(4) thereof

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32 2017 (48) STR 476 (Tri-Bom)

33 (1991) 33 STC 325

has been invoked while denying the credit. However, we observe that the appellant while filing reply to the SCN (i) on 19-12-2013 had submitted all the requisite invoices, based whereupon the said credit of Rs.16,59,225 was availed. All those documents have absolutely been ignored by the Commissioner. Also, no specific deficiency or discrepency has been identified. The impugned order is held be absolutely non speaking on this ground. We draw support from the decision of Honorable Supreme Court in the case of **Stemens Engineers and Manufacturing Co. vs. Union of India**[34]and **Kranti Associates Private Limited vs. Massod Ahmed Khan**[35] where it is categorically held that recording of resons is an indispensable requirement of a valid quasi-judicial order. In the absence of any discussion on facts, evidence or legal submissions, the impugned order is vitiated by violation of principles of natural justice and is liable to be set aside. We further observe that once the tax paid invoices are with the assessee, Rule 3, CCR, 2004 entitles the assessee to avail the CENVAT credit. We set-aside the confirmation and remand this matter for reconsideration by the adjudicating authority.

15. Issue No. E:

15.1 We note that the tables reveal the extensive communication that took place between the appellant and the Department through Letters/Summons/Audit. As apparent from the additional written submissions of the appellants, the Appellants had provided all documents as and when demanded including their Financial Statements, Annual Reports, invoices, ledgers, major agreements, reconciliations of various types of incomes, forex expenditure details, Bills of Entries, Income Tax Returns, and Service Tax returns etc. in their various replies the appellants have been repeatedly insisting that their turnover for charter hire services was not chargeable to tax under the category of SOTG but for other services under the category of tour operator,

34 1976 (2) SCC 981
35 2011 (273) ELT 345

renting, pandal or Shamiana, they were duly discharging their service tax liability. Admittedly the appellant was initially paying Service tax under the category of SOTG Service but owing to the ambiguity and prevailing confusion regarding the correct classification of the nature of services in question, appellant stopped paying it. We find that it was in the knowledge of the department as admittedly, the appellants were regularly filing their ST-3 Returns. Various decisions discussed under Issue No. A and also referred by the appellant shows that activity of Charter Hire of aircrafts had been adjudged differently by various decisions as discussed above. This clearly establishes the bona fide belief of the Appellant and absence of any intent to evade tax, which is a sine qua non for invoking the extended period. The Supreme Court has consistently held that "mere non-payment of tax does not amount to suppression and something positive is required for invoking the extended period" Uniworth Textiles Ltd. vs. CCE 2013 (288) ELT 161, and that "suppression must be wilful with intent to evade duty" Cosmic Dye Chemical vs. CCE 1995 (75) ELT 721. The Hon'ble Supreme Court in the case of **Gopal Zarda Udyog vs. CCE, Delhi**[36]has held that extended period is applicable only when something positive other than mere inaction or failure on part of the assessee is proved. Conscious and deliberate with holding of information by the assessee is necessary for invoking the extended period. In such circumstances, the allegation of suppression in the instant case has not be examined in the impugned order.

15.2 We take note of the submission made by the learned counsel that despite submitting all relevant documents, the impugned order has failed to give any findings on the issue. The limitation issue is a factual inquiring which can be done only at the original adjudication level. Typically, remand ordered when the lower authority didn't address limitation at all or the limitation issue requires factual inquiry (e.g. date of cause of action acknowledgement of debt.). In the instant case, we

36 2005 (188) FLT 251 SC

note that despite the voluminous documents submitted by the appellant, the adjudicating authority has failed to give his findings on the issue, and has proceeded to confirm the extended period of limitation in a mechanical manner.

16. In view of the above discussions, we pass the following order:

(A) The demand of service tax on SOTG is upheld

(B) The demand on services provided in Jammu & Kashmir is set-aside

(C) The demand on MMR under RCM is set-aside

16.1 The following two issues are remanded to the adjudicating authority for re-consideration:-

(D) Demand for reversal of CENVAT Credit

(E) Invocation of extended period of limitation

17. Consequently, the impugned order is upheld on the issue A indicated above subject to finding about invocation of extended period of limitation. The order under challenge is set-aside in respect of issues at B & C. The issues at D and E are remanded to the original adjudicating authority for reconsideration. The impugned order is upheld to extent indicated above and the appeal is allowed partially and partially by way of remand. The original adjudicating authority is required to pass the order with respect to D and E within three months of receiving the copy of this order after giving reasonable opportunity of hearing to the appellant. Appeal is allowed partially and partially by way of remand.

[Order pronounced in the open court on **13.07.2026**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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