

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH – COURT NO. 2

Service Tax Appeal No. 75733 of 2017

(Arising out of Order-in-Original No. 132/COMMR/ST-II/KOL/2016-17 dated 27.02.2017 passed by the Commissioner of Service Tax-II, Kendriya Utpad Shulk Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata – 700 107)

M/s. Pharos Shipping & Overseas Services (P) Ltd. : Appellant
Malleable House, 53B,
Mirza Ghalib Street, Park Street H.O.,
Kolkata – 700 016

VERSUS

Commissioner of Service Tax-II : Respondent
Kendriya Utpad Shulk Bhawan,
180, Shantipally, Rajdanga Main Road,
Kolkata – 700 107

APPEARANCE:

Shri Ishan Tulsian, Chartered Accountant, for the Appellant

Shri Prasenjit Das, Authorized Representative, for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 77380 / 2025

DATE OF HEARING: 02.09.2025

DATE OF DECISION: 04.09.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

This appeal has been filed by M/s. Pharos Shipping & Overseas Services (P) Limited [hereinafter referred to as the "appellant"] challenging the Order-in-Original No. 132/COMMR/ST-II/KOL/2016-17 dated 27.02.2017 passed by the Ld. Commissioner of Service Tax-II, Kendriya Utpad Shulk Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata – 700 107.

2. The facts of the case are that the appellant is engaged in providing Steamer Agent's Service, along with incidental and ancillary services connected thereto. The appellant has been duly appointed as an "Agent" by various international shipping lines whose vessels call at Indian ports. In the course of discharging its role as Steamer Agent, the appellant is required to incur numerous statutory and third-party expenses on behalf of the vessel owners or their principals, such as pilotage, berth hire, Indian Coast Light dues, transporters'/stevedores charges, port dues, wharfage, launch hire, survey charges, and similar disbursements. These expenses are reimbursed to the appellant by the Principals strictly on actual basis.

2.1. As a trade practice, the appellant receives advances from the Principals towards meeting estimated expenditure for the vessels' operations, in addition to the agency service charges for which service tax has always been duly discharged. Upon completion of each voyage, the accounts are reconciled, and actual disbursement accounts are rendered to the Principals. Wherever the advance exceeds the actual expenditure, the balance is refunded to the Principals, or, in a few cases, written back and recorded as income in the Profit & Loss Account as per the standard accounting procedure advised by auditors. The amounts in question are merely residual balances, not linked to any taxable services.

3. A Show Cause Notice vide C. No. V(15)60/ST-II/Adjn/Commr/16/787 dated 19.04.2016 was issued to the appellant, proposing to demand service tax of Rs.4,80,10,661/- for the period from October 2010 to

March 2015, along with interest, and proposing penalties under Sections 77 and 78 of the Finance Act, 1994.

3.1. The said Show Cause Notice was adjudicated vide the impugned Order-in-Original dated 27.02.2017 wherein a demand of Rs.2,74,20,508/- attributable to customs and port charges was dropped, recognising that such charges were reimbursed on actuals. However, the Id. adjudicating authority has confirmed the demand of service tax of Rs.2,05,90,153/- in respect of other heads of expenditure such as stevedoring charges, railway freight, supply of fender, supply of spare parts, survey charges, and launch hire charges, treating them as 'considerations' received towards taxable services and hence the same are includible in the taxable value, along with unspent advances recorded as income. Interest under Section 75 was also demanded, and penalties of Rs.2,05,90,153/- under Section 78 of the Finance Act, 1994 and Rs.10,000/- under Section 77 of the Finance Act, 1994 were also imposed.

4. Aggrieved by the confirmation of the demand of Service Tax, along with interest and penalties thereon, the appellant has filed this appeal.

5. The Ld. Counsel appearing on behalf of the appellant submits that the issue is no longer *res integra* as the issue of Service Tax liability on reimbursable expenditure has already been settled by the Hon'ble Apex Court in the case of *Union of India v. Intercontinental Consultants and Technocrats Pvt. Ltd. [2018 (10) G.S.T.L. 401 (S.C.)]*. He points out that in the said judgement, while interpreting the scope and application of Section 67 of the Finance Act, 1994, both in its unamended form prior to 01.05.2006

and after its amendment w.e.f. 01.05.2006, the Hon'ble Apex Court has categorically held that the valuation of taxable services shall be confined to the "gross amount charged by the service provider for such service" and that any inclusion of reimbursable expenses, out-of-pocket expenses or third party disbursements which are not part of the core consideration for the service rendered, travels beyond the mandate of Section 67 *ibid*.

5.1. It is further pointed out in this regard that in the said judgement, the Hon'ble Supreme Court further noted that recognizing the legislative gap in the valuation of taxable services vis-à-vis reimbursable expenses, the Parliament enacted a substantive amendment to Section 67 vide Finance Act, 2015, effective from 14.05.2015, wherein the definition of "consideration" was explicitly expanded to include "any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service"; however, the Hon'ble Apex Court has decisively held that such an amendment being substantive in nature, introducing a new charging element, cannot be applied retrospectively. Thus, it is his submission that by virtue of the above ruling, for all periods prior to 14.05.2015, reimbursable expenses remain outside the purview of taxable value under Section 67. Accordingly, it is the appellant's contention that the said charges reimbursed by them are not includable in the assessable value for the purpose of computation of their Service Tax liability.

5.2. In this context, the appellant placed their reliance on the following decisions wherein the above ratio has consistently been followed by this Tribunal:

- i. M/s. Chatterjee & Sons Pvt. Ltd. v. Commissioner of Service Tax, Kolkata [2024 (6) TMI 500 – CESTAT, Kolkata]*
- ii. M/s. Sea Wings Logistics Pvt. Ltd. v. Commissioner of Service Tax-II, Kolkata [2024 (10) TMI 51 – CESTAT, Kolkata]*
- iii. M/s. Saila Shipping & Clearing Agency Pvt. Ltd. v. Commissioner of Service Tax, Kolkata [2024 (10) TMI 628 – CESTAT, Kolkata]*

5.3. Further reliance is also placed by the appellant on the following judgements rendered by the Hon'ble Madras High Court: -

- i. M/s. Trinity's Clearing and Shipping Agencies v. Union of India & ors. [2022 (5) TMI 12 – Madras High Court]*
- ii. M/s. Brokeman Logistics India Pvt. Ltd. v. Commissioner of C.G.S.T. & C.Ex., Chennai [2024 (12) TMI 1182 – Madras High Court]*

5.4. In view of the above submissions and as the period of dispute in the present case is prior to 14.05.2015, the Ld. Counsel for the appellant has prayed for setting aside the demands confirmed in the impugned order, as being unsustainable in law.

6. On the other hand, the Ld. Authorized Representative of the Revenue has reiterated the findings in the impugned order. He submits that the Id. adjudicating authority has already extended the benefit in respect of reimbursable expenses. However, in respect of the other expenses the appellant did not submit any documentary evidence to substantiate their claim that the same were reimbursable expenditure received on actual basis. Accordingly, the Ld. Authorized Representative of the Revenue

contends that the claim of the appellant that they have acted as a pure agent in respect of such other expenses is unsubstantiated. In view of the above, he supported the impugned order.

7. Heard both sides and perused the appeal records.

8. We observe that the issue involved in the present appeal is regarding inclusion of certain third-party expenses incurred by the appellant on behalf of their principals in the assessable value for the purpose of arriving at the Service Tax liability. From the impugned order, it is observed that the Id. adjudicating authority has allowed the benefit accruing as a 'pure agent' only in respect of Customs and Port charges and worked out the remaining tax liability as under: -

Period	Taxable Value (cum tax) as per SCN (in Rs.)	Customs + Port charges (in Rs.)	Taxable Value (cum tax) after deduction of customs and port charges (i.e. Col.2- Col.3) in Rs.	Rate of Tax	Service Tax (including cess) payable (in Rs.)	Service Tax (including cess) paid (in Rs.)	Service Tax(including cess) to be paid (in Rs.)
1	2	3	4	5	6	7	8
01.10.10 to 31.03.11	43978862	31838181	12140681	10.30%	1133717	443091	690626
01.04.11 to 31.03.12	80048477	31655259	48393218	10.30%	4519040	292566	4226474
01.04.12 to 31.03.13	94558403	55310227	39248176	12.36%	4317439	762149	3555290
01.04.13 to 31.03.14	49694369	48797951	896418	12.36%	98609	416099	0
01.04.14 to 31.03.15	211094182	94147873	116946309	12.36%	12864510	746747	12117763
Total	479374293	261749491	217624802				20590153

8.1. It is the appellant's contention that there were so many other charges, namely: -

- (a) Stevedoring charges
- (b) Railway freight
- (c) Supply of fender
- (d) Supply of spare parts
- (e) Survey charges
- (f) Launch hire charges
- (g) Misc expenses

which were also reimbursed by the appellant to the principals strictly on actual basis, on which no Service Tax is leviable. In support of their claim, the appellant has produced a Chartered Accountant's certificate. For ease of reference, the said Chartered Accountant's certificate is scanned and reproduced below: -

CA

R K VENKATESAN & CO

CHARTERED ACCOUNTANTS
114F/1D Selimpur Road, Kolkata 700 031
Ph : 4063-7113, 4000-7507, email: ravi@sraco.in; rkvaudit@gmail.com

CHARTERED ACCOUNTANTS CERTIFICATE

We have checked the enclosed "STATEMENT OF AMOUNTS COLLECTED FROM CLIENTS AND THE UTILISATION THEREOF" for the period between 1st October, 2010 and 31st March, 2015 of M/S Pharos Shipping & Overseas Services Private Limited, 53B Mirza Ghalib Street, Kolkata 700 016 (CIN No. U6100WB2005PTC105113 ; Service Tax Registration No. AADCP7594GST001), with the books of account and other relevant records and documents and based on the information and explanations provided to us, we certify that the same has been correctly prepared and are in agreement with the books of account of the Company.

Place: Kolkata
Dated: 23rd December, 2016

For R K Venkatesan & Co.,
Chartered Accountants
(Registration No. 315056E)



Ravi Kumar Venkatesan
Ravi Kumar Venkatesan
Partner
(Membership No. 52145)

PHAROS SHIPPING & OVERSEAS SERVICES PRIVATE LIMITED

STATEMENT OF AMOUNTS COLLECTED FROM CLIENTS AND UTILISATION THEREOF
PERIOD: FROM 01/10/2010 TO 31/03/2015

(59)

Particulars	Details Rs	Amount Rs	Remarks
Opening Balance on 01.10.2010		14,224,184	(A)
Add: Receipts from Clients from 01.10.2010 to 31.03.2015:			
01.10.2010 to 31.03.2011	53,112,249		
01.04.2011 to 31.03.2012	44,910,424		
01.04.2012 to 31.03.2013	98,299,358		
01.04.2013 to 31.03.2014	61,329,245		
01.04.2014 to 31.03.2015	205,998,951	463,650,227	(B)
Total Clients' Funds		477,874,411	(A + B) = (C)
Amount paid to Customs authorities on behalf of clients:			
01.10.2010 to 31.03.2011	1,569,785		
01.04.2011 to 31.03.2012	1,043,723		
01.04.2012 to 31.03.2013	601,358		
01.04.2013 to 31.03.2014	1,156,372		
01.04.2014 to 31.03.2015	3,374,440	7,745,678	(D)
Amount paid to Ports on behalf of clients, where Service Tax claimed by them and paid by Pharos Shipping & Overseas Services Pvt Ltd:			
01.10.2010 to 31.03.2011	30,268,396		
01.04.2011 to 31.03.2012	30,611,536		
01.04.2012 to 31.03.2013	54,708,869		
01.04.2013 to 31.03.2014	47,641,579		
01.04.2014 to 31.03.2015	90,773,433	254,003,813	(E)
Amount paid to Stevedores/Cargo Handlers on behalf of clients where Service Tax claimed by them and paid by Pharos Shipping & Overseas Services Pvt Ltd:			
01.10.2010 to 31.03.2011	14,212,056		
01.04.2011 to 31.03.2012	4,678,678		
01.04.2012 to 31.03.2013	19,206,346		
01.04.2013 to 31.03.2014	12,099,543		
01.04.2014 to 31.03.2015	102,944,069	153,140,692	(F)
Other amount paid to vendors on behalf of clients for those who have not charged Service Tax:			Reimbursement claimed by Pharos Shipping & Overseas Services Pvt Ltd on actual basis only
01.10.2010 to 31.03.2011	254,422		
01.04.2011 to 31.03.2012	287,854		
01.04.2012 to 31.03.2013	506,736		
01.04.2013 to 31.03.2014	667,616		
01.04.2014 to 31.03.2015	1,233,054	2,949,682	(G)
Total amount paid on behalf of clients (01/10/2010 to 31/03/2015)		417,839,865	(D+E+F+G) = (H)



PHAROS SHIPPING & OVERSEAS SERVICES PRIVATE LIMITED

STATEMENT OF AMOUNTS COLLECTED FROM CLIENTS AND UTILISATION THEREOF
PERIOD: FROM 01/10/2010 TO 31/03/2015

60

Particulars	Details Rs	Amount Rs	Remarks
Total of clients' funds after set off of payments on their behalf:		60,034,546	(C - H) = (I)
Amount refunded to clients:			
01.10.2010 to 31.03.2011	7,678,186		
01.04.2011 to 31.03.2012	7,822,297		
01.04.2012 to 31.03.2013	5,324,528		
01.04.2013 to 31.03.2014	3,343,793		
01.04.2014 to 31.03.2015	4,787,317	28,956,121	(J)
Clients funds remaining after set off of payments on their behalf and after refund to them:		31,078,425	(I - J) = (K)
Out of the above Rs 3,10,78,425:			
a) Liability no longer required, written back:			
~ For receipts prior to 01.10.2010	301,310		
~ For receipts after to 01.10.2010	4,806,865	5,108,175	(L)
b) Clients' balance awaiting subsequent disbursement / advice Accounts		3,405,804	(M)
c) Balance amount received from clients for our service + service tax * * :			
01.10.2010 to 31.03.2011	2,113,756		
01.04.2011 to 31.03.2012	3,190,287		
01.04.2012 to 31.03.2013	6,867,786		
01.04.2013 to 31.03.2014	3,714,369		
01.04.2014 to 31.03.2015	6,678,248	22,564,446	(N)
		31,078,425	(L+M+N)

* * Break up between service and service tax (in item (M) above):

Period	Service	Service Tax + Cess	Total
01.10.2010 to 31.03.2011	1,916,551	197,205	2,113,756
01.04.2011 to 31.03.2012	2,892,295	297,992	3,190,287
01.04.2012 to 31.03.2013	6,128,374	739,412	6,867,786
01.04.2013 to 31.03.2014	3,305,778	408,591	3,714,369
01.04.2014 to 31.03.2015	5,943,609	734,639	6,678,248
Total	20,186,607	2,377,839	22,564,446

Kolkata

Dated: 23rd December, 2016

For R K Venkatesan & Co
Chartered Accountants
(Firm Regn No 315056E)Ravi Kumar Venkatesan
Partner

(Membership No 052145)

8.1.1. From the Chartered Accountant's certificate submitted by the appellant as reproduced above, we find that after carefully examination of the records of the appellant, the Chartered Accountant has certified that the appellant has received such reimbursements only on actual basis.

8.2. This is also evident from the Disbursement Account extract produced by the appellant [marked as Annexure-1], which is as under: -

Annexure-1

DISBURSEMENT ACCOUNT			
MV WO LONG SONG FROM 24/09/2014 TO 01/10/2014			
(AA)	Advance Received from - COSCO SHIPPING CO LTD		
	22/09/2014	13,33,992.00	
	25/09/2014	27,49,000.00	
	TOTAL	40,82,992.00	(A)
(BB)	PAID TO/PURPOSE	AMOUNT	REMARKS
SAGAR ANCHORAGE :-			
	MARINE DUES AT ANCHORAGE	10,30,150.00	As per Kopl Bill # VOB14951 Dt 09.10.2014 Annexure - 1
	LIGHT DUES	91,856.00	As per receipts no 132068 dt 09.09.2014 Annexure - 2
	CUSTOMS POOT CHARGES FOR ATTENDING AT SAGAR	2,050.00	As per Customs Receipts No 56 dt 24.10.2014 Annexure - 3
	LAUCH HIRE	72,809.28	As per J N Mukherjee Bill # PS05/WLS/SR/1 Dt 21.10.2014 Annexure - 4
	MISC/MMIING	20,296.00	As Debit Note - Pharos/Cosco/Wo Long Song/ Oct/1/ 14-15 dt 24.10.2014
	CUSTOM BOARDING	16,914.00	As Debit Note - Pharos/Cosco/Wo Long Song/ Oct/2/ 14-15 dt 24.10.2014
	AGENT CONVEYANCE	48,709.00	As Debit Note - Pharos/Cosco/Wo Long Song/ Oct/3/ 14-15 dt 24.10.2014
HALDIA:-			
	MARINE DUES AT HALDIA	13,73,938.00	As per Hdc Bill # VOS14977 Dt 02.10.2014 Annexure - 5
	PORT GARBAGE BILL	894.00	As per Hdc Bill # VGS14951 Dt 02.10.2014 Annexure - 6
	DRAFT SURVEY AT SAGAR AND HALDIA	10,674.20	As per Norman Stewart & Co Pvt Ltd bill no C1492/14-15 dt 10.10.2014 Annexure - 7
	SUPPLY OF FENDERS	16,854.00	As per J N Mukherjee Bill # PS05/WS/HAL/1 dt 24.10.2014 Annexure - 8
	AGENT CONVEYANCE	40,591.00	As Debit Note - Pharos/Cosco/Wo Long Song/ Oct/4/ 14-15 dt 24.10.2014
	AGENT MISCELLANEOUS	6,765.00	As Debit Note - Pharos/Cosco/Wo Long Song/ Oct/5/ 14-15 dt 24.10.2014
	AGENT COMMUNICATION / COURIER	16,914.00	As Debit Note - Pharos/Cosco/Wo Long Song/ Oct/6/ 14-15 dt 24.10.2014
	AGENCY FEE	2,02,956.00	As Debit Note - Pharos/Cosco/Wo Long Song/ Oct/7/ 14-15 dt 24.10.2014
	TOTAL	29,52,370.48	(B)
	Add : TDS amount adjusted	20,296.00	Tds 10% on Agency Fees Rs 2,02,956
	Less : Funds transfer through RTGS	11,25,817.52	Vide UTR No HDFCR52014103001834685 dt 30.10.2014
	NET CREDIT BALANCE	25,100.00	

8.3. From a perusal of the above, we find that the appellant has received all these amounts on actual basis, as a 'pure agent'. Thus, we find merit in the submission made by the appellant that they have received the 'other charges' such as stevedoring charges, railway freight, supply of fender, supply of spare parts, survey charges, launch hire charges, etc., also as reimbursements from their clients on actual basis and thus have acted as a 'pure agent'. Accordingly, we observe that such reimbursable expenses collected in the capacity of a pure agent are not includable in the assessable value as provided under Section 67 of the Finance Act, 1994, prior to 14th May, 2015. We find that this view has been held by the Hon'ble Apex Court in the case of *Union of India v. Intercontinental Consultants and Technocrats Pvt. Ltd.* [2018 (10) G.S.T.L. 401 (S.C.)]. The relevant observations of the Hon'ble Apex Court in the aforesaid judgement are reproduced below: -

"24. In this hue, the expression 'such' occurring in Section 67 of the Act assumes importance. In other words, valuation of taxable services for charging service tax, the authorities are to find what is the gross amount charged for providing 'such' taxable services. As a fortiori, any other amount which is calculated not for providing such taxable service cannot a part of that valuation as that amount is not calculated for providing such 'taxable service'. That according to us is the plain meaning which is to be attached to Section 67 (unamended, i.e., prior to May 1, 2006) or after its amendment, with effect from, May 1, 2006. Once this interpretation is to be given to Section 67, it hardly needs to be emphasised that Rule 5 of the Rules went much beyond the mandate of Section 67. We, therefore, find that High Court was right in interpreting Sections 66 and 67 to say that in the valuation of taxable service, the value of taxable service shall be the gross amount charged by the service provider 'for such service' and the valuation of tax service cannot be anything more or less than the consideration paid as quid pro qua for rendering such a service.

....

29. *In the present case, the aforesaid view gets strengthened from the manner in which the Legislature itself acted. Realising that Section 67, dealing with valuation of taxable services, does not include reimbursable expenses for providing such service, the Legislature amended by Finance Act, 2015 with effect from May 14, 2015, whereby Clause (a) which deals with 'consideration' is suitably amended to include reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service. Thus, only with effect from May 14, 2015, by virtue of provisions of Section 67 itself, such reimbursable expenditure or cost would also form part of valuation of taxable services for charging service tax. Though, it was not argued by the Learned Counsel for the Department that Section 67 is a declaratory provision, nor could it be argued so, as we find that this is a substantive change brought about with the amendment to Section 67 and, therefore, has to be prospective in nature. On this aspect of the matter, we may usefully refer to the Constitution Bench judgment in the case of Commissioner of Income Tax (Central)-I, New Delhi v. Vatika Township Private Limited [(2015) 1 SCC 1] wherein it was observed as under:*

"27. A legislation, be it a statutory Act or a statutory rule or a statutory notification, may physically consists of words printed on papers. However, conceptually it is a great deal more than an ordinary prose. There is a special peculiarity in the mode of verbal communication by a legislation. A legislation is not just a series of statements, such as one finds in a work of fiction/non-fiction or even in a judgment of a court of law. There is a technique required to draft a legislation as well as to understand a legislation. Former technique is known as legislative drafting and latter one is to be found in the various principles of "interpretation of statutes". Vis-a-vis ordinary prose, a legislation differs in its provenance, layout and features as also in the implication as to its meaning that arise by presumptions as to the intent of the maker thereof.

28. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities.

*Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as *lex prospicit non respicit* : law looks forward not backward. As was observed in *Phillips v. Eyre* [(1870) LR 6 QB 1] , a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.*

*29. The obvious basis of the principle against retrospectivity is the principle of "fairness", which must be the basis of every legal rule as was observed in *L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co. Ltd.* Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later."*

30. As a result, we do not find any merit in any of those appeals which are accordingly dismissed."

8.4. In the judgement of the Hon'ble Apex Court cited supra, we observe that while interpreting the scope and application of Section 67 of the Finance Act, 1994, both in its unamended form prior to 01.05.2006 and after its amendment w.e.f. 01.05.2006, the Hon'ble Apex Court has categorically held that the valuation of

taxable services shall be confined to the "gross amount charged by the service provider for such service" and that any inclusion of reimbursable expenses, out-of-pocket expenses or third party disbursements which are not part of the core consideration for the service rendered, travels beyond the mandate of Section 67 *ibid*. In the said judgement, the Hon'ble Supreme Court further noted that recognizing the legislative gap in the valuation of taxable services vis-à-vis reimbursable expenses, the Parliament enacted a substantive amendment to Section 67 vide Finance Act, 2015, effective from 14.05.2015, wherein the definition of "consideration" was explicitly expanded to include "any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service"; however, the Hon'ble Apex Court has decisively held that such an amendment being substantive in nature, introducing a new charging element, cannot be applied retrospectively. Thus, we observe that by virtue of the above ruling, for all periods prior to 14.05.2015, reimbursable expenses remain outside the purview of taxable value under Section 67. Accordingly, we hold that the said charges reimbursed by them are not includable in the assessable value for the purpose of computation of their Service Tax liability.

8.5. The above view has also been followed by this Tribunal in the case of *M/s. Chatterjee & Sons Pvt. Ltd. v. Commissioner of Service Tax, Kolkata [2024 (6) TMI 500 – CESTAT, Kolkata]*.

8.6. This Tribunal again had an occasion to analyse an identical issue, in the case of *M/s. Sea Wings Logistics Pvt. Ltd. v. Commissioner of Service Tax-II,*

Kolkata [2024 (10) TMI 51 – CESTAT, Kolkata], wherein it was observed as under: -

"8. We find that the said issue has been settled by the Hon'ble Apex Court in the case of Intercontinental Consultants and Technocrats Pvt. Ltd. (supra) wherein it has been held that prior to 14.05.2015, reimbursable expenses are not includable in the taxable value of services rendered by an assessee. In this case, we find that whole of the period is prior to 14.05.2015. Accordingly, we hold that the reimbursable expenses received by the appellant from their clients are not includable in the taxable value of the services provided by them. Therefore, the demand of Rs.98,62,631/- is set aside."

8.7. In this regard, we also find it relevant to refer to the decision of the Hon'ble Madras High Court in the case of *M/s. Trinity's Clearing and Shipping Agencies v. Union of India & ors. [2022 (5) TMI 12 – Madras High Court]*, wherein, while referring to the decision in *Intercontinental Consultants and Technocrats Pvt. Ltd. (supra)*, the Hon'ble High Court has reinforced the settled legal position that Rule 5 of the Service Tax (Determination of Value) Rules, 2006 is ultra vires Section 67 of the Finance Act, 1994.

8.8. A similar view has again been expressed by the Hon'ble Madras High Court in the case of *M/s. Brokeman Logistics India Pvt. Ltd. v. Commissioner of C.G.S.T. & C.Ex., Chennai [2024 (12) TMI 1182 – Madras High Court]*.

9. In view of the above discussions and by relying on the ratio of the judicial precedents cited supra, we hold that the Service Tax demand of Rs.2,05,90,153/- confirmed in the impugned order by including all the above said reimbursements in the assessable value, is not sustainable and hence, the same is set aside.

9.1. As the impugned demand of Service Tax itself does not survive, the question of demanding interest thereon or imposing penalties does not arise.

10. In the result, we set aside the impugned order, qua confirmation of the demand of Service Tax of Rs.2,05,90,153/-, along with interest and penalty thereon, and allow the appeal, with consequential relief, if any, as per law.

(Order pronounced in the open court on **04.09.2025**)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd