

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

REGIONAL BENCH – COURT NO. 2

Service Tax Appeal No. 76716 of 2016

(Arising out of Order-in-Original No. 34-35/COMMR/ST-II/KOL/2016-17 dated 30.06.2016 passed by the Commissioner of Service Tax-II, KendriyaUtpad Shulk Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata – 700 107)

M/s. T.P. Roy Chowdhury & Co. Private Limited : **Appellant**
53B, Mirza Galib Street, 1st Floor,
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 R.K. Agarwal, Authorized Representative, for the Respondent

CORAM:

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

FINAL ORDER NO. 77381 / 2025

DATE OF HEARING: 02.09.2025

DATE OF DECISION: 04.09.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the Order-in-Original No. 34-35/COMMR/ST-II/KOL/2016-17 dated 30.06.2016 passed by the Ld. Commissioner of Service Tax-II, KendriyaUtpad Shulk Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata, wherein the Ld. Commissioner has confirmed the demand of Service tax of Rs.1,59,49,183/-, along with interest, and imposed an equal amount of tax as penalty.

2. The facts of the case are that M/s T.P. Roy Chowdhury & Co. Pvt. Ltd. (hereinafter referred to as the "appellant"), has provided stevedoring and allied port services at Kolkata Port and Haldia Dock. Acting under express authorisation of shipping lines, steamer agents, and importers/exporters, the appellant incurred statutory and third-party expenses on behalf of their Principals, which were reimbursed strictly on actual basis without mark-up.

2.1. The Department issued the following Show Cause Notices to the appellant, which is the subject matter of the present appeal: -

(i) SCN C. No. V(15)189/ST-Adjn/JC/12/23881-83 dated 10.10.2012, demanding Rs.19,90,219/- for FY 2007-08 to 2011-12, alleging non-inclusion of reimbursed expenses under Rule 5(1)/(2) of the Service Tax (Determination of Value) Rules, 2006

(ii) SCN C. No. (15)324/ST-Adjn/Commr/13/26867 dated 22.10.2013, proposing a further demand of Rs.3,93,15,175/- for the Financial Years 2008-09 to 2011-12.

2.2. The said Show Cause Notices were adjudicated vide a common order dated 30.06.2016, by the Ld. Commissioner of Service Tax-II, Kolkata, wherein a portion of the demand raised in the said Notices was confirmed by the Id. adjudicating authority, along with interest and penalties, while dropping the remaining portion of the demand. Aggrieved by the confirmation of Service Tax demands against them, along with interest and penalty, the appellant has filed this appeal.

2.2.3. The impugned demands, which are contested by way of this appeal, are distributed under the following three heads:

- (1) Pure Agent Issue – involving service tax of Rs.58,96,594/- [Rs.58,78,821/- + Rs.17,773/-] on the alleged non-exclusion of reimbursable expenses.
- (2) Difference between ST-3 and Debtors' Summary – involving service tax of Rs.60,61,591/- on the alleged short reporting of receipts vis-à-vis Debtors ledger.
- (3) Difference between ST-3 and Bank Credits – involving service tax of Rs.39,90,998/- on the alleged discrepancy vis-à-vis 14 bank accounts.

3. Regarding the demand of service tax of Rs.58,96,594/-, the appellant submits that this demand has been confirmed on reimbursable expenditures received by them as 'Pure Agents' from their clients; the allegation in the impugned order is that the appellant does not qualify as "pure agents" and hence service tax is liable to be paid on the reimbursements received by them. In this regard, the appellant states that they incurred statutory and third-party expenses on behalf of the Principals, which were reimbursed strictly on actual basis without any mark-up. Accordingly, the appellant contends that they qualify as 'pure agents' and such expenditures reimbursed are not includable in the assessable value for the purpose of computing their service tax liability, as held by the Hon'ble Supreme Court in the case of *Union of India v. Intercontinental Consultants & Technocrats Pvt. Ltd.* [2018 (10) G.S.T.L. 401 (SC)].

3.1. In support of this claim, the appellant also relied on the following decisions:

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

3.2. By relying on the ratio of the decisions cited supra, the appellant prayed for setting aside the demand of service tax confirmed in the impugned order on this count.

4. Regarding the demand of service tax of Rs.60,61,591/- confirmed in the impugned order, the appellant submits that this demand has been raised on the basis of difference between ST-3 and Debtors' Summary – i.e., alleged short reporting of receipts vis-à-vis Debtors ledger.

4.1. In this regard, it is the appellant's contention that service tax cannot be levied merely on the basis of assumptions and presumptions; the levy requires identification of taxable service, identification of service recipient, and consideration received; that mismatch in the accounting or accounting differentials are not sufficient to demand service tax. It is pointed

out by the appellant that in the present case, the Debtors contain non-taxable items such as Credit notes, exempt activities (e.g., agri handling), barge operations covered by exemption, State VAT, and pure-agent recoveries etc. The appellant also submitted a CA Certificate wherein the figures have been reconciled and found excess payment in two years and a minor shortfall in payment in one year, which they have already paid along with interest. The appellant also submits that Courts and Tribunals have consistently quashed demands confirmed solely on the basis of Profit and Loss Account, Ledgers and ST-3 comparisons without correlation to taxable services.

4.2. In support of their above contentions, the appellant relied on the following decisions:

- i. Firm Foundations & Housing Pvt. Ltd. [2018 (4) TMI 613];*
- ii. New Era Travel & Cargo Agencies [2024 (5) TMI 1520 (LB)];*
- iii. ITC Ltd., Coimbatore, [2025 (6) TMI 1967 (Chennai)];*
- iv. Forum Projects Pvt. Ltd., [2025 (1) TMI 1262];*
- v. UltraTech Cement Ltd. [2025 (3) TMI 971];*
- vi. Sen Brothers [2024 (8) TMI 1404];*
- vii. Go Bindas Entertainment [2019 (5) TMI 1487 (All.)];*
- viii. South Eastern Coalfields [2024 (2) TMI 1455 (ND)].*

4.3. In view of the above submissions, the appellant prayed for setting aside the demand of service tax confirmed in the impugned order on this count.

5. As regards the demand of service tax of Rs.39,90,998/- confirmed in the impugned order, the

appellant submits that the demand pertains to aggregate bank inflows which include Fixed Deposit maturities, tax refunds, contra/intra-bank reversals, capital receipts, dividends, insurance claims, loans, non-service receipts, etc., and there is no service tax liability on any of these receipts. The appellant submitted a full reconciliation along with CA Certificate, which explains each credit across 14 accounts certified by a professional Chartered Accountant. It is submitted that there is no departmental rebuttal with contrary evidence in respect of the reconciliation submitted by them. Thus, the appellant contends that demands cannot be raised on raw bank account details without any linkage to taxable services and receipt of considerations toward rendering of such services.

5.1. In support of their contentions, the appellant places reliance on the following decisions:

- i. T V. Purni Ads Pvt. Ltd. [2010 (4) TMI 186 (CESTAT-Ahmd.)];*
- ii. V.K. Industries v. CGST, Dehradun [2025 (8) TMI 609 (CESTAT-All.)];*
- iii. Forum Projects [2025 (1) TMI 1262];*
- iv. Sen Brothers [2024 (8) TMI 1404].*

5.2. Accordingly, it is contended by the appellant that the demand confirmed on the above count also cannot be sustained.

6. In view of the above submissions, the appellant prayed for setting aside the entire demand of service tax of Rs.1,59,49,183/- confirmed in the impugned order, along with interest and penalties thereon.

7. On the other hand, the Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order. He submits that 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, The Ld. Authorized Representative of the Revenue supports the impugned order.

8. Heard both sides and perused the appeal records.

9. We observe that service tax demand totally amounting to Rs.1,59,49,183/- has been confirmed in the impugned order, under the following categories: -

- (1) Pure Agent Issue - involving service tax of Rs.58,96,594/- [Rs.58,78,821/- + Rs.17,773/-] on the alleged non-exclusion of reimbursable expenses.
- (2) Difference between ST-3 and Debtors' Summary - involving service tax of Rs.60,61,591/- on the alleged short reporting of receipts vis-à-vis Debtors ledger.
- (3) Difference between ST-3 and Bank Credits - involving service tax of Rs.39,90,998/- on the alleged discrepancy vis-à-vis 14 bank accounts.

9.1. Regarding the demand of service tax of Rs.58,96,594/- confirmed in the impugned order, we observe that the appellant has provided stevedoring and allied port services at Kolkata Port and Haldia

Dock. It is also noted that acting under express authorisation of shipping lines, steamer agents, and importers/exporters, the appellant incurred statutory and third-party expenses on behalf of the Principals, which were reimbursed strictly on actual basis without any mark-up. It is also seen that the reconciliation statements furnished by the appellant in respect of such recovery on actual basis of reimbursed expenses incurred on behalf of clients have been certified and accompanied by a Certificate dated 08.06.2016 by the Statutory Auditor/Chartered Accountant, namely, M/s. Kabiraj & Co., certifying the same to be true, a copy of which has also been placed on record. For ease of reference, the said Chartered Accountant's certificate, along with the annexures thereto, has been reproduced hereunder: -

Annexure-2

Kabiraj & Co.
Chartered Accountants

To whom it may concern

We have examined the records of M/s. T.P. Roychowdhury & Co. Pvt. Ltd for the period 2007-08 to 2011-12 with reference to the 'headings'/figures relevant for the SCNs under C Nos.V(15)189/ST-Adjn./JC/12/23881 dated 10.10.2012 and V(15)324/ST-Adjn/Commr/13/26867 dated 22.10.13. The annexures to the SCN have been verified/reconciled (to the extent possible) and certified to be true as under:

Annexure- I to the SCN	: Reconciled as "Annexure - X"
Annexure- II to the SCN	: The proforma does not match with general accounting practice and as such cannot be reconciled with the books of account.
Annexure- III to the SCN	: Reconciled as "Annexure - Y"



Place : Kolkata
Date : The 8th June, 2016

S. Kabiraj
S. Kabiraj
Partner
M. No. 050879
For Kabiraj & Co.
Chartered Accountants
FRN: 312206E

T. P. ROY CHOWDHURY AND CO PVT LTD
WAC19370RST032

ANNEXURE - Y

Statement of Reimbursement expenses incurred and collected in actuals									
FY 2007-08									
Reimbursement expenses collected under Pure Agent									
PARTICULARS	TOLL TAX	Municipal Tax	INCIDENTAL EXP	WEIGHT CHARGES					TOTAL
AS PER SCH	1,27,245.00		5,830.00	10,720.00					1,43,795.00
AS PER ST-1	1,27,245.00		5,830.00	10,720.00					1,43,795.00
DISCREPANCY WITH SCH									

Statement of Reimbursement expenses incurred and collected in actuals												
FY 2008-2009												
Reimbursement expenses collected under Pure Agent							Exempted services					
PARTICULARS	TOLL TAX	Municipal Tax	INCIDENTAL EXP	WEIGHT CHARGES	PORT CHARGES	Other Reimbursable expenses	EMPTY TRANSPORTATION CHARGES	Branch Receipt	Property Tax	Handling of Agricultural Products	SERVICE RELATING TO EXPORT CARGO	TOTAL
AS PER SCH	20,37,320.00		12,045.00	57,720.00		1,71,26,615.00	30,51,735.00					2,22,80,435.00
AS PER ST-1	1,81,204.00		19,314.00	52,720.00	14,48,341.00		1,71,07,724.00	8,27,883.00	73,333.00	4,20,028.00	21,84,440.00	2,22,84,922.00
DISCREPANCY WITH SCH	18,56,116.00		77,769.00		14,48,341.00	-1,71,26,615.00	1,40,55,519.00	8,27,883.00	13,833.00	4,20,028.00	21,84,440.00	11,488.00



T. P. ROY CHOWDHURY AND CO PVT LTD
WAC19370RST032

Statement of Reimbursement expenses incurred and collected in actuals

Statement of Reimbursement expenses incurred and collected in actuals													
FY 2009-2010													
Reimbursement expenses collected as Pure Agent							Exempted Service						
PARTICULARS	TOLL TAX	Municipal Tax	ELECTRICITY CHARGES	SECURITY CHARGES	INCIDENTAL EXP	WEIGHT CHARGES	PORT CHARGES	EMPTY TRANSPORTATION CHARGES	OTHER REIMBURSABLE EXP	Dead Freight Charges	Property Tax	Discursion charge	Handling of Agricultural products
AS PER SCH - ANNEXURE III	79,000	4,84,376	66,083	6,21,118	20,495		1,10,338	6,82,830	53,80,145				
AS PER ST-1	79,000	4,84,376	66,083	6,21,118	20,495		1,45,052	6,82,830		1,50,000	17,700	15,40,732	19,35,340
DISCREPANCY WITH SCH							34,714		-53,80,145	1,50,000	17,700	15,40,732	19,35,340

Statement of Reimbursement expenses incurred and collected in actuals													
FY 2010-2011													
Reimbursement expenses collected as Pure Agent							Exempted Services						
PARTICULARS	TOLL TAX	Municipal Tax	ELECTRICITY CHARGES	SECURITY CHARGES	INCIDENTAL EXP	WEIGHT CHARGES	Stores Supplied	EMPTY TRANSPORTATION CHARGES	OTHER REIMBURSABLE EXP	Property Tax	Discursion charge	Handling of Agricultural products	Sale of iron Ore
PER SCH - ANNEXURE III	38,370	15,40,137	1,01,117	11,85,923	1,86,233	2,400			1,53,89,718				
PER ST-1	38,370	15,40,137	1,01,117	11,85,923	1,86,233	2,400	1,49,150			52,609	9,50,000	88,67,959	56,00,000
DISCREPANCY WITH SCH							1,19,150		-1,53,89,718	52,609	9,50,000	88,67,959	56,00,000

Statement of Reimbursement expenses incurred and collected in actuals												
FY 2011-2012												
Reimbursement expenses collected as Pure Agent							Exempted Service					
PARTICULARS	TOLL TAX	Municipal Tax	ELECTRICITY CHARGES	SECURITY CHARGES	INCIDENTAL EXP	WEIGHT CHARGES	PORT CHARGES	EMPTY TRANSPORTATION CHARGES	OTHER REIMBURSABLE EXP	Property Tax	Bank CHARGES	TOTAL
PER SCH	1,85,243	9,66,307	1,23,439	28,95,565	1,02,770				1,12,634	5,176		43,91,134
PER ST-1	75,107	10,71,296	1,28,387	28,95,565	1,13,267		59,650			42,484	5,176	43,91,132
DISCREPANCY WITH SCH	-1,09,936	1,04,989	4,948		10,497		59,650		-1,12,634	42,484		



9.1.1. The documentary evidences including Chartered Accountant's certificates, reconciliation statements, and supporting invoices, clearly demonstrate that the expenses were reimbursed on actuals and without any mark-up. Furthermore, the payment made by the appellant on behalf of its clients has been separately indicated in the invoice issued by the appellant to its clients. In support of their stand that reimbursable amounts are charged separately, the appellant has also produced sample copies of vendors' bills/vouchers related to such payments. We also take note of the submission of the appellant that the goods or services procured by them from the third party as pure agent for their clients are in addition to the services provided on their own account. In this regard, the appellant has also separately enclosed the bill for the service provided by the appellant.

9.2. Thus, we find that all these amounts have been received by the appellant on actual basis, as a 'pure agent'. Hence, we find merit in the submission made by the appellant that they have received the reimbursements from their clients on actual basis and thus have acted as a 'pure agent'. We find that such reimbursable expenses collected by the appellant 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, as 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.

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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 consist 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."

9.3. 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.

9.4. 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*.

9.5. 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 has been 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."

9.6. In this context, 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.

9.7. 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].

9.8. 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.58,96,594/- 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.

10. Regarding the demand of service tax of Rs.60,61,591/- confirmed in the impugned order, we observe that this demand has been raised on the basis of difference between ST-3 and Debtors' Summary – i.e., alleged short reporting of receipts vis-à-vis Debtors ledger. In the present case, we find that the Debtors contain non-taxable items such as Credit notes, exempt activities (e.g., agri handling), barge operations covered by exemption, State VAT, and pure-agent recoveries etc. In this regard, we have perused the Chartered Accountant's Certificate submitted by the appellant wherein the figures have been reconciled and excess payment has been found in two years and a minor shortfall in payment in one year, which the appellant have already paid along with interest. We observe that the Chartered Accountant is a professional who has issued the Certificate after verifying the records of the appellant and reconciled the figures. As there is no contrary evidence against the above said observations in the Chartered Accountant's certificate, we do not find any reason to reject the same.

10.1. Further, it is pertinent to mention that Courts and Tribunals have consistently quashed demands confirmed solely on the basis of Profit and Loss Account, Ledger and ST-3 comparisons without correlation to taxable services.

10.2. In the case of *Forum Projects Pvt. Ltd. [2025 (1) TMI 1262]*, this Tribunal has observed as under:

"10. Regarding the demand of service tax of Rs.88,051/-, we observe that these demands have been raised on the differential value of Profit & Loss Account and ST-3 returns. The appellant submitted that the Profit & Loss Account is prepared on accrual basis whereas Service Tax is payable on receipt basis and thus, there is a difference between the

values declared in the ST-3 and Profit and Loss Account. We observe that the Id. adjudicating authority has not given any finding regarding the liability of service tax on the differential value. It is the settled position of law that demand of Service Tax cannot be confirmed merely on the ground that there is a difference in the value of Profit & Loss Account and ST-3 returns. We observe that this issue is covered by the decision of Tribunal, Kolkata in the case of *Balajee Machinery v. Commissioner of C.G.S.T. & Excise, Patna-II* [2022 (66) G.S.T.L. 440 (Tri. – Kol.)]. The relevant part of the said decision is reproduced below: -

"8. We find that the very basis of the impugned demand is the figures appearing in the Income Tax Portal and the Profit and Loss account. We also find that the Ld. Commissioner has duly noted the fact that the Appellant was duly audited by the Service Tax Department for the compliance up to the financial year 2013-14. Since the records have been duly audited, the demand cannot be raised for the same period on account of change in the opinion. Further, we find that the Appellant had duly submitted the VAT Returns which have been recorded by the Ld. Commissioner in the impugned order.

9. In the VAT return for the financial year 2015-16, the Appellant has duly disclosed the sales turnover of Rs. 8,13,46,124/- on which VAT has been duly paid, whereas the impugned demand has been raised considering the value of taxable services to be Rs. 8,28,06,929/- by taking higher of the amount appearing in profit and loss account and the Income Tax Return. Similarly, for the financial year 2016-17, the value of taxable services have been considered to be Rs. 8,96,52,728/- whereas the appellant has duly disclosed the sales turnover of Rs. 8,79,88,828/- in its VAT return on which VAT has been paid at applicable rate. From the above, it appears that the major demand has been computed on the sales turnover."

10.1. Thus, by relying on the decision cited supra, we hold that the demand of service tax of Rs.88,051/-, confirmed merely on the basis of the differential value between the Profit & Loss Account and ST-3 returns is not sustainable and accordingly, we set aside the same."

10.3. A similar view has also been expressed in the case of *Firm Foundations & Housing Pvt. Ltd.* [2018 (4) TMI 613].

10.4. By relying on the ratio of the decisions cited supra, we hold that the demand of service tax of Rs.60,61,591/- confirmed in the impugned order, on the basis of difference between ST-3 and Debtors' Summary – i.e., alleged short reporting of receipts vis-à-vis Debtors ledger, is not sustainable and hence, we set aside the same.

11. Regarding the demand of service tax of Rs. 39,90,998/- confirmed in the impugned order, we observe that this demand has been raised and confirmed on the basis of difference observed between ST-3 and Bank Credits. In this regard, we find that the aggregate bank inflows include various non-taxable receipts such as, Fixed Deposit maturities, tax refunds, contra/intra-bank, reversals, capital receipts, dividends, insurance claims, loans, non-service receipts, etc. We are of the view that there is no service tax liability on any of these receipts.

11.1. We also find that the appellant has submitted a full reconciliation along with CA Certificate, which explains each credit across 14 accounts certified by a professional Chartered Accountant. It is observed that the Chartered Accountant is a professional, who has issued the Certificate after verifying the records of the appellant and reconciled the figures. As there is no contrary evidence against the above said observations in the Chartered Accountant's certificate, we do not find any reason to reject the same.

11.2. Furthermore, it is well settled that demands cannot be raised on the basis of raw bank account details without any linkage to taxable services and receipt of considerations toward rendering of such services.

11.3. In this regard, we rely upon the decision of the Tribunal, Allahabad in the case of *V.K. Industries v. CGST, Dehradun*, [2025 (8) TMI 609 (CESTAT-All.)], wherein it has been held as under: -

"12. I find that the whole case of demand was built up merely on the basis of figures shown in ITR/ Form 26AS statement. As far as demand on the value of Rs.13,70,268/-, which was taken from Form 26AS has already been dropped by the Commissioner (Appeals). For the demand of Rs.3,04,443/- confirmed by the Commissioner (Appeals) is also on the basis of computation attached with the ITR and submitted before him is not sustainable. 13. Neither in the SCN nor the Adjudicating officer or the Appellate Authority has tried to find out nature of services rendered by the Appellant. In the impugned Order-in-Appeal, Learned Commissioner (Appeals), has categorically mentioned, that demand was determined on the basis of figures shown in Computation attached with the ITR, which is without support of any other documents. I find that the said observation is not legally correct. Onus lies on the Department to give specific finding on taxability of action of the assessee. The submission of the Appellant that even if it is turnover of milk supply, it cannot be held that it is a service. Further nowhere it is mentioned in the SCN that the demand is for which service. Even if computation shows Supply of milk, it cannot be held that it is a service. Supply of milk is a trading activity and not the service hence demand of service tax is not sustainable. 14. I also agree with the submissions of the Appellant that there is no suppression on his part and the demand is barred by limitation. The Department has booked the case on the basis of ITR/26AS which is a public document and it cannot be alleged that the assessee has suppressed any fact from the Department. Hence, I hold that demand is fully time barred."

11.4. We also find the other case-law cited by the appellant on this issue to be squarely applicable, wherein similar views have been expressed.

11.5. Thus, by relying on the ratio of the judicial precedents cited supra, we hold that the Service Tax demand of Rs.39,90,998/- confirmed in the impugned order on the basis of difference between ST-3 and Bank Credits is not sustainable and hence, we set aside the same.

12. As the service tax demands against the appellant itself are not sustainable, the question of demanding interest or imposing penalties does not arise.

13. In view of the above discussions, we set aside the demands of service tax, along with interest and penalties, confirmed in the impugned order 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