CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench – Court No. – I

Service Tax Appeal No. 26134 of 2013
(Arising out of Order-in-Appeal No.7/2013 (H-III) ST dt.28.02.2013 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Hyderabad)

M/s Swamysons Agencies Pvt Ltd
K/1/1, IDA, Uppal, Hyderabad,
Telangana – 500 039
......Appellant

VERSUS

Commissioner of Central Tax
Secunderabad - GST
Kendriya Shulk Bhavan, LB Stadium Road,
Basheerbagh, Hyderabad – 500 004
……Respondent

Appearance
Shri P.V.B. Chary, Advocate for the Appellant.
Shri V.R. Pavan Kumar, AR for the Respondent.

Coram: **HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)**
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30177/2026

Date of Hearing: 03.12.2025
Date of Decision: 02.04.2026

[Order per: A.K. JYOTISHI]

M/s Swamysons Agencies Pvt Ltd (hereinafter referred to as the appellant) are in appeal against the Order-in-Appeal dt.28.02.2013, whereby, Commissioner (Appeals) has upheld the order passed by the Original Adjudicating Authority confirming the demand of service tax along with interest and imposition of penalty.

2. The issue, in brief, is that the appellants are Clearing and Forwarding Agent (C & F Agent), who were appointed by M/s Jubilant Organosys Ltd for carrying out certain functions in terms of agreement dt.01.04.2010. The agreement, inter alia, provided for certain functions including certain obligations. It also, inter alia, provided that in case the appellant uses his own transport for transport and delivery of goods to third parties, such transportation shall be at the company’s cost and C&FA should submit such transportation bill to the company.

3. The view of the department was that the appellants were required to perform certain functions including maintenance of godown and all necessary corresponding facilities like electricity, water, godown, cleaning, telephone and transportation of vehicles, etc., and also employee suitable staff. It was the view of the department that essentially expenses incurred for providing C&F Agent services were not in the nature of reimbursable expenses and they were required to be included in the gross value for discharging service tax liability.

4. Learned Advocate for the appellant has mainly submitted that they were incurring various expenses including freight. His main submission is that they were getting certain amount reimbursed by their principal and therefore, the issue to be decided is whether such reimbursable expenditure paid to the appellant by the principal is liable to service tax for provision of C&F Agent services or otherwise. He has relied on the judgment of Hon’ble Delhi High Court in the case of Intercontinental Consultants & Technocrats Pvt Ltd Vs UOI [2013 (29) STR 9 (Del)], which was further upheld by the Hon’ble Supreme Court. The Hon’ble Delhi High Court had struck down Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 as ultra vires and in view of the same, the demand of service tax during the period April, 2010 to March, 2011 is not sustainable. He has relied on various judgments including Crystal Marketing Corporation Vs CCT, Secunderabad [Final Order No.A/30308/2023 dt.04.10.2023 & Final Order No.30702-30703/2019 dt.19.06.2019], whereby, under similar circumstances, the demands have been dropped.

5. On the other hand, learned AR has mainly submitted that these expenses were not in the nature of reimbursable expenses and they were spent by the appellant for performing their obligations and functions as a C&F Agent for their principal. He has further reiterated that various terms and conditions would make it obvious that they were required to perform certain functions and in relation thereto certain expenses were required to be incurred by them and they were solely responsible for such functions. He has further submitted that in this case, the SCN has not demanded service tax by claiming such expenses as reimbursable expenses invoking provisions of Rule 5 of Service Tax (Determination of Value) Rules, 2006, and it has been issued as per the provisions of section 67 of the Finance Act, 1994 and

therefore, the judgment in the case of Intercontinental Consultants & Technocrats Pvt Ltd (supra) is not relevant. He has further cited that the issue is also no longer res integra in view of the judgments of the Larger Bench of the Tribunal in the case of Sri Bhagvathy Traders Vs CCE, Cochin [2011 (8) TMI 430 – CESTAT Bangalore (LB)], wherein, inter alia, it was held that before deciding the taxability of reimbursable expenses what is also need to be decided is whether they are in the nature of reimburasable expenses or otherwise. The relevant paras of the judgment are cited below.

> *"5.8 The Tribunal in the case of Harveen & Co. [2011-TIOL-848-CESTAT-DEL] following the decision in the case of Naresh & Co. has held that if the godown is taken on rent by the service provider for discharging his obligation under the contract, rent for godown will form part of the value even if it is reimbursed separately by the client.*
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> *6.1 Having analyzed the various decisions cited on behalf of the assessee and on behalf of the department, it would be appropriate to consider the scope of the term "reimbursements" in the context of money realized by a service provider. A person selling the goods to another cannot treat cost of raw materials or the cost of labour or other cost components for inputs services, which went into the manufacture of the said goods as reimbursements. If the buyer enters into a contract for supply of raw materials after negotiating prices from the supplier for the raw materials and the raw materials are received by the manufacturer and the manufacturer pays the amounts to the supplier of raw materials and recovers the same from the buyer, it can certainly be considered as reimbursements. It is to be noted that in such a case, the manufacturer has no role about choosing the source of the materials procured or the price at which the materials procured and the manufacturer is not under any legal or contractual obligation to pay the amount to the supplier. However, if the manufacturer procures raw materials from a source of his choice at a price negotiated between him and supplier of the raw materials and uses the material for manufacture of the final products which he sells, the question of his collecting the cost of raw materials as reimbursement does not arise. The concept of reimbursement will arise only when the person actually paying was under no obligation to pay the amount and he pays the amount on behalf of the buyer of the goods and recovers the said amount from the buyer of the goods.*
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> *6.2 Similar is the situation in the transaction between a service provider and the service recipient. Only when the service recipient has an obligation legal or contractual to pay certain amount to any third party and the said amount is paid by the service provider on behalf of the service recipient, the question of reimbursing the expenses incurred on behalf of the recipient shall arise. For example, when rent for premises is sought to be claimed as reimbursement, it has to be seen whether there is an agreement between the landlord of the premises and the service recipient and, therefore, the service recipient is under obligation for paying the rent to the landlord and that the service provider has paid the said amount on behalf of the recipient. The claim for reimbursement of salary to staff, similarly has to be considered as to whether the staff were actually employed by the service recipient at agreed wages and the service recipient was under obligation to pay the salary and it was out of expediency, the provider paid the same and sought reimbursement from the service recipient.*

6.3 The various Circulars of the Board relied upon by the learned Advocate for the assessee clearly referred to amounts payable on behalf of the service recipient. For example, the Customs House Agent paying the Customs duty to the Customs Department, paying the charges levied by the Port Trust to the Port Trust, paying the fee for testing to the Testing Organization are clearly on behalf of the importer/exporter and the same are recoverable by the CHA as reimbursement, that too on actual basis. These Circulars cannot be held to be in support of the claim of the assessee that they can split part of the amount as reimbursable expenses and the rest as towards service charges.

6.4 The claim for reimbursement towards rent for premises, telephone charges, stationery charges, etc. amounts to a claim by the service provider that they can render such services in vacuum. What are costs for inputs services and inputs used in rendering services cannot be treated as reimbursable costs. There is no justification or legal authority to artificially split the cost towards providing services partly as cost of services and the rest as reimbursable expenses."

6. Similar view has also been taken by the Coordinate Bench at Ahmedabad in the case of Modern Business Solutions Vs CST, Ahmedabad [2018 (11) TMi 27 – CESTAT Ahmedabad], wherein, inter alia, it was observed that all expenses incurred by a service provider cannot be called reimbursable expenses and only the expenses that qualify the test laid down in the decision of Sri Bhagvathy Traders (supra), can be called as reimbursable expenses. Further, in the case of Adarsh Agency Vs CCE & C, Nagpur [2017 (8) TMI 1232 – CESTAT Mumbai], the Coordinate Bench at Mumbai dealing with identical case of C&F Agency claiming certain expenses as reimbursable expenses, inter alia, held that service tax is chargeable on such reimbursement. The relevant para is cited below for ease of reference.

"5. We find that appellant is providing service of Clearing and Forwarding Agency for which he has maintained the premises for storage and distribution of the goods. For providing service minimum input services are required such as rent, postage and stationery, telephone charges etc. without these input services, Clearing and Forwarding service cannot be provided, therefore these services are required for providing Clearing and Forwarding service and has to be part and parcel of the gross value of the service i.e. Clearing and Forwarding Agency. In the case of Sri. Bhagavathy Traders (surpa) the Larger Bench of this Tribunal clearly held that expenses, which is required for providing output service is includible in the gross value of the services. In the present case the nature of expenses is such, which is mandatory for carrying out the business of Clearing and Forwarding Agency, therefore in our considered view so called reimbursement escaped from payment of service tax is clearly includible in the gross value of services of Clearing and Forwarding Agency. Accordingly, we hold that service tax is chargeable on such reimbursement …"

7. Similar view has been taken by this Bench in the case of Rama Mohana Rao & Co. Vs CCCE & ST (vice-versa) [2019 (11) TMI 304 – CESTAT Hyderabad].

8. Heard both sides and perused the records.

9. We find that in this case, there is an agreement between the principal and the appellant to act as a C&F Agency for the principal, which obligated the appellant to perform certain functions. While performing said functions, they were incurring various expenses and according to the appellant they were getting those expenses reimbursed from the principal. We find that the issue as to whether any amount, which is being incurred by a C&F agency and later on certain amount is getting reimbursed or repaid by the principal has been subject matter of various orders passed by the Coordinate Benches. The core issue that was examined in those orders was whether the said expenses can be considered as reimbursable expenses keeping in view the order of the Larger Bench in the case of Sri Bhagvathy Traders (supra) or otherwise. We find that in the case of Sri Bhagvathy Traders (supra), the Larger Bench, inter alia, has observed that only when the service recipient has an obligation legal or contractual to pay certain amount to any third party and the said amount is paid by the service provider on behalf of the service recipient, the question of reimbursement of expenses incurred on behalf of the recipient shall arise. It was also, inter alia, observed that claim for reimbursement towards rent of premises, telephone charges, stationery charges, etc., amounts to a claim by the service provider that they can render such services in vacuum. Therefore, what are costs for input services and inputs used in rendering services cannot be treated as reimbursable costs.

10. Therefore, we find that in this case, admittedly, though they are getting certain amount paid back by the principal, however, the said amount in totality cannot be considered as reimbursable expenses keeping in view the judgment of the Larger Bench in the case of Sri Bhagvathy Traders (supra). However, we find that there is a provision in the agreement that in case the C&F agency uses his own transport for transport and delivery of goods to third parties, such transportation shall be at the company's cost and C&F agent has to submit such transportation bill to the company. In other words, this is one of the expenses, which was clearly meant for reimbursement on actual basis and it was reimbursed by the principal. Therefore, this element was essentially a reimbursement and hence it could not have formed part of rest of the gross value for charging service tax. Rest

of the expenses are in relation to performing their various obligations and functions and hence it has to be part of the gross value. It is also settled position that “reimbursable”, expenses were includable, during the material time, however, after the Intercontinental Consultants & Technocrats Pvt Ltd., judgment, supra. It cannot be added to the gross value till the provisions under Section 67 were amended in 2015 and hence keeping in view the judgment in the case of Intercontinental Consultants & Technocrats Pvt Ltd (supra), service tax to that extent would also not be leviable. Further, as no substantive document has been shown corroborating actual reimbursement on cost to cost basis in respect of transportation charges, the matter needs to be remanded back to the Original Adjudicating Authority, who shall cross-check the documents submitted by the appellant for claiming reimbursement in respect of transportation and delivery of goods to third parties using their own transport and if it is on actual basis, then the said amount has to be considered as reimbursement otherwise it is includible, however, in view of judgment cited, supra, authority to include would not exist prior to amendment in 2015. Further, if it is on notional basis, then the said amount cannot be considered as reimbursable expenses and hence includible. The adjudicating authority shall recalculate the total demand after allowing the exclusion of reimbursable expenses in view of the observations and judgment cited, supra. The impugned order is set aside and remanded back for re-computation of demand.

11. Appeal allowed by way of remand.

(Pronounced in the Open Court on 02.04.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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