

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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75280 of 2016

(Arising out of Order-in-Original No. 24-25/Commr/ST-II/Kol/2015-16 dated 27.11.2015 passed by the Commissioner of Service Tax, Service Tax-II Commissionerate, Kolkata, Kendriya Utpad Shulk Bhawan, 180, Rajdanga Main Road, Shantipally, Kolkata – 700 107)

M/s. S.M. Niryat Private Limited

: Appellant

402, Sagar Trade Cube,
104, S.P. Mukherjee Road,
Kolkata – 700 026

VERSUS

Commissioner of Service Tax-II

: Respondent

Service Tax-II Commissionerate,
Kendriya Utpad Shulk Bhawan,
180, Shantipally, Rajdanga Main Road,
Kolkata – 700 107

APPEARANCE:

Shri Bhaskar Thakkar, Chartered Accountant,
Ms. Aindrila Ghosh, Advocate,
Ms. Madhurima Bose, Advocate
For the Appellant

Shri Prasenjit Das, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

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

FINAL ORDER NO. 75589 / 2026

DATE OF HEARING: 12.03.2026

DATE OF DECISION: 18.05.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed by M/s. S.M. Niryat Private Limited, 402, Sagar Trade Cube, 104, S.P. Mukherjee Road, Kolkata – 700 026 against the Order-in-Original No. 24-25/Commr/ST-II/Kol/2015-16 dated 27.11.2015 (hereinafter referred to as the "impugned order") passed by the Ld. Commissioner of Service Tax, Service Tax-II Commissionerate, Kolkata, Kendriya Utpad Shulk Bhawan, 180, Rajdanga Main Road, Shantipally, Kolkata – 700 107.

2. The facts of the case are that a verification was conducted by the Survey, Intelligence & Verification unit of the Service Tax Commissionerate, Kolkata ('SIV unit' for short) dated 11.07.2013 wherein, required various details and documents as per requisition were provided by the company. Upon scrutiny of the said documents / records as tendered by the appellant, it appeared to the SIV unit that the declaration made by the appellant/declarant in Form VCES-1 under the Service Tax Voluntary Compliance Encouragement Scheme, 2013 (VCES) was substantially false inasmuch as the appellant had not correctly paid Service Tax dues to the tune of Rs.6,34,60,359/- (inclusive of cesses) during the period from 01.10.2007 to 31.12.2012 as they had declared their tax dues as Rs.6,54,845/- only.

3. Pursuant to the above, a Show Cause Notice dated 19.12.2014 was issued, proposing to demand Service Tax amounting to Rs.6,34,60,359/- (inclusive of cess) for the period from 01.10.2007 to 31.12.2012, along with interest and penalties thereon. The amount of Rs.6,54,845/- as deposited by the appellant towards VCES was proposed to be appropriated against the aforesaid liability.

4. During adjudication proceedings, on the basis of the submission made by the appellant-company vide reply dated 20.11.2015, vide the impugned order dated 27.11.2015, the demand was partially confirmed to the tune of Rs 4,43,45,453/- by the Id. adjudicating authority, along with interest; a penalty of Rs.4,43,45,43/- in respect of the above confirmed amount under Section 78 of the Finance Act, 1994. The Id. adjudicating authority also confirmed the demand of interest totalling to Rs.53,082/- on account of late payment of Service Tax

during October 2007 to March 2008 and Financial Year 2008-09, besides imposing a penalty of Rs.10,000/- under Section 77(2) of the Act. The amount of Rs.6,54,845/- already paid by the assessee under the VCES was ordered to be appropriated.

4.1. Aggrieved by the said order, the appellant has filed the instant appeal.

5. The appellant submits that the demand has been confirmed on the transportation service received by them from various transporters under reverse charge mechanism in respect of export cargo. The appellant submits that transportation charges paid by them is in relation to export cargo which exempt from payment of service tax. However, the Ld. adjudicating authority has not extended the benefit of the said exemption in relation to the export cargo while confirming the service tax demands. The details of the demand of Service Tax confirmed for the captioned period have been summarized by the appellant in the following table: -

Consolidated amount in dispute (Total demand of Rs.4,43,45,382/-)					
Particulars	FY2012-13	FY-2011-12	FY-2010-2011	FY2009-10	FY2008-09
Total Transportation Charge (R1)	1,17,79,21,922	75,02,68,740	48,40,91,770	9,64,40,414	3,25,34,059
Transportation charge for which EXP-1 and EXP-2 has been and accepted (R2)	70,54,72,686	17,71,04,078	-	-	-
Transportation charge on which service tax to be calculated (R1-R2)	47,24,49,236	57,31,64,662	-	-	-

Value of the taxable service (25% on transportation charges)	11,81,12,309	14,32,91,166	12,10,22,943	2,41,10,104	81,33,515
Rate	12	10	10	10	12
Service Tax	1,41,73,477	1,43,29,117	1,21,02,294	24,11,010	39,077
E.cess	2,83,470	2,86,582	2,42,046	48,220	
S & H.E. cess	1,41,735	1,43,291	1,21,023	24,110	
Total	1,45,98,682	1,47,58,990	1,24,65,363	24,83,341	39,077

6. The Ld. Counsel has made specific submissions, financial year wise, in defence of the above demand confirmed against them, which can be broadly summarized as under: -

(I) Incorrect Demand of Service Tax on Transportation Charges Already Discharged For FY 2008-09 [Amount Involved: Rs.39,077/-]

- (i) The total transportation charges incurred during the relevant period amounted to Rs.3,15,63,736/-, on which service tax of Rs.9,66,224/- was duly paid and appropriately declared in the ST-3 Returns filed with the Department. Copies of the said returns were also submitted to the SIV team. Notwithstanding this, the Department has once again raised a demand for the same period, without appreciating that the service tax liability had already been fully discharged. In support of this claim, the appellant submitted copies of the ST-3 Returns. The Department has alleged that the transportation charges incurred during this period was Rs.3,25,34,059/-, on which the value of taxable service (25%) has been calculated as Rs.81,33,515/- and Service Tax

liability as Rs.10,05,302/-; considering the Service Tax paid by the assessee as Rs.9,66,225, the Service Tax payable by the appellant has been calculated as Rs.39,077/-.

- (ii) It is submitted that the figure of Rs.3,25,34,059/- adopted in the impugned Order-in-Original (OIO) represents the gross amount reflected in the Profit and Loss Account, which already includes the Service Tax Component paid on such transportation charges. Consequently, the computation of taxable value in the OIO is erroneous and unsustainable in law. Furthermore, interest on delayed payment of service tax amounting to Rs.4,099/- had already been debited under the same ledger head and carried to the Profit and Loss Account. Hence, imposition of further interest of Rs.6,559/- amounts to double charging, which is contrary to the principles of natural justice and therefore liable to be set aside. To substantiate their contention, the position has been demonstrated by the appellant in the table below: -

2008-09			
Sl. No.	Particulars	Amount (in Rs.)	
1	Gross Amount paid against Transportation Expenses as per the SCN (a)	3,25,34,059	
2	Less: Amounts not taxable		
3	Amounts of service tax paid included in above gross payments	9,66,224	

4	Amounts of Interest paid on service tax debited to transportation ledger	4,099	9,70,323
5	Total amount excludible from transportation charges paid to arrive at Taxable value (b)		
6	Net taxable value (a-b)		
7	Less: Amounts of transportation charges on which Tax is paid as per ST-3 Returns		3,15,63,736
	Net taxable value		-

(iii) The appellant submits that as per the above table, there is no service tax liability payable by them as the transportation charges mentioned in the balance sheet are inclusive of service tax and the same has not been considered by the adjudicating authority.

(II) Incorrect Demand of Service Tax Liability and Exemption on Transportation Charges for FY 2009–10[Amount Involved: Rs.24,83,341/-]

(i) The total transportation charges incurred by the appellant during the FY 2009–10 amounted to Rs.9,64,40,414/-. Out of this, a sum of Rs.7,26,83,776/- pertained to transportation of goods by road directly from the appellant's place of removal to the port of export, while the balance amount of Rs.2,37,56,638/- was paid to Goods Transport Agencies (GTAs), on which service tax was duly discharged. Out of the total taxable transportation charges of Rs.2,37,56,638/-, an amount of Rs.2,33,60,038/- was incurred towards transportation of goods sold in the domestic

market (i.e., other than exports), and the remaining Rs.3,96,000/- related to transportation of imported goods. The said transportation charges were liable to service tax under the reverse charge mechanism. Due to a bona fide misunderstanding, the appellant could not discharge the said tax liability within the prescribed time; however, the entire liability to the tune of Rs.6,11,733/-(10.3% of 25% of Rs.2,37,56,638/-) was subsequently paid under the Voluntary Compliance Encouragement Scheme (VCES), 2013.

- (ii) Further, transportation charges amounting to Rs.7,26,83,776/- were incurred for transport of goods by road directly from the appellant's place of removal to the port of export. In this regard, Notification No. 18/2009- Service Tax dated 7th July 2009 exempts taxable services of transportation of goods by road received by an exporter and used for export of goods. Since the said notification was newly introduced, the appellant was unaware of certain procedural requirements, such as timely filing of Forms EXP-1 and EXP-2. It is submitted that the Form EXP-1 and EXP-2 showcasing Transportation charges for export consignment to the tune of Rs.7,26,83,776/- was submitted as acknowledged by Adjudication Authority at Para 7.4.4 of the Order in Original. However, due to delay in filing of such forms as stipulated in the Notification No. 18/2009-Service Tax dated 7th July 2009 the same was disallowed by the adjudicating authority. Nevertheless, the appellant duly fulfilled all substantive conditions for availing the benefit of exemption and

subsequently submitted the requisite forms and supporting documents, albeit with a procedural delay.

- (iii) That the only ground for denial of exemption in the impugned proceedings is procedural non-compliance specifically, delay in filing the prescribed forms even though the appellant has fully satisfied all substantive conditions. It is a settled position of law that procedural lapses cannot defeat substantive benefits legitimately due to an Assessee. Reliance in this regard is placed on the following judicial pronouncements: *Mangalore Chemicals & Fertilizers Ltd. v. Deputy Commissioner* [1991 (55) ELT 437 (SC)] – wherein the Hon’ble Supreme Court held that procedural requirements should not frustrate substantive rights. *Formica India Division v. Collector of Central Excise* [1995 (77) ELT 511 (SC)] – holding that benefits cannot be denied merely on technical grounds. *UM Cables Ltd. v. Union of India*, wherein the Hon’ble Bombay High Court reiterated that procedural provisions are directory and intended only to facilitate verification, not to override substantive entitlements. Accordingly, denial of exemption on purely procedural grounds is unjustified and contrary to settled judicial principles.
- (iv) The appellant submits that there is no service tax liability payable by them, if the benefit of exemption as claimed by them in the EXP-1 and EXP-2 statements are accepted. The liability of service tax arose as the adjudicating authority has not condoned the procedural requirement to be followed by them. As there is no dispute

regarding the rendering of the transportation services in relation to exports, the appellant prayed for condonation of the procedural violation and allow the benefit of export. Thus, the appellant submits that the demand of service tax confirmed for the FY 2010-11 is not sustainable.

(III) Denial of Service Tax Exemption under Notification No. 18/2009-ST for Transportation Charges for FY 2010-11 [Amount involved: Rs.1,24,65,363/-]

- (i) The appellant incurred total transportation expenses amounting to Rs.48,40,91,770/-, towards movement of goods by road directly from the appellant's place of removal to the port of export. In terms of Notification No. 18/2009-Service Tax dated 7th July 2009, services of "transport of goods by road" received by an exporter and used for export of goods are exempt from payment of Service Tax.
- (ii) The sole basis for the impugned demand is the alleged non-compliance by the appellant with certain procedural requirements, namely the delay in filing Forms EXP-1 and EXP-2 as prescribed under the said notification. It is submitted that Forms EXP-1 and EXP-2, reflecting transportation charges for export consignments amounting to Rs.48,40,91,770/-, were in fact submitted and duly acknowledged on 27.02.2014 by the Adjudicating Authority, as recorded in para 7.5.2 of the Order-in-Original. However due to delay in filing of such forms as stipulated in the Notification No. 18/2009-service tax dated 7th July 2009 and the same

was disallowed. It is also submitted that the appellant had duly fulfilled all substantive conditions stipulated for availing the exemption, and the denial of benefit solely on procedural grounds is unjustified and contrary to law.

- (v) It is a settled legal position that procedural lapses cannot override substantive entitlements. Judicial pronouncements of the Hon'ble Supreme Court and various High Courts have consistently held that procedural provisions are directory in nature and intended only to facilitate verification, not to deny legitimate benefits. In view of the foregoing, it is submitted that the impugned order has erred in denying the exemption benefit on purely procedural grounds. Such denial is contrary to settled legal principles and judicial precedents. The appellant submits that there is no service tax liability payable by them, if the benefit of exemption as claimed by them in the Exp-1 and Exp-2 statements are accepted. The liability of service tax arose as the adjudicating authority has not condoned the procedural requirement to be followed by them. As there is no dispute regarding the rendering of the transportation services in relation to exports, the appellant prayed for condonation of the procedural violation and allow the benefit of export. Thus, the appellant submits that the demand of service tax confirmed for the FY 2010-11 is not sustainable.

(IV) Incorrect Computation and Denial of Service Tax Exemption on Transportation Charges for FY 2011-12
[Amount Involved: Rs.1,47,58,990/-]

(i) The impugned Order-in-Original (OIO) has erroneously considered total transportation charges of Rs.75,02,68,740/-, based solely on assumptions and estimates. However, the actual transportation expenses incurred amounted to Rs.33,59,70,666/-, as duly reflected in the Appellant’s audited Balance Sheet. It is submitted that transportation charges were not shown as a separate line item in the Profit and Loss Account, since the same were part and parcel of the purchase of stock-in-trade, including outward transportation up to the place of removal, which is specifically excluded from the taxable value under the applicable valuation provisions. To clarify the said accounting treatment, an Auditor’s Certificate has been issued certifying that the transportation charges for FY 2012-12 amounting to Rs.33,59,70,166/- were included as part of the purchase of stock-in-trade amounting to Rs. 1,31,45,90,975/-, as reflected under Sl. No. 4(a) of the Profit and Loss Account.

2011-12				
SI No.	Particulars		Amount (in Rs.)	
a	Total Transportation Charges as per Balance Sheet		33,59,70,666	
b	Filed EX-01 & EXP-02	EXP-2 Filed for 1st half	10,78,14,450	33,08,14,045
		EXP-2 Filed for 2nd half	22,29,99,595	

c	Transportation charges on which ST is collected by the Service provider	47,82,121
d	Filed through VCES	3,74,500
e	Total Transportation Charges discharged (b+c+d)	33,59,70,666
	Net taxable value(a-e)	-

- (ii) From the above-mentioned table, out of the total transportation charges of Rs.33,08,14,045/-, a sum of Rs.10,78,14,450/- relates to the first half of the year, which qualifies for exemption under Notification No. 18/2009–Service Tax dated 7th July 2009, granting relief to exporters for transportation of goods by road used for export. The appellant was fully eligible for the said exemption; however, due to lack of awareness of procedural requirements, the prescribed Forms EXP–1 and EXP–2 were not filed within the stipulated period for the half-year ended 30.09.2011. The appellant subsequently submitted all requisite forms and supporting documents, though beyond the due date. The only basis for denial of the exemption is such procedural delay, and not any substantive ineligibility. It is therefore submitted that once all substantive conditions are fulfilled, exemption cannot be denied merely for procedural lapses.
- (iii) For the second half of the financial year (01.10.2011–31.03.2012), the appellant duly filed all prescribed forms within the due date i.e., 11.04.2012, covering transportation charges of Rs.22,29,99,595/- which was acknowledged by the Adjudicating Authority in the Para 7.6.2 of the Order in Original. However, the impugned OIO has accepted exemption only

to the extent of Rs.17,71,00,000/-, and confirmed demand on the balance amount, on the erroneous presumption without any justifiable reason. Therefore, the impugned demand is factually and legally untenable and liable to be set aside.

- (iv) With respect to the balance amount of Rs.47,82,121/-, Service Tax has already been charged and paid by the transporters themselves. As clarified vide C.B.E.C. Circular No. 341/18/2004-TRU (Pt.) dated 17.12.2004, once Service Tax has been discharged by the service provider, no further liability arises on the recipient, in order to avoid double taxation. This settled legal position is supported by judicial precedents including *Navyug Alloys Pvt. Ltd. v. CCE & Cus., Vadodara-II* [2009 (13) S.T.R. 421 (Tri.- Ahmd.)], and *Mandev Tubes v. CCE, Vapi* [2009 (16) S.T.R. 724 (Tri.- Ahmd.)] wherein it was categorically held that once tax has been paid by the service provider, the same cannot be demanded again from the recipient. Accordingly, the demand of service tax on the balance amount of Rs.47,82,121/- amounts to double taxation and is also therefore contrary to law and also liable to be quashed in full.
- (v) Furthermore, an amount of Rs.3,74,500/- pertains to transportation charges paid on import of goods, on which the appellant has already discharged service tax liability under the Voluntary Compliance Encouragement Scheme (VCES), 2013. Consequently, this portion of the demand stands fully settled and cannot be reopened or re-demanded under the present

proceedings. A copy of the VCES documents has been placed on record.

- (vi) In light of the foregoing, it is submitted that the impugned demand is based on erroneous computation, overlooks the exemption benefits lawfully available, and disregards taxes already discharged. The appellant submits that there is no service tax liability payable by them, if the benefit of exemption as claimed by them in the Exp-1 and Exp-2 statements and other exemptions eligible to them are extended. The liability of service tax arose as the adjudicating authority has not condoned the procedural requirement to be followed by them and not allowed the other exemptions claimed by them. As there is no dispute regarding the rendering of the transportation services in relation to exports and they have submitted necessary documentary evidences required for claiming the other exemptions, the appellant prayed for condonation of the procedural violation and allow the benefit of export and other exemptions as claimed by them. Thus, the appellant submits that the demand of service tax confirmed for the FY 2011-12 is not sustainable. Hence, the impugned demand is liable to be set aside in toto.

(V) Incorrect Computation and Denial of Service Tax Exemption on Transportation Charges for FY 2012-13
[Amount involved: Rs.1,45,98,682/-]

- (i) The impugned Order-in-Original (OIO) has incorrectly computed total transportation charges of Rs.1,17,79,21,922/-, based purely on assumptions and projections. However, the

actual transportation expenditure incurred by the appellant during the said year amounted to Rs.77,60,38,602/-, as duly reflected in the audited Balance Sheet. It is submitted that transportation charges were not shown as a separate line item in the Profit and Loss Account, since the same were part and parcel of the purchase of stock-in-trade, including outward transportation up to the place of removal, which is specifically excluded from the taxable value under the applicable valuation provisions. To clarify the said accounting treatment, an Auditor's Certificate has been issued certifying that the transportation charges for FY 2012-13 amounting to Rs.77,60,38,602/- were included as part of the purchase of stock-in-trade amounting to Rs. 1,91,47,45,148/-, as reflected under Sl. No. 4(a) of the Profit and Loss Account.

2012-13		
Sl No.	Particulars	Amount (in Rs.)
a	Transportation Charge as per Balance Sheet	77,60,38,602
b	Filed EX-01 & EXP-02	76,62,05,705
c	Transportation charges on which ST is collected by the Service provider	9,86,256
d	Amount of Transportation charges paid on procurement of goods for export but yet not exported(i.e. stock-in-trade)	50,99,549
e	Transportation charge paid for transport of food grains	26,63,952
f	Filed through VCES	10,83,140
g	Total Transportation charges discharged(b+c+d+e+f)	77,60,38,602
Net taxable value(a-g)		-

- (ii) In respect of transportation charges of Rs.76,62,05,705/-(as shown above) incurred for movement of goods from the appellant's place of removal to the port for export, attention is invited to Notification No. 18/2009–Service Tax dated 7th July 2009, later superseded by Notification No. 31/2012–Service Tax dated 20th June 2012 (effective from 1st July 2012). Both notifications exempt the taxable service of “transport of goods by road” when received by an exporter and used for export of goods. The appellant duly complied with all procedural requirements, including filing of Forms EXP–1 and EXP–2 within the prescribed timelines for both half- years 01.04.2012 to 30.09.2012 and 01.10.2012 to 31.03.2013 as acknowledged by the Adjudicating Authority in the Para 7.7.2 of the Order in Original. The said forms, on record, clearly demonstrate that the transportation charges were incurred exclusively for export purposes and are therefore fully exempt from service tax. Although the order partially accepted the exemption to the extent of Rs.70,54,72,686/-, the remaining amount was disallowed on the erroneous presumption without any justifiable reason. Thus, the denial of exemption in the impugned order is arbitrary, misconceived, and devoid of legal justification. Such a finding is factually incorrect and contrary to the documentary evidence furnished by the appellant.
- (iii) With regard to transportation charges of Rs.50,99,549/-, incurred for transport of goods to the port that were subsequently exported in the next financial year, it is submitted that

under Notification No. 31/2012-ST, effective from 01.07.2012, such services are clearly eligible for exemption since the transportation was integrally connected to exportation. The rejection of exemption on this count, merely citing "non-submission of records," is baseless and unsustainable.

- (iv) As regards transportation of rice amounting to Rs.26,63,952/- between Dec'12 and Mar'13, it is submitted that Notification No. 25/2012-Service Tax dated 20th June 2012 as amended of 03/2013ST dated 01-03- 2013, effective from 1st July 2012, exempts the transportation of "food grains" and "foodstuffs" from levy of service tax. Rice being classified as food grain and subsequently as foodstuff, falls squarely within the scope of this exemption. The appellant had duly submitted all relevant invoices and documentary evidence, yet the impugned order erroneously concluded that "no evidence was submitted." Such a finding is factually incorrect and contrary to record. The relevant invoices are re-submitted and placed on record.
- (v) In respect of local transportation charges of Rs.10,83,140/-, the same were taxable under the reverse charge mechanism as they were unrelated to export. Owing to a bona fide misunderstanding, the appellant did not discharge the tax liability to the tune of Rs. 33,469(i.e. 12.36% of Rs.10,83,140/-) within the prescribed time but subsequently declared and paid the full amount under the VCES, 2013.

- (vi) As regards the balance amount of Rs.9,86,256/- , Service Tax had already been charged and collected by the respective transporters. In accordance with CBEC Circular No. 341/18/2004-TRU (Pt.) dated 17.12.2004, once the service provider has discharged the tax, no liability can be fastened upon the service recipient, as it would lead to double taxation. This position has been consistently upheld in judicial precedents including *Navyug Alloys Pvt. Ltd. v. CCE & Cus., Vadodara-II* [2009 (13) S.T.R. 421 (Tri.-Ahmd.)] and *Mandev Tubes v. CCE, Vapi* [2009 (16) S.T.R. 724 (Tri.-Ahmd.)]. Accordingly, the demand raised on this component is legally unsustainable and liable to be set aside in full.
- (vii) That from the above submissions, it is clear that the impugned Order has erroneously computed transportation expenses, misapplied the exemption provisions, and ignored taxes already discharged. The findings are contrary to settled law and facts on record. The appellant submits that there is no service tax liability payable by them, if the benefit of exemption as claimed by them in the Exp-1 and Exp-2 statements and other exemptions eligible to them are extended. The liability of service tax arose as the adjudicating authority has not condoned the procedural requirement to be followed by them and not allowed the other exemptions claimed by them. As there is no dispute regarding the rendering of the transportation services in relation to exports and they have submitted necessary documentary evidences required for claiming

the other exemptions, the appellant prayed for condonation of the procedural violation and allow the benefit of export and other exemptions as claimed by them. Thus, the appellant submits that the demand of service tax confirmed for the FY 2012-13 is illegal, invalid, and liable to be quashed in its entirety, with all consequential benefits to the appellant.

6.1. In view of the foregoing, the Ld. Counsel for the appellant has prayed for setting aside the demands confirmed against them vide the impugned order, along with interest and penalties thereon, to the extent as challenged by them, and allowing their appeal, with consequential reliefs, as per law.

7. On the other hand, the Ld. Authorized Representative representing the Revenue has reiterated the findings in the impugned order. Accordingly, he prays for rejection of the appeal filed by the assessee.

8. Heard both sides and perused the records of the case.

9. We find that the demand of Service Tax under dispute in this case, has been made on transportation charges on the basis of the data available in the balance-sheet of the appellant for the concerned periods. The main contention of the appellant/assessee is that the demand confirmed against them is on account of erroneous computation by the Revenue and denial of Service Tax exemptions on procedural and arbitrary grounds. We now proceed to examine the issues corresponding to the various periods under dispute in this case.

(I) Financial year 2008-09 [Service Tax demand of Rs.39,007/-]:

10. The details of the transportation charges incurred by the appellant during the Financial Year 2007-08 are tabulated below: -

SI No.	Particulars	2008-09
A	Total Transportation Charge as per SCN	3,25,34,059
B	Total Transportation Charge as per Balance Sheet	3,15,63,736
1	Transportation charge for which EXP-1 and EXP-2 has been filed	-
2	Transportation charge for which EXP-1 and EXP-2 has been and accepted	-
3	Transportation charge for which EXP-1 and EXP-2 has been rejected	-
4	Grounds Of Rejection	-
5	Amount on which ST is paid by the service provider	-
6	Total declaration amount paid under VCES 2013	-
7	Amount of Transportation charges paid on procurement of goods for export but yet not exported (i.e. stock-in-trade)	-

8	Transportation charge paid for transport of food grains	-
9	Service Tax included in the Transportation Charge	9,70,323
	Total [1+4+5+6+7+8]	3,25,34,059

[*in INR]

10.1. In respect of the Financial Year 2008-09, the appellant's contention is that the Revenue has erroneously considered the amount of Rs.3,25,34,059/- reflected in the Profit & Loss Account as the total transportation charges incurred during the relevant period and demanded Service Tax thereon. It has been explained that the said amount i.e., Rs.3,25,34,059/- reflected in their Profit & Loss Account actually represents the gross amount [Rs.3,15,63,736/- + Rs.9,70,323/- (Rs.3,25,34,059/-)] which includes the Service Tax component of Rs.9,70,323/- already paid by them along with interest.

10.2. Admittedly, the details of the Service Tax paid by them for the Financial Year 2008-09 had been declared by the appellant in their statutory ST-3 Returns. We observe that the appellant has submitted copies of such returns filed by them to the SIV unit during the course of investigation, but they have not been considered by the investigation.

10.3. We have examined the documents submitted by the appellant and find force in the appellant's contention that the demand of Service Tax of Rs.39,007/- raised during this period has arisen on account of erroneous computation by the Revenue. Hence, we hold that the said amount of Rs.3,25,34,059/- reflected in their Profit & Loss

Account actually represents the gross amount which includes the Service Tax component of Rs.9,70,323/- already paid by them along with interest [Rs.3,15,63,736/- + Rs.9,70,323/- (Rs.3,25,34,059/-)]. Accordingly, we hold that the demand of Service Tax of Rs.39,007/- confirmed in the impugned order for the Financial Year 2008-09 is not legally sustainable in view of the above findings and hence we set aside the same.

(II) Financial Year 2009-10 [Service Tax demand of Rs.24,83,340/-]:

11. The details of the transportation charges incurred by the appellant during the Financial Year 2009-10 are tabulated below: -

SI No.	Particulars	2009-10
A	Total Transportation Charge as per SCN	9,64,40,414
B	Total Transportation Charge as per Balance Sheet	9,64,40,414
1	Transportation charge for which EXP-1 and EXP-2 has been filed	7,26,83,776
2	Transportation charge for which EXP-1 and EXP-2 has been and accepted	-
3	Transportation charge for which EXP-1 and EXP-2 has been rejected	7,26,83,776

4	Grounds Of Rejection	EXP-1 & 2 to the tune of 7,26,83,776/- was rejected as filed beyond time
5	Amount on which ST is paid by the service provider	-
6	Total declaration amount paid under VCES 2013	2,37,56,638
7	Amount of Transportation charges paid on procurement of goods for export but yet not exported (i.e. stock-in-trade)	-
8	Transportation charge paid for transport of food grains	-
9	Service Tax included in the Transportation Charge	-
	Total [1+4+5+6+7+8]	9,64,40,414

[*in INR]

11.1. On examination of the documents placed before us, we observe that out of the total transportation charges of Rs.9,64,40,414/- incurred during this period, the appellant had filed Forms EXP-1 & EXP-2 for the amount of Rs.7,26,83,776/- in terms of Notification No. 18/2009-S.T. dated 07th July, 2009 which have been rejected by the Id. adjudicating authority on account of delay in filing such forms. In their defence, the appellant have taken the stand that they were unaware of the procedural requirements as contained in the said Notification, which resulted in the said delay.

11.2. In this regard, we observe that there is no dispute regarding the receipt of the transportation services in relation to export of goods. We observe that the appellant had duly fulfilled all substantive conditions for availing the benefit of exemption and subsequently submitted the requisite forms and supporting documents, albeit with a delay. It is a settled position of law that a substantive benefit cannot be denied merely on account of a procedural infirmity. We are of the view that denial of exemption in the impugned order only on the ground of procedural non-compliance even though the appellant has fully satisfied all substantive conditions is not justified. It has been held in a catena of judgements that procedural requirements should not frustrate substantive rights. A similar view has been expressed by the Hon'ble Apex Court in the case of *Formica India Division v. Collector of Central Excise* [1995 (77) ELT 511 (SC)] wherein it has been held as under: -

"2. The High Court, however, took note of the fact that no contention had been raised before the Tribunal that the appellants should be permitted to meet the requirements of Rule 56A of the Central Excise Rules and, therefore, they cannot be permitted to avail of that benefit in a Writ Petition brought under Article 226 of the Constitution. That indeed was a technical view to take because if the appellants were entitled to the benefit of the Notification No. 71/71-C.E., dated 29th May, 1971, to deny that benefit on the technical ground of non-compliance with Rule 56A would tantamount to permitting recovery of double duty on the intermediary product. The circumstances in which the appellants did not pay the duty on the intermediary product before putting the same to captive consumption for producing that stage, the appellants contested the correctness of the classification and had, therefore, not paid the duty on the intermediary product. When it was found that they were liable to pay duty on the intermediary product and had not paid the same, but had paid the duty on the end product, they could not ordinarily

have complied with the requirements of Rule 56A. Once the Tribunal took the view that they were liable to pay duty on the intermediary product and they would have been entitled to the benefit of the notification had they met with the requirement of Rule 56A, the proper course was to permit them to do so rather than denying to them the benefit on the technical ground that the point of time when they could have done so had elapsed and they could not be permitted to comply with Rule 56A after that stage had passed. We are, therefore, of the opinion that the appellants should be permitted to avail of the benefit of the notification by complying at this stage with Rule 56A to the satisfaction of the Department."

11.3. Thus, by relying on the ratio of the decision cited supra, we hold that the appellant is eligible to the benefit of Notification No. 18/2009-S.T. dated 07th July, 2009 in terms of the Forms EXP-1 and EXP-2 filed by them in respect of transportation charges for export consignment to the tune of Rs.7,26,83,776/-.

11.4. In this connection, the appellant has also stated that for the balance amount of transportation charges during this period, i.e., Rs.2,37,56,638/- [Rs.9,64,40,414/- - Rs.7,26,83,776/-], they have already discharged the entire liability to the tune of Rs.6,11,733/- under the VCES, 2013. Proof of payment to this extent has also been placed on record. We observe that the VCES application filed by the appellant was considered on the allegation that the appellant has wrongly declared their liability under the VCES Scheme. The appellant submitted that the allegation is not substantiated as the allegation of wrong declaration has occurred due to non-extension of the benefit of export and other exemptions claimed by them. Since, the benefit of exemptions claimed by the appellant are now found to be eligible, we observe

that the rejection of the VCES application has been made without examining all relevant records. As the payment of Rs.6,11,733/- under the VCES, 2013 is not in dispute, we take on record the payment made by the appellant under the VCES Scheme to arrive at their Service Tax liability.

11.5. In view of the above, we set aside the demand of Rs.24,83,340/- as confirmed vide the impugned order during the Financial Year 2009-10.

(III) Financial Year 2010-11 [Service Tax demand of Rs.1,24,65,363/]:

12. The details of the transportation charges incurred by the appellant during the Financial Year 2010-11 are tabulated below: -

SI No.	Particulars	2010-11
A	Total Transportation Charge as per SCN	48,40,91,770
B	Total Transportation Charge as per Balance Sheet	48,40,91,770
1	Transportation charge for which EXP-1 and EXP-2 has been filed	48,40,91,770
2	Transportation charge for which EXP-1 and EXP-2 has been and accepted	-
3	Transportation charge for which EXP-1 and EXP-2 has been rejected	48,40,91,770

4	Grounds Of Rejection	EXP-1 & 2 to the tune of Rs 48,40,91,770/- was rejected as filed beyond time
5	Amount on which ST is paid by the service provider	-
6	Total declaration amount paid under VCES 2013	-
7	Amount of Transportation charges paid on procurement of goods for export but yet not exported (i.e. stock-in-trade)	-
8	Transportation charge paid for transport of food grains	-
9	Service Tax included in the Transportation Charge	-
	Total [1+4+5+6+7+8]	48,40,91,770

[*in INR]

12.1. As far as the demand raised for the period 2010-11 is concerned, the appellant has not disputed the total transportation charges as computed by the Revenue (i.e., Rs.48,40,91,770/-), but have taken the ground that the Forms EXP-1 and EXP-2 filed by them for the entire amount of Rs.48,40,91,770/-, during the aforesaid period in terms of Notification No. 18/2009-S.T. dated 07th July, 2009 have been rejected by the Id. adjudicating authority on account of delay in filing the same.

12.2. We have considered the submissions made by the appellant. The sole basis for the impugned demand is the non-compliance by the appellant with the procedural requirement viz., delay in filing Forms EXP-1 and EXP-2 as prescribed under the said Notification. It is not in dispute that the said Forms EXP-1 and EXP-2 reflecting transportation charges for export consignments amounting to Rs.48,40,91,770/- were in fact submitted, which has also been recorded by the Id. adjudicating authority. Thus, as already observed hereinabove for the earlier period, we are of the opinion that the appellant is entitled to the benefit of Notification No. 18/2009-S.T. dated 07th July, 2009 in terms of the Forms EXP-1 and EXP-2 filed by them for the aforesaid amount, in view of the settled legal position that procedural lapses cannot override substantive entitlements. We observe that the liability of Service Tax for the FY 2010-11 has arisen because the adjudicating authority has not condoned the procedural requirement to be followed by the appellant. As there is no dispute regarding the rendering of the transportation services in relation to exports, we condone the procedural violation and allow the benefit of export as claimed by the appellant. Accordingly, we hold that the demand of Service Tax confirmed for the FY 2010-11 is not sustainable. Consequently, we set aside the demand of Rs.1,24,65,363/- as confirmed vide the impugned order during the Financial Year 2010-11.

(IV) Financial Year 2011-12 [Service Tax demand of Rs.1,47,58,990/-]:

13. The details of the transportation charges incurred by the appellant during the Financial Year 2011-12 are tabulated below: -

SI No.	Particulars	2011-12
A	Total Transportation Charge as per SCN	75,02,68,740
B	Total Transportation Charge as per Balance Sheet	33,59,70,666
1	Transportation charge for which EXP-1 and EXP-2 has been filed	33,08,14,045
2	Transportation charge for which EXP-1 and EXP-2 has been and accepted	17,71,04,078
3	Transportation charge for which EXP-1 and EXP-2 has been rejected	15,37,09,967
4	Grounds Of Rejection	EXP-1 & 2 rejected by the lower authority as filed beyond time and also on other grounds
5	Amount on which ST is paid by the service provider	47,82,121
6	Total declaration amount paid under VCES 2013	3,74,500

7	Amount of Transportation charges paid on procurement of goods for export but yet not exported (i.e. stock-in-trade)	-
8	Transportation charge paid for transport of food grains	-
9	Service Tax included in the Transportation Charge	-
	Total [1+4+5+6+7+8]	33,59,70,666

[*in INR]

13.1. The appellant has disputed the computation of total transportation charges of Rs.75,02,68,740/- by the Revenue for the above said period and contended that the actual figure of transportation charges incurred during the said period is Rs.33,59,70,666/-, as has been reflected in their audited Balance Sheet. In support of their above claim, an Auditor's Certificate certifying to the above extent has also been produced by the appellant, which is reproduced below: -



R. S. RAY & ASSOCIATES
Chartered Accountants

Annexure - E

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Tivoli Court
Suite # 111, Block 'A', 4th Floor
1C, Ballygunge Circular Road
Kolkata - 700 019 • Phone : 4603 1145
E-mail : rsr@rsrayassociates.com
rsrayassociates@gmail.com
Website : www.rsayassociates.com

CA CERTIFICATE

We, M/s. R.S.Ray & Associates, Chartered Accountants were the statutory auditor of M/s. S.M. Niryat Pvt. Ltd which has been amalgamated with M/s. OCL Iron and Steels Limited vide Order No. 156 dated 30.01.2024 of NCLT, Kolkata (hereinafter referred to as "the Company") having its principal place of business at Godrej Waterside Tower-1, 5th Floor, Sector-V, Salt Lake City, Kolkata-700091, for period from 01.04.2011 to 31.03.2012, have Audited the Books of Accounts and other relevant details of M/s. S.M. Niryat Pvt. Ltd., do hereby solemnly affirm and declare as under:

That for the period from 1st April 2011 to 31st March 2012, the Statement of Profit and Loss under Sl. No. 4 – Expenses (a) Purchases of Stock-in-Trade, amounting to Rs.1,31,45,90,975/-, includes Transportation Charges aggregating to Rs.33,59,70,666/-.

That the above declaration is made based on the records and books of accounts maintained by the Company and is true and correct to the best of our knowledge and belief.

We hereby affirm that the above statement is made voluntarily and without any misrepresentation of facts.

For R.S. RAY AND ASSOCIATES
Chartered Accountants
FRN: 320244E



(RAM SHANKAR RAY)
Partner
Membership No. 055425
UDIN: 25055425BMIFRY1315

Date: 15/10/2025
Place: KOLKATA

13.2. From the above certificate, it is evident that the transportation charges for the Financial Year 2011-12 amounted to Rs.33,59,70,666/-, which were included as part of the purchase of stock-in-trade reflected under Sl. No. 4(a) of the Profit & Loss Account. We observe that the appellant has made this submission and claimed this amount as the actual Transportation charges for the FY 2011-12. However, the Id. adjudicating authority has not considered it, even though he has recorded it at paragraph 7.6.2 of the impugned order. The appellant has now submitted the Chartered Accountant's Certificate establishing that the actual transportation charges for the Financial Year 2011-12 was only Rs.33,59,70,666/-. In the absence of any documentary evidence to the contrary

on record, we concur with the submission of the appellant that the transportation charges during the relevant period have been incorrectly arrived at by the Revenue. Therefore, in the facts and circumstances of the case, we hold that the value of transportation charges for the Financial Year 2011-12 is to be considered as Rs.33,59,70,666/-, as claimed by the appellant.

13.3. Out of the transportation charges of Rs.33,59,70,666/-, the appellant had filed Forms EXP-1 and EXP-2 for an amount of Rs.10,78,14,450/- for exemption under Notification No. 18/2009-S.T. dated 07th July, 2009, which has been denied by the lower authority on the ground of procedural delay and not any substantive ineligibility. In terms of the observations already made by us in the preceding paragraphs of this Order, we hold that the exemption cannot be denied merely for procedural/technical lapses for this period as well. Accordingly, the demand in respect of the above amount stands set aside.

13.4. It is further observed that out of the above amount of Rs.33,59,70,166/-, the appellant had also filed the said forms for an amount of Rs.22,29,99,595/-. We find that the Id. adjudicating Authority in the paragraph 7.6.2 of the Order-in-Original has acknowledged the submission of EXP 1 & EXP 2 of the said amount and hence, rejection of balance amount without giving any justifiable reasons is unjustified. Having specifically acknowledged submission of said forms for Rs.22,29,99,595/- in the paragraph 7.6.2 of the said Order and thereafter not granting relief without any proper justification is unacceptable. Accordingly, the demand in respect of the above amount stands set aside.

13.5. Furthermore, the appellant has claimed that for an amount of Rs.47,82,121/- out of Rs.33,59,70,166/-, Service Tax has already been charged and paid by the transporters / service providers and hence, no further liability would arise on the part of the appellant. The said submission of the appellant is not acceptable as they could not produce any evidence to support their arguments. Accordingly, the demand in respect of this issue stands confirmed. However, for discharging their Service Tax liability under transportation service, the appellant shall be eligible for abatement of 75% from the taxable value. Thus, the Service Tax liability of the appellant in this regard is to be calculated after allowing abatement of 75%, as eligible in respect of transportation service.

13.6. In respect of the balance amount of Rs.3,74,500/-, out of the above amount of Rs.33,59,70,166/-, it can be seen from the records that the appellant has already discharged their Service Tax liability, under the VCES, 2013. The appellant has also enclosed documentary evidence to substantiate the above payment made by them under the VCES to this extent. Thus, this portion of the demand stands settled by the appellant.

13.7 Consequently, we set aside the demands confirmed vide the impugned order during the Financial Year 2012-13 to the extent as discussed hereinabove, except those demands which have been confirmed and upheld at 13.5 of this Order (supra). The amount paid by the appellant under the VCES stands appropriated against their corresponding Service Tax liability, as already observed hereinabove.

(V) Financial Year 2012-13 [Rs.1,45,98,682/-]:

14. The details of the transportation charges incurred by the appellant during the Financial Year 2012-13 are tabulated below: -

SI No.	Particulars	2012-13
A	Total Transportation Charge as per SCN	117,79,21,922
B	Total Transportation Charge as per Balance Sheet	77,60,38,602
1	Transportation charge for which EXP-1 and EXP-2 has been filed	76,62,05,705
2	Transportation charge for which EXP-1 and EXP-2 has been and accepted	70,54,72,686
3	Transportation charge for which EXP-1 and EXP-2 has been rejected	6,07,33,019

4	Grounds Of Rejection	EXP-1 & 2 to the tune of Rs 6,07,33,019/- was rejected without proper explanation/justification
5	Amount on which ST is paid by the service provider	9,86,256
6	Total declaration amount paid under VCES 2013	10,83,140
7	Amount of Transportation charges paid on procurement of goods for export but yet not exported (i.e. stock-in-trade)	50,99,549
8	Transportation charge paid for transport of food grains	26,63,952
9	Service Tax included in the Transportation Charge	-
	Total	77,60,38,602

[*in INR]

14.1. Regarding the demand for above period i.e., 2012-13, the appellant, at the outset, has challenged the computation of total transportation charges of Rs.1,17,79,21,922/-, arrived at by the Revenue, as being based solely on assumptions and presumptions. It has been categorically submitted that transportation expenditure pertaining to the Financial Year 2012-13 is Rs.77,60,38,602/- as accounted for by the appellant in their audited Balance Sheet. In support of the above claim, the appellant has furnished an Auditor's Certificate wherein it is certified that the transportation charges for FY 2012-13 amounting to Rs.77,60,38,602/- were included as part of the purchase of stock-in-trade amounting to Rs. 1,91,47,45,148/-, as reflected under Sl. No. 4(a) of the Profit and Loss Account. For better appreciation of the facts, the said certificate is reproduced below:-



R. S. RAY & ASSOCIATES
Chartered Accountants

Annexure - H
Tivoli Court
Suite # 111, Block 'A', 4th Floor
1C, Ballygunge Circular Road
Kolkata - 700 019 - Phone : 4603 1145
E-mail : rsr@rsrayassociates.com
rsrayassociates@gmail.com
Website : www.rsrayassociates.com

CA CERTIFICATE

We, M/s. R.S.Ray & Associates, Chartered Accountants were the statutory auditor of M/s. S.M. Niryat Pvt. Ltd which has been amalgamated with M/s. OCL Iron and Steels Limited vide Order No. 156 dated 30.01.2024 of NCLT, Kolkata (hereinafter referred to as "the Company") having its principal place of business at Godrej Waterside Tower-1, 5th Floor, Sector-V, Salt Lake City, Kolkata-700091, for period from 01.04.2012 to 31.03.2013, have Audited the Books of Accounts and other relevant details of M/s. S.M. Niryat Pvt. Ltd., do hereby solemnly affirm and declare as under:

That for the period from 1st April 2012 to 31st March 2013, the Statement of Profit and Loss under Sl. No. 4 - Expenses (a) Purchases of Stock-in-Trade, amounting to Rs.1,91,47,45,148/-, includes Transportation Charges aggregating to Rs.77,60,38,602/-.

That the above declaration is made based on our audit records and books of accounts maintained by the Company and is true and correct to the best of our knowledge and belief.

We hereby affirm that the above statement is made voluntarily and without any misrepresentation of facts.

For R.S. RAY AND ASSOCIATES
Chartered Accountants
FRN: 320244E

(RAM SHANKAR RAY)
Partner
Membership No. 055425
UDIN: 25055425BMIFRZ8390

Date: 15/10/2025
Place: KOLKATA



14.2. In the absence of any corroborative evidence being brought on record by the respondent to the contrary, we accept the above certificate furnished by the assessee. Accordingly, we agree with the submission made by the appellant that the computation of total transportation charges of Rs.1,17,79,21,922/- by the Revenue is without any basis. We observe that although the appellant had made this submission and claimed this amount as the actual Transportation charges for the FY 2012-13, the Id. adjudicating authority has not considered it, even though he has recorded it in the impugned order in paragraph 7.7.2 of the impugned order. The appellant has now submitted the Chartered Accountant’s Certificate, reproduced above, establishing that the actual transportation charges for the Financial Year 2012-13 was only to the extent of Rs.77,60,38,602/- .Consequently, we hold that the total transportation charges incurred during the said period is to be construed as Rs.77,60,38,602/-, as per the documentary evidence available on record.

14.3. The appellant has also provided a table indicating the break-up of the amount of Rs.77,60,38,602/- representing the transportation charges during the Financial Year 2012-13, which is as follows: -

2012-13		
SI No.	Particulars	Amount (in Rs.)
a	Transportation Charge as per Balance Sheet	77,60,38,602

b	Filed EX-01 & EXP-02	76,62,05,705
c	Transportation charges on which ST is collected by the service provider	9,86,256
d	Amount of Transportation charges paid on procurement of goods for export but yet not exported (i.e. stock-in-trade)	50,99,549
e	Transportation charge paid for transport of food grains	26,63,952
f	Filed through VCES	10,83,140
g	Total Transportation charges discharged (b+c+d+e+f)	77,60,38,602

14.4. From the above table, it is observable that an amount of Rs.76,62,05,705/- was incurred during the said period for movement of goods from the appellant's place of removal to the port for export, for which the appellant claims the benefit of Notification No. 18/2009–Service Tax dated 7th July 2009, as superseded by Notification No. 31/2012–Service Tax dated 20th June 2012 (effective from 1st July 2012) which exempt the taxable service of "transport of goods by road" when received by an exporter and used for export of goods. Although the appellant duly complied with all procedural requirements, including filing of Forms EXP–1 and EXP–2 within the prescribed timelines for both half- years 01.04.2012 to 30.09.2012 and 01.10.2012 to 31.03.2013, the Id. adjudicating authority, in the impugned order, has partially accepted the exemption to the extent of Rs.70,54,72,686/-. We find that the Id. adjudicating

authority in the paragraph 7.7.2 of the Order in Original acknowledged the submission of EXP 1 & EXP 2 of Rs.76,62,05,705/-. Hence, we find the rejection of the balance amount [Rs. 76,62,05,705/- - Rs.70,54,72,686/-] without giving any justifiable reasons to be unjustified. Having specifically acknowledged submission of the said forms for Rs.76,62,05,705/-/- in the paragraph 7.7.2 of the Order, not granting relief without any proper justification is legally untenable. Accordingly, the demand in respect of the above balance amount, which was not considered by the Id. adjudicating authority, stands set aside.

14.5. As regards the amount of Rs.50,99,549/- seen in the table above, the appellant's stand is that the said amount was incurred as transportation charges for transport of goods to the port that were subsequently exported in the next financial year and thus also eligible for exemption in terms of the above said Notification(s). However, no documentary evidence has been placed on record to substantiate their above claims. Therefore, considering the facts and evidence available before us, we do not find any merit in the argument advanced by the appellant on this count. Accordingly, the demand of Service Tax in respect of the said amount is hereby upheld. The appellant is liable to pay Service Tax on the above amount under the category of transportation service, for which they are eligible for abatement of 75% from the taxable value. Thus, the Service Tax liability of the appellant in this regard is to be calculated after allowing abatement of 75%, as eligible in respect of transportation service.

14.6. The amount of Rs.26,63,952/-, as seen in the above Table, has been claimed by the appellant to

have been incurred in the transportation of rice between December, 2012 and March, 2012. The appellant's plea is that they are eligible for exemption in relation to the transportation of "food grains" and "foodstuffs" from levy of Service Tax in terms of Notification No. 25/2012-Service Tax dated 20th June 2012 as amended by Notification No. 03/2013-Service Tax dated 01.03.2013. The appellant had submitted that they have produced documentary evidences to support that these transportation charges were for transport of food grains. We have examined the above Notification which provides exemption in relation to the transportation of "food grains" and "foodstuffs" from levy of Service Tax. However, the invoices submitted by the appellant does not specify transportation of food grains. Therefore, considering the facts and evidence available before us, we do not find any merit in the argument advanced by the appellant on this count. Accordingly, the demand of Service Tax in respect of the said amount is hereby upheld. The appellant is liable to pay Service Tax on the above amount under the category of transportation service, for which they are eligible for abatement of 75% from the taxable value. Thus, the Service Tax liability of the appellant in this regard is to be calculated after allowing abatement of 75%, as eligible in respect of transportation service.

14.7. An amount of Rs.10,83,140/-, out of the above amount of Rs.77,60,38,602/-, has been settled by the appellant under the VCES, Scheme. Copies of the VCES documents have also been enclosed by the appellant as evidence thereof. Considering the above, we hold that the demand of Service Tax on the said amount is unsustainable and hence, the same is set aside.

14.8. As regards the balance amount of Rs.9,86,256/- , the appellant's contention is that Service Tax had already been charged and collected by the respective transporters and no liability can be fastened upon the service recipient, as it would lead to double taxation. However, the said submission of the appellant is not acceptable as they could not produce any evidence to support their arguments. Accordingly, the demand in respect of this issue stands confirmed. The appellant is liable to pay Service Tax on the above amount under the category of transportation service, for which they are eligible for abatement of 75% from the taxable value. Thus, the Service Tax liability of the appellant in this regard is to be calculated after allowing abatement of 75%, as eligible in respect of transportation service.

14.9 Consequently, we set aside the demands confirmed vide the impugned order during the Financial Year 2012-13 to the extent as discussed hereinabove, except those demands which have been confirmed and upheld at 14.5, 14.6 and 14.8 of this Order (supra). The amount paid by the appellant under the VCES stands appropriated against their corresponding Service Tax liability, as already observed hereinabove.

15. We also note that an amount of Rs.53,082/- has been confirmed against the appellant vide the impugned order owing to late payment of Service Tax during the periods October, 2007 to March, 2008 and the Financial Year 2008-09. However, the appellant has not contested the said amount. Therefore, we do not interfere with the above demand confirmed vide the impugned order. The same is thus upheld.

16. Regarding the imposition of penalties, it is evident from the records that the entire demand has been raised on the basis of the records/documents submitted by the appellant. No evidence has been adduced by the Revenue to indicate mala fide intent on their part so as to evade payment of Service Tax. We also do not find that any corroborative evidence has been brought on record by the Revenue to show that the appellant has indulged in any activity amounting to suppression or wilful mis-statement. In view thereof, we do not find any justification in the imposition of penalty under Section 78 of the Act in this case and hence, the same is aside in toto as being unsustainable both in law and on facts. Accordingly, we hold that penalty under Section 78 of the Act is not imposable on the appellant in respect of any of the demands, including those upheld by us hereinabove, in the facts and circumstances of the case.

16.1. Considering the facts and circumstances of the case as well as the bona fides of the appellant, we also waive the penalty imposed under Section 77(2) of the Act.

17. The appeal is disposed of in the above manner.

(Order pronounced in the open court on **18.05.2026**)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)