**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,**
**EAST REGIONAL BENCH : KOLKATA**
**Court No.1**

## Service Tax Appeal No.75621 of 2025

(Arising out of Order-in-Original No.50/Commr./CGST & CX/Kol/North/2024-25 dated 31.12.2024 passed by Commissioner of CGST & Central Excise, Kolkata)

**M/s India Steamship**
(Birla Building, 9th Floor, 9/1, R.N.Mukherjee Road, Kolkata-700001)

**Appellant**

*VERSUS*

**Commissioner of CGST & Central Excise, Kolkata**
(180, Shantipally, Rajdanga Main Road, Kolkata-700107)

**Respondent**

Appearance:
Shri Arvind Baheti, Chartered Accountant for the Appellant
Shri Desh Dulal Chatterjee, Authorized Representative for the Respondent

**WITH**

## Service Tax Appeal No.76110 of 2025

(Arising out of Order-in-Original No.50/Commr./CGST & CX/Kol/North/2024-25 dated 31.12.2024 passed by Commissioner of CGST & Central Excise, Kolkata)

**Commissioner of CGST & Central Excise, Kolkata**
(180, Shantipally, Rajdanga Main Road, Kolkata-700107)

**Appellant**

*VERSUS*

**M/s India Steamship**
(Birla Building, 9th Floor, 9/1, R.N.Mukherjee Road, Kolkata-700001)

**Respondent**

Appearance:
Shri Desh Dulal Chatterjee, Authorized Representative for the Respondent
Shri Arvind Baheti, Chartered Accountant for the Appellant

**CORAM:**
**HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)**
**HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO.76212-76213/2026**

**DATE OF HEARING : 18 AUGUST 2026**

**DATE OF PRONOUNCEMENT : 25 SEPTEMBER 2026**

**Per Ashok Jindal :**

Both sides are in appeal arising out of a common impugned order.

2. The facts of the case are that the appellant-assessee, a division of Chambal Fertilisers and Chemicals Limited, is engaged in the shipping business, deriving its revenue from (a) voyage chartering

(transportation of petroleum products by vessels for freight) and (b) time chartering: (provision of ships on time basis for fixed rent) and discharged service tax on these streams under both forward charge and reverse charge basis, Shipping, being a global business, the appellant-assessee incurred foreign currency expenses for procuring various services from the non-taxable territory (i.e. suppliers located outside India). All such foreign currency expenses were duly disclosed in the ST 3 returns and deductions/abatement were claimed with respect to those specified services which were not covered under Rule 3 of the POPS Rules, but covered under Rule 4, Rule 9 and Rule 10 of the POPS Rules.

2.1 Based on scrutiny of the ST 3 returns filed by the Assessee, as a service recipient, for the relevant period, SCN dated 31 August 2018 was issued demanding service tax on reverse charge basis in terms of Section 68(2) of the Finance Act, 1994 read with Notification No. 30/2012 -ST dated 20 June 2012 ("reverse charge notification"), on the select foreign currency payments, for which deductions were claimed by the assessee by purportedly applying Rule 3 of the POPS Rules to assume that the specified underlying services were provided in the taxable territory. At this juncture, it would be pertinent to note that similar demand was raised under the positive list regime, covering the period 2007-08 to 2011-12 by invoking the then default Rule 3(iii) of the Taxation of Services (Provided from Outside India and received in India) Rules, 2006 ("Import of Service Rules"), which was subsequently set aside by this Tribunal in the assessee’s own case vide Final Order dated 11 June 2024 and the same has since been accepted by the Department.

2.2 The assessee in its detailed reply dated 25 March 2019, denied the applicability of Rule 3 of the POPS Rules and also submitted documentary evidence viz., remittance advice, invoices, agreements etc. with respect to each of the 15 specified services in order to bring home its contention that the abatement/deduction under Rule 4, Rule 9 and Rule 10 were rightly claimed by the assessee.

2.3 The Ld Adjudicating Authority, after considering the submissions and the documents submitted by the Assessee passed the Order-In-Original dated 31 December 2024 dropping/confirming the demand raised in the SCN as follows:

| **SlNo** | **Category/Description of Service** | **Demand proposed along with the default Rule Applied in the SCN** | **Demand Dropped along with the Rule/Provision Applied by the Adjudicating Authority** | **Relevant Documents (Pg /C)** |
|---|---|---|---|---|
| 1. | Transport of Goods by Coastal Shipping | 1,07,83,53,384<br>Rule 3 of the POPS Rules | 1,06,57,36,695<br>Covered under the negative list of service under Section 66D(p) of the Finance Act, 1994/Rule 10 of the POPS Rules | Annexure 6/Pg 218-298/Reply to SCN<br>Pg. 185-222/Compilation |
| 2. | Steamer Agent Service | 28,31,47,388<br>Rule 3 of the POPS Rules | 28,31,47,388<br>Rule 4 of the POPS Rules | Annexure 7/299-349/Reply to SCN<br>Pg 223-226/Compilation |
| 3. | Maintenance/Repair Service | 4,07,35,941<br>Rule 3 of the POPS Rules | 4,07,35,941<br>Rule 4 of the POPS Rules | Annexure 8/Pg 350-362/Reply to SCN<br>Pg. 227-232/Compilation |
| 4. | Business Auxiliary Service | 2,35,97,348<br>Rule 3 of the POPS Rules | 2,35,97,348<br>Rule 9 of the POPS Rules | Annexure 9/Pg 563-570/Reply to SCN<br>Pg. 233-236/Compilation |
| 5. | Technical Inspection and Certification Agency Service | 95,18,574<br>Rule 3 of the POPS Rules | 95,18,574<br>Rule 4 of the POPS Rules | Annexure 10/Pg. 571-595/Reply to SCN , Annexure 11/Pg. 596-633/Reply to SCN and Annexure 12/Pg. 634-710/Reply to SCN<br>Pg. 237-250/Compilation |
| 6. | Security/Detective | 40,25,810 | 40,25,810 | Annexure 13/Pg. 711- |

| | | | | |
|---|---|---|---|---|
| | Agency Service | Rule 3 of the POPS Rules | Rule 4 of the POPS Rules | 741/Reply to SCN<br>Pg. 251-255/Compilation |
| 7. | Online Database/Information Service | 9,55,296<br>Rule 3 of the POPS Rules | 9,55,296<br>Rule 9 of the POPS Rules | Annexure 14/Pg. 742-789/Reply to SCN<br>Pg. 255-264/Compilation |
| 8. | Transport of Goods by Air | 9,54,157<br>Rule 3 of the POPS Rules | 9,54,157<br>Rule 10 of the POPS Rules | Annexure 15/Pg 790-851/Reply to SCN<br>Pg. 265-280/Compilation |
| 9. | Technical Testing and Analysis Service | 6,60,098<br>Rule 3 of the POPS Rules | 6,60,098<br>Rule 4 of the POPS Rules | Annexure 16/852-898/Reply to SCN<br>Pg. 281-286/Compilation |
| 10. | Business Support Service | 3,11,347<br>Rule 3 of the POPS Rules | 3,11,347<br>Rule 4 of the POPS Rules | Annexure 17/899-902/Reply to SCN<br>Pg 287-290/Compilation |
| 11. | Other Taxable Service | 3,09,827<br>Rule 3 of the POPS Rules | 3,09,827<br>Rule 4 of the POPS Rules | Annexure 18/Pg 903-950/Reply to SCN<br>Pg 291-301/Compilation |
| 12. | Erection, Commissioning and Installation Service | 1,00,679<br>Rule 3 of the POPS Rules | 1,00,679<br>Rule 4 of the POPS Rules | Annexure 19/Pg 951-953/Reply to SCN<br>Pg. 302-304/Compilation |
| 13. | Commercial Training or Coaching Service | 57,336<br>Rule 3 of the POPS Rules | 57,336<br>Rule 4 of the POPS Rules | Annexure 20/Pg 954-957/Reply to SCN<br>Pg. 305-308/Compilation |
| 14. | Information Technology Software Service | 25,878<br>Rule 3 of the POPS Rules | 25,878<br>Rule 4 of the POPS Rules | Annexure 8/Pg 350-562/Reply to SCN<br>Pg. 227-232/Compilation |
| 15. | General Insurance Service (ECRC Membership) | 5,562<br>Rule 3 of the POPS Rules | 5,562<br>Rule 4 of the POPS Rules | - |
| **Total** | | | **1,44,27,58,625** | |

These are cross appeals. The Assesse has preferred an appeal against the amount of demand confirmed to the tune of Rs 1,26,16,689/- while the department is in appeal against the amount of demand dropped to the tune of Rs 143,01,41,936/-

**Contentions of the Assessee with respect to the Departmental Appeal**

It is the contention of the Department that the Ld.Adjudicating Authority while applying the POPS Rules has accepted the contentions of the Assessee without undertaking a verification of the documents:

3. In this regard, the ld.Counsel for the assessee submits the following, which are in alternative and without prejudice to one another:

(i) SCN forms the foundation for any legal proceedings and should lay down the precise charge, which forms the basis of the demand [Refer – Commissioner of Central Excise, Bangalore Vs Brindavan Beverages (P) Ltd.]. The SCN does not dispute the specified category of services as declared by the Assessee in the ST 3 returns. On the contrary, the Department has accepted the said specified category of services but has assumed that Rule 3 of the POPS Rules is applicable and that the deduction claimed by the Assessee under Rule 4, Rule 9 and Rule 10 is inapplicable. Demand raised by assuming the applicability of Rule 3 of the POPS Rules without providing any reasons itself makes the SCN unsustainable [ReferMs. Shree Venkatesh Films Private Limited Vs Commissioner of CGST & Central Excise, Kolkata - 2026 (2) TMI 288 (Tri. Kol.)]. Therefore, the SCN is ex-facie vague, and the department cannot be allowed at this stage to improve upon the SCN [Commissioner of Customs, Mumbai Vs. Toyo Engineering India Limited[2006 (201) E.L.T. 513 (SC)] and Ms. Jagatjit Industries

Limited Vs CCE, Ludhiana [2016 (10) TMI 486 (Tri. – Chan)]. Once the Ld. Adjudicating Authority has examined the applicability of POPS Rules against each of the specified category of services, duly supported by documentary evidence, the Authority was completely justified in dropping the demand.

(ii) Further, the burden to prove taxability is upon the Revenue [Refer –Commissioner of Customs (Import), Mumbai Vs Dilip Kumar & C0 – 2018 (361) E.L.T. 577]. Section 66B of the Finance Act states that service tax is levied on the services which are provided or agreed to be provided in the taxable territory. Section 68(2) read with the reverse charge notification further states that the tax shall be paid on reverse charge by the recipient of services when the same are provided by a person located in the non-taxable territory to a person located in the taxable territory. In order to examine whether a service has been provided in the taxable territory or not one must have recourse to the POPS Rules. Rule 3 of the POPS Rules is a default/general Rule that is applicable when a specified service does not fall within any of the other Rules i.e., Rule 4 to Rule 12. In the instant case, Revenue has conveniently assumed applicability of Rule 3 without adducing any reasons to dispel the claim of the Noticee/Assessee as made in the ST 3 returns regarding the applicability of Rule 4, Rule 9 and Rule 10.

(iii) In so far as the contention of the Department with respect to the verification of place of performance is concerned, it is being submitted that the same is only relevant with respect to services on which deduction was claimed under Rule 4 of the POPS Rules [Performance Based Rule] and not with respect to Rule 9 and Rule 10.In any event, documentary evidence with respect to each of the 15 specified categories of services was duly furnished at the adjudication stage along with the reply to the notice and was available with the Ld. Adjudicating Authority at the time of passing of the Order. The Appellant has also enclosed herewith a detailed statement covering the services, their nature, contentions of the department and the counter contentions of the Assessee.

(iv) Extended period of limitation cannot be invoked in the facts of the present case as the demand has been raised based on the disclosures made by the Assessee in the statutory returns for the relevant period. It is a settled principle in law that when the demand itself has been raised based on the returns furnished by an Assessee, suppression cannot be alleged and extended period of limitation cannot be invoked. Reliance in this regard being placed on the judgements of this Hon'ble Tribunal in the cases of Ms Libra Business Private Limited Vs Commissioner of CGST and Central Excise, Ranchi [2026 (6) TMI 956 (Tri. – Kol.)] andMs Saraf Agencies Private Limited Vs Commissioner of Service Tax – I, Kolkata [2025 (8) TMI 1219 (Tri. Kol.)]. Further, all the relevant facts and circumstances were already in knowledge of the Department at the time of issuance of the previous show cause notice under the positive list regime. Notwithstanding the same, the department issued the first communication in the matter as late as in 2018. When a SCN has already been issued by the Department on similar facts and circumstances, suppression cannot be alleged and extended period of limitation cannot be invoked in the subsequent SCN[Refer - Nizam Sugar Factory Vs Collector of Central Excise, AP - 2008 (9) STR 314 (SC)].

**Contentions of the Assessee with respect to its own Appeal**

4. It is further submitted that the demurrage charges are independent penal charges paid for the delay in discharge or loading of cargo and are not a consideration for any service, and thus cannot be subjected to service tax.

4.1 He submits that the Assessee was engaged in the global business of transportation of crude oil. In addition to deploying its own fleet of ships, situations also used to arise, when due to unavailability of Assessee's own ships, Assessee used to hire ships on spot charter basis, from vendors overseas to perform the voyages. On account of delay in loading/unloading of such ships, the assessee was required to pay demurrage charges. The demand of Rs.1,26,16,689 has been computed by Ld Adjudicating Authority on such demurrage payments of Rs.8,57,75,203 by considering the same to be towards transportation of goods by coastal shipping which was covered in the negative list upto May 2016 and was removed thereafter, despite the categorical submissions by the Assessee that the said payments were towards demurrage :

| Month/Period | Amount Paid (in Rs) | Rate of Service Tax (including Cess) | Service Tax (including Cess) |
|---|---|---|---|
| June 2016 | 1,44,99,348 | 14.5% | 21,02,405 |
| July 2016 | 94,08,964 | 14.5% | 13,64,300 |
| August 2016 | 95,58,194 | 14.5% | 13,85,938 |
| September 2016 | 1,64,51,853 | 14.5% | 23,85,519 |
| October 2016 to March 2017 | 3,58,56,844 | 15% | 53,78,527 |

4.2 It is further submitted that demurrage charges have been characterized as liquidated damages in terms of the judgement of the Hon'ble Supreme Court Rasiklal Kantilal & Co. v. Board of Trustees of Port of Bombay [2017 (348) ELT 3 (SC)]. Further, such demurrage/detention charges were in the nature of penal rent, and not a consideration towards a taxable service and hence service tax could not be demanded on the said charges. The same has been upheld by the following judgements of the Hon'ble Tribunals, including one in Assessee's own case:

(i) M/s India Steamship Vs. Commr. of Service Tax Audit [Final Order Nos.76064–76065/2024 dated 11.06.2024] ;

(ii) Tiger Logistics (India) Ltd. v. Commissioner of Service Tax, Delhi [2022 (63) G.S.T.L. 337 (Tri.-Del)].

He further submits that the aforesaid position has also been clarified by the Board vide CBEC Circular No. 121/2/2010 dated 26.04.2010.

4.3 Further, he submits that even assuming, though without admitting that payment of demurrage is not an independent charge but towards transportation of goods by coastal shipping, the said payments could not be taxed on reverse charge basis as the actual provision of transportation service took place prior to June 2016 . It is his further contention that even it is assumed that the said payments were towards transportation of goods by coastal shipping, the actual provision of the transportation service took place prior to June 2016 when such service was covered under the negative list of service in terms of Section 66D(p)(ii) of the Finance Act, and as such the same would not be taxable on reverse charge basis in terms of the first and the third proviso to Rule 7 of the Point of Taxation Rules, 2011.

5. The ld.A.R. for the Revenue reiterated the grounds contained in the appeal filed by the Revenue, which read as under :

(i) After going through the Order passed by the Commissioner, it is observed that all have been stated in the said Order is that the submissions made by the noticee were found to be correct, without assigning any reason after examination of the related relevant documents why the same were found to be so. It is observed that while accepting the noticee's contention, it would have helped had the AA clearly illustrated with documentary evidence how he found them to be legally justified. The AA has dropped the demand of service tax of Rs.143,01,41,936/- out of the demand of service tax of

Rs.144,27,58,625/-. The AA has dropped the demand of service tax of Rs.143,01,41,936/-(Rs. 106,57,36,695/- + Rs.28,31,47,388/- + Rs.4,07,35,941/- + Rs.2,35,97,348/- + Rs.95,18,574/- + Rs.40,25,810/- Rs.9,55,296/- + Rs.9,54,157/- + Rs.6,60,098/- + Rs.3,11,347/- + Rs.3,09,827/- + Rs.1,00,679/- + Rs.57,336/- + Rs.25,878/- + Rs.5,562/-) payable (under RCM) on taxable services received in respect of services mentioned at Sl. No. 1 to 15 of the above table respectively during October 2012 to June' 2017 along with applicable interest and applicable penalty u/S 78 of the said Act and while doing so, he has not recorded his findings thoroughly. There is nothing to show how he reconciled the payments made by the noticee as recipient of taxable services or otherwise during the material period with relevant invoices/bills, work orders/agreements, payment particulars and other supporting documents. In short, he has not passed a speaking order.

(ii) It is observed that the ld.Adjudicating Authority considered only the submissions made by the noticee and he strictly confined himself only to the respective service wise submissions made by the notice and did not evaluate and/or examine not a single relevant invoice/bill, import manifest, payment particulars, agreement/ work orders etc. to arrive at his conclusion, which seems to be not correct. The AA should have examined all the relevant agreements/work orders, documents along with corresponding invoices/bills, as per the deductions/ abatement claimed in the ST-3s of the noticee for the disputed period. By not doing so, he has grossly erred in passing the said order.

Points in respect of respective services:

(iii) In respect of Transport of goods by coastal shipping service, from the discussion & finding in para 5.15, it is seen that only on the basis of the noticee's submission, the AA found that the that service was provided between foreign port and customs port in India. However, there was no sign of document based discussion after analysing all, the relevant documentary evidences in his findings as to whether the noticee had provided any coastal shipping service from one Indian port to other Indian port or exclusively provided shipping service between foreign port to Indian customs port. In his findings, the AA has not at all stated which documents amongst copies of the contract/agreement/order and invoices issued to this effect, payment receipts from the customers/providers of the services etc. were brought on record which revealed that the services received by the noticee by way of transportation of goods through vessels from a place outside India up to the customs station of clearance in India were in conformity with Sec 66D(p)(ii) of the said Act during the period from October 2012 to May 2016; There is no reflection of examining any related relevant documents such as invoices/bills, contractual agreements, customs certified copy of import manifest, payment particulars etc., if any submitted by the noticee in their support; In absence of any such examination for the period from October 2012 to May 2016:

how he ascertained both the locations of the service provider as well as the service receiver;

how he ascertained the mode of transport, i.e., how he ascertained that vessels in conformity with Sec 658(53) of the said Act were used; how he ascertained the transport from where to where, i.e., how he ascertained the transport were from a place outside India upto the customs station of clearance in India in conformity with Sec 65B(21) & 65B(27) of the said Act and how he ascertained that goods in conformity with Sec 65B(25) of the said Act were transported during the disputed period, are not understood.

(iv) After examination of all the relevant documentary evidences of the noticee, no analysis of the same with cogent reason made by the AA in support of his decision, is noticed in his findings. No detailed examination of all the payments made towards shipping services was also made by the AA in support of his decision in his findings. In absence of any examination of all the relevant invoices along with payment particulars by the AA, it could also not ruled out any part of transaction involved coastal shipping, i.e., transport of goods from one Indian port to other Indian port, which was out of the ambit of Sec 66D(p) (ii) of the said Act during the period from October 2012 to May 2016. In the instant issue, after examination of all the relevant documentary evidences, the AA should have analyse the same to ascertain the proper facts of the case in support of the decision regarding drop of demand of service tax of Rs.106,57,36,695/- but he had not done so. By not doing so, the AA's decision based only on the noticee's submissions, is not sustainable. Therefore, in absence of any such reflection of document based examination in the discussion &

finding as made by the AA, the decision made by the AA in respect of drop of service tax demand of Rs.106,57,36,695/- seems to be non-speaking and accordingly not legal and proper.

(v) In respect of Steamer agency service, from the discussion & finding, it is seen that the AA opined his above decision only on the basis of the noticee's submission. From the findings of the AA, it is seen that there is not a single documentary examination of the relevant documents in this issue, from where it can be decided that the service provider was located in a non-taxable territory and the place of provision of services in respect of steamer agent service was also a non-taxable territory but that was decided by the AA in his findings. The AA has not at all stated which documents amongst copies of the contract/ agreement/order and invoices issued to this effect, payment receipts from the steamer agents/service providers/ others of the services etc. were brought on record which revealed that the reimbursement of expenditure or costs incurred & by the steamer agents while acting as a pure agent were deductible in terms of Rule 5 of the Service Tax (Determination of Value) Rules, 2006. in absence of any detailed examination of all the payments made as contended by the noticee in this context, the decision of the AA that the steamer agents were engaged by the noticee for the performance of various activities at the ports on their behalf and the steamer agents recovered actual amounts spent by them along with the service charge, is not ascertainable on facts. There is no reflection of examining any relevant documents such as invoices/bills, contractual agreements, payment particulars etc., if any submitted by the noticee in their support; In absence of any such examination: how he ascertained the location of the service provider - who provided the service as well as the location of provision of actual performance of service in respect of actual receipt of service, both were in the non-taxable territory in respect of the subject service; how he ascertained the subject services were in conformity with Rule 4 of the POPS Rule and in respect of the steamer agents whether all the conditions as laid down u/R S(2) of the Service Tax (Determination of Value) Rules, 2006 as well as the meaning of pure agent as per Explanation 1 of the said Rule 5(2) were fulfilled or not, are not understood. After examination of the relevant documentary evidences of the noticee, no fact based analysis of the said evidences with cogent reasons made by the AA in his findings is noticed. In the instant issue, after examination of all the relevant documentary evidences, the AA should have analyse the same to ascertain the proper facts of the case in support of the decision regarding drop of demand of service tax of Rs.28,31,47,388/- but he had not done so. By not doing so, the AA's decision based only on the noticee's submissions, is not sustainable. In absence of any such reflection of document based examination in the discussion & finding as made by the AA, the decision made by the AA in respect of drop of service tax demand of Rs.28,31,47,388/- seems to be non- speaking and accordingly not legal and proper.

(vi) In respect of Maintenance/Repair service, from the discussion & finding, it is seen that the AA dropped the demand of service tax by concluding that the service provider was located in a non-taxable territory and the place of provision of services in respect of maintenance & repair service was also a non-taxable territory, only on the basis of the noticee's submission and in support of his decision, he had examined not a single documentary evidence. There is no reflection of examining any related relevant documents such as invoices, agreements (if any), payment particulars etc., if submitted by the noticee in their support, in absence of any such examination: how he ascertained the location of the service provider who provided the service as well as the location of provision of actual performance of service in respect of actual receipt of service, both were in the non-taxable territory in respect of the subject service, and how he ascertained the subject services were in conformity with Rule 4 of the POPS Rule, are not understood.

(vii) After examination of the relevant documents, no document based logical conclusion made by the AA in respect of drop of service tax, could be noticed in his finding. In the instant issue, after examination of all the relevant documentary evidences, the AA should have analyse the same to ascertain the proper facts of the case in support of the decision regarding drop of demand of service tax of Rs.4,07,35,941/- but he had not done so. By not doing so, the AA's decision based only on the noticee's submissions, is not sustainable. Therefore, in absence of any such reflection of document based examination in the discussion & finding as made by the AA, the decision made by the AA in respect of drop of service tax demand of Rs.4,07,35,941/-seems to be non-speaking and accordingly not proper.

(viii) In respect of Business auxiliary service, from the discussion & finding, it is seen that only on the basis of the noticee's submission, the

AA dropped the demand of service tax by concluding that the service provider was located in a non-taxable territory and the place of provision of services in respect of business auxiliary service was also a non-taxable territory but in support of his decision, not a single documentary evidence was examined by the AA. No reflection of examining any related relevant documents such as invoices/bills, contractual agreements with intermediaries, payment particulars etc., if submitted by the noticee in their support, is seen in the fidnings. In absence of any such examination: how he ascertained that the ship-brokers acted as intermediaries as defined u/R 2(f) of the POPS Rule;

how he ascertained the location of the service provider who provided the service as well as the location of provision of actual performance of service in respect of actual receipt of service, both were in the non-taxable territory in respect of the subject service and how he ascertained the subject services were in conformity with Rule 9(c) of the POPS Rule, are not understood.

(ix) The finding made by the AA in the subject issue, is clearly devoid of any examination of related proper evidences. In the instant issue, after examination of all the relevant documentary evidences, the AA should have analyse the same to ascertain the proper facts of the case with cogent reasons in support of the decision regarding drop of demand of service tax of Rs. 2,35,97,348/- but he had not done so. By not doing so, the AA's decision based only on the noticee's submissions, is not sustainable. In absence of any such reflection of document based examination in the discussion & finding as made by the AA, the decision made by the AA in respect of drop of service tax demand of Rs.2,35,97,348/- seems to non-speaking and accordingly not proper.

(x) In respect of (i) Technical inspection & certification service, (ii) Security/detective agency service, (iii) Technical testing & analysis service, (iv) Business support service, (v) Erection commissioning & installation service, (vi) Information technology software service and (vii) General insurance service, from the discussion & finding in paras 5.19, 5.20, 5.23, 5.24, 5.26, 5.28 and 5.29 respectively, it is seen that only on the basis of the noticee's submission, the AA dropped the demand of service tax by concluding that the service providers. were located in non-taxable territory and the places of provision of services in respect of the above services were also non-taxable territory but in support of his decision, there was no sign of examination of any single documentary evidence, in the AA's finding. There are no reflection of examining any relevant documents such as invoices, agreements (if any), payment particulars etc., if submitted by the noticee in their support. In absence of any such examination: how he ascertained the location of the service provider - who provided the service as well as the location of provision of actual performance of service in respect of actual receipt of service, both were in the non-taxable territory in respect of the subject service and how he ascertained the subject services were in conformity with Rule 4 of the POPS Rule, are not understood.

(xi) The finding was made by the AA without considering the related respective documentary evidences of the noticee and therefore no document based facts ascertainment in respect of the above issues were reflected in the findings made by the AA in the above paras. In the instant issues, after examination of all the relevant documentary evidences, the AA should have analyse the same to ascertain the proper facts of the case with cogent reasons in support of the decision regarding drop of demand of service tax but he had not done so. By not doing so, the AA's decisions based only on the noticee's submissions, are not sustainable. Therefore, in absence of any such reflections of document based examinations in the discussion & finding as made by the AA, the decision made by the AA in respect of drop of service tax demand of Rs.95,18,574/-, Rs.40,25,810/-, Rs.6,60,098/, Rs 3,11,347/, Rs.1,00,679/-, Rs. 25,878/- and Rs.5,562/- in respect of technical inspection & certification service, security/detective agency service, technical testing & analysis service, business support service, installation service, information technology software service and general Insurance service respectively seems to non-speaking and accordingly not proper.

(xii) In respect of Other taxable service/Information service, from the discussion & funding, it is seen that based only on the naticee's submission, the AA dropped the demand of service tax by concluding that the service provider was located in a non-taxable territory and the place of provision of services in respect of the above service was also non-taxable territory but in support of his decision, there was no document based examination of the relevant documents in the AA's finding. There is no reflection of examining any related relevant documents such as invoices, agreements (if any), payment particulars etc., if submitted by the noticee in their support. In absence of any such examination: how he ascertained the location of the service provider -

who provided the service as well as the location of provision of actual performance of service in respect of actual receipt of service, both were in the non-taxable territory in respect of the subject service and 6 how he ascertained the subject services were in conformity with Rule 9(b) of the POPS Rule, are not understood. Moreover, in the instant issue, from the nature of service, it seems that the noticee received the services in the taxable territory. It is also to mention that the said Rule 9(b) was omitted by the Place of Provision of Services (Amendment) Rules, 2016 w.e.f 01.12.216 but the AA has not made any finding in that regard though the subject period involved was from April 2013 to March 2017. In the instant issue, after examination of all the relevant documentary evidences, the AA should have analyse the same to ascertain the proper facts of the case with cogent reasons in support of the decision regarding drop of demand of service tax but he had not done so. By not doing so, the AA's decision based only on the noticee's submissions, is based examination in the discussion & finding as made by the AA as well as in absence of any logical valid sustainable. Therefore, in absence of any such reflection of document conclusion, the decision made by the AA in respect of drop of service tax demand of Rs.9,55,296/- seems to non-speaking and accordingly not proper,

(xiii) In respect of Transport of goods by air service, from the discussion & finding in para 5.22, it is seen that based only on the noticee's submission, the AA dropped the demand of service tax by concluding that the service provider was located in a non-taxable territory and the place of provision of services in respect of the above service was also non-taxable territory but in support of his conclusion, not a single documentary evidence was examined by him. There is no reflection of examining any related relevant documents such as invoices/bills, contractual agreements with the freight forwarder, payment particulars etc., if submitted by the noticee in their support, in absence of any such examination: how he ascertained the location of the service provider - who provided the service as well as the location of provision of actual performance of service in respect of actual receipt of service, both were in the non-taxable territory in respect of the subject service and how he ascertained the subject services were in conformity with Rule 10 of the POPS Rule, are not understood

(xiv) After examination of all the relevant documentary evidences, the AA should have analyse the same to ascertain the proper facts of the case with cogent reasons in support of the decision regarding drop of Demand of service tax but he had not done so. By not doing so, the AA's decision based only on the noticee's submissions, is not sustainable and therefore, in absence of any such reflection of document based examination in the discussion & finding as made by the AA, the decision made by the AA in respect of drop of service tax demand of Rs. 9,54,157/- seems to non-speaking and accordingly not proper.

(xv) In respect of Other taxable service & Commercial training & coaching service from the discussion & finding, it is seen that based only on the noticee's submission, the AA dropped the demand of service tax by concluding that the service providers were located in non-taxable territory and the places of provision of services in respect of the above services were also non-taxable territory but in support of his decision, not a single documentary evidence was examined by him. There are no reflection of examining any related relevant documents such as invoices, agreements (if any), payment particulars etc., if submitted by the noticee in their support. In absence of any such examination:

how he ascertained the location of the service provider - who provided the service as well as the location of provision of actual performance of service in respect of actual receipt of service, both were in the non-taxable territory in respect of the subject service and how he ascertained the receipt of medical treatment services & commercial training or coaching service were in conformity with Rule 4(b) of the POPS Rule, are not understood.

(xvi) In the subject issues, after examining all the relevant documentary evidences, the AA should have analyse the same to ascertain the proper facts of the case with cogent reasons in support of his decisions regarding drop of demand of service tax but he had not done so. By not doing so, the AA's decisions based only on the noticee's submissions, are not sustainable and therefore in absence of any such reflection of document based examination in the discussion & finding as made by the AA, the decision made by the AA in respect of drop of service tax demand of Rs.3,09,827/- and Rs.57,336/- in respect of medical treatment service and commercial training or coaching service respectively seems to non-speaking and accordingly not proper. He, therefore, prays that the Revenue's appeal be allowed and the assessee's appeal be dismissed.

6. Heard both the parties and considered the submissions.

7. We find that in this case the show-cause notice has been issued to the assessee on 31st August, 2018 for the period October, 2012 to June,

2017 to demand service tax under reverse charge mechanism by applying Rule 3 of Place of Provision of Services (POPS) Rules, 2012, without assigning any reason whereas the assessee is claiming that the services are covered under Rules 4,9 & 10 of POPS Rules, 2012 i.e. place of provision of performance based service, place of provision of specified services and place of provision of goods transportation services. However, no reason has been assigned in the show-cause notice, as to why Rules 4,9 & 10 of POPS Rules, 2012, are not applicable, for which the appellant claimed in their ST-3 Returns.

8. We take note of the fact the show-cause notice is based on scrutiny of ST-3 Returns and the on the basis of audit conducted. As all the documents relevant to the claim of the appellant, were with the Revenue during the course of audit itself and the assessee has claimed deductions in terms of Rule 4,9 & 10 of POPS Rules, 2012, which is evident from their ST-3 Returns. In that circumstances, we are of the view that the extended period of limitation is not invokable.

9. Admittedly, part of the demand in this case has been proposed by way of invoking extended period of limitation as for the period October, 2012 to June, 2017, a show-cause notice has been issued on 31.08.2018 by way of invoking extended period of limitation.

10. We further take note of the fact that at the time of issuance of show-cause notice, it is alleged by the Department that Rule 3 of POPS Rules, is applicable to the case (whereas the assessee has claimed the deductions under Rule 4,9 & 10 of POPS Rules), which not exempted while issuing show-cause notice. Rule 4 of POPS is applicable for place of provision of performance based services and Rule 9 is for place of

provision of specified services and Rule 10 is for place of provision of goods transportation services. While filing ST-3 Returns, the assessee has claim deductions under Rule 4,9 & 10 of POPS Rules, 2012, but while issuing the show-cause notice, it is not clarified why the deductions under Rule 4,9 & 10 of POPS Rules, 2012, are not applicable to the assessee. Merely, alleged that Rule 3 of POPS Rules is applicable. The said observations in the show-cause notice are not sustainable as held by this Tribunal in the case of Venkatesh Films Pvt. Ltd. Vs. Commissioner of CGST & Central Excise, Kolkata reported in 2026 (2) TMI 288 (Tri.-Kolkata) as well as by the decision of the Hon'ble Apex Court in the case of Commissioner of Central Excise, Bangalore Vs. Brindavan Beverages (P) Ltd. reported in 2007 (213) ELT 487 (S.C.) wherein the Hon'ble Apex Court has held as under :

> *"**10.** There is no allegation of the respondents being parties to any arrangement. In any event, no material in that regard was placed on record. The show cause notice is the foundation on which the department has to build up its case. If the allegations in the show cause notice are not specific and are on the contrary vague, lack details and/or unintelligible that is sufficient to hold that the noticee was not given proper opportunity to meet the allegations indicated in the show cause notice. In the instant case, what the appellant has tried to highlight is the alleged connection between the various concerns. That is not sufficient to proceed against the respondents unless it is shown that they were parties to the arrangements, if any. As no sufficient material much less any material has been placed on record to substantiate the stand of the appellant, the conclusions of the Commissioner as affirmed by the CEGAT cannot be faulted."*

11. As the show-cause notice issued to the assessee is vague and the assessee has filed the reply to the show-cause notice giving all the evidences in respect of claiming deductions in terms of Rule 4,9 & 10 of POPS Rules, 2012, therefore, it cannot be said that the adjudicating authority has not examined the documents and passed the order without examining the documents.

12. We further take note of the fact that the assessee has filed the reply to the show-cause notice and  filed all the documents before the adjudicating authority and in the adjudication order, the adjudicating authority has examined all the 15 services availed by the assessee and not paid the service tax by claiming the deductions under Rule 4,9 & 10 of POPS Rules, 2012, separately and thereafter, came to the conclusion that the assessee is entitled to claim the deductions thereof in Paragraphs 5.14 to 5.31 of the adjudication order, wherein he has came to the following decisions :

> *"In view of the above discussion and findings, I arrive at the conclusion that the said assessee -*
>
> *(a) have availed improper deduction/abatement by wrongly quoting Rule 4, 9 & 10 of Place of Provision of Services Rules, 2012 read with Sections 66C of the Finance Act, 1994 and Notification No.28/2012-Service Tax dated 20.06.2012, made effective from 01.07.2012 and have contravened the provisions of Section 68(2) of the Finance Act, 1994 read with Notification no 30/2012-ST dtd 20.06.12 made effective from 01.07.2012 and Section 70 of the Finance Act, 1994 read with Rule 6 & 7 Service Tax Rules, 1994 in as much as the said assessee have not*
>
> *paid Service Tax to the tune of Rs. 1,26,16,689/- (Rupees one crore twenty six lakh sixteen thousand six hundred and eighty*

*nine) only including Education Cess, & Secondary Higher Education Cess, Swach Bharat Cess, Krishi Kalyan Cess in respect of services of transportation of goods by coastal shipping on reverse charge basis for the period from June, 2016 to March, 2017 with the intention to evade payment of service tax which is liable to be recovered in terms of the proviso to Sub Section (1) of Section 73 of the Finance Act, 1994; and*

*(b) are eligible for deduction/abatement in terms of Rule 4, 9 & 10 of Place of Provision of Services Rules, 2012 read with Sections 66C of the Finance Act, 1994 and Notification No.28/2012-Service Tax dated 20.06.2012, made effective from 01.07.2012 and Notification no 30/2012-ST dtd 20.06.12 made effective from 01.07.2012 and Section 70 of the Finance Act, 1994 read with Rule 6 & 7 Service Tax Rules, 1994 and the amount of service tax (including Cess) amounting to Rs. 143,01,41,936/- (Rupees one hundred and forty-three crore one lakh forty-one thousand nine hundred and thirty-six) only is liable to be dropped for the period from October, 2012 to June, 2017, as detailed below:-*

| l. No. | Description of Service | Deduction Claimed(Rs.) | Service Tax (including Cess) Rs. |
|---|---|---|---|
| 1 | Transport of Goods by coastal Shipping | 8023668058 | 1065736695 |
| 2 | Steamer Agency Service | 2147822119 | 283147388 |
| 3 | Maintenance or Repair Service | 303716878 | 40735941 |
| 4 | Business Auxiliary Service | 180885417 | 23597348 |
| 5 | Technical Inspection and Certification Agency Service | 73764124 | 9518574 |
| 6 | Security/Detective Agency Service | 31181434 | 4025810 |
| 7 | Other Taxable Service/Information Service | 7163747 | 955296 |
| 8 | Transport of Goods by Air | 6833803 | 954157 |
| 9 | Technical Testing Analysis Service | 5140494 | 660098 |
| 10 | Business Support Service | 2518989 | 311347 |
| 11 | Other Taxable Service | 2506691 | 309827 |
| 12 | Erection, Commissioning & Installation Service | 719133 | 100679 |
| 13 | Commercial Training and Coaching Service | 451482 | 57336 |
| 14 | Information technology Software | 209368 | 25878 |
| 15 | General Insurance Service | 38360 | 5562 |
| | Total | 10786620097 | 1430141936 |

*5.32 Once service tax liability has been established, interest cannot be detached from such liability. As the said assessee is liable for payment of service tax on the services as detailed in* *preceding paras, they are also liable for payment of interest under Section 75 of the Finance Act, 1994 read with Section 174(2) of the CGST Act, 2017.*

*5.33 The said assessee have claimed deduction/abatement/exemption of certain amount from the purview of tax by quoting Rule 4, 9 & 10 of POPS Rule which indicates that they were very much aware of law regarding the concept of 'Reverse Charge Mechanism' read with Notfn no 30/2012-ST dtd 20.06.12 effective from 01.07.12. If the provider of Service has no office/establishment in India (taxable territory), the recipient of service is liable to pay the tax under 'Reverse Charge Mechanism' in respect of transportation of goods by coastal shipping from the period of June, 2016 onwards. The said assessee was well aware that they were receiving services from non-taxable territory but have resorted to wilful mis-statement by taking the shelter of Rule 4, 9 & 10 of POPS Rule with clear cut intention to evade the liability of Tax. The matter came to the notice of the department during the course of enquiry and verification of the records of the said assessee. Had the department not conducted such enquiry, the non-payment of service tax by the said assessee would have remained unnoticed and escaped payment. The said assessee have contended that there is no suppression of facts on their part and extended period of limitation cannot be invoked as they had been issued a SCN previously by the Commissioner of Service Tax, Kolkata in respect of the services received from the service providers located outside India during the period 2007-08 to 2011-12, being a similar issue in the positive list regime. The Hon'ble CESTAT Kolkata vide order dated 11-06-2024 has dropped the entire demand and clearly held that the services were performed outside the taxable territory. In this context, I disagree with the contention of the said assessee as the previous SCN was issued in the positive list regime whereas the instant SCN has been issued in the negative list regime. Therefore, the background of circumstances are entirely different in both the SCNs and both cannot be stated to be in the same* *background and circumstances. In respect of the earlier SCN, the Hon'ble CESTAT, Kolkata vide Final Order No. 76064-76065/2024 dated 11.06.2024 has dropped the entire demand and the same has also been accepted by the department as communicated vide letter C. No. GEXCOM/REV/ST/TRIB/1601/2024-T and R-O/o Pr Commr-CGST-Kolkata(n)/8397 dated 20.11.2024 by the Superintendent (TAR), CGST & CX, Kolkata North Commissionerate."*

13. We further take note of the facts that the burden to prove regarding taxability of the service and non-availability of exemption under Rule 4,9, & 10 of POPS Rules, lies on the Revenue, which the Revenue has failed to do so. Therefore, the allegations made in the show-cause notice are not sustainable.

14. We further take note of the fact in respect of verification of place of performance of service is concerned, it is relevant for deductions claimed by the assessee under Rule 4 of POPS Rules and not in respect of Rules 9 & 10 of the Rules, but the assessee has provided all the documents to say that the activity has been performed outside India. In that circumstances, the ld.Adjudicating Authority has rightly examined the documents and dropped the demand against the assessee.

14.1 As on the same issue, earlier the show-cause notice was issued to the assessee, in that circumstances, the subsequent show-cause notice cannot be issued by invoking extended period of limitation as held by the Hon'ble Apex Court in the case of Nizam Sugar Factory Vs. Collector of Central Excise, AP reported in 2008 (9) STR 314 (SC). Therefore, the extended period of limitation is not sustainable.

15. With regard to Revenue's Appeal, we find that the Revenue has blindly concluded that for the services availed by the assessee, the place of provision of service is the location of the service recipient and alleged that the assessee has availed all the services. It is thus the

Revenue’s contention that the assessee shall be liable to pay service tax under reverse charge mechanism in respect of the said services.

16. However, we find that the place of provision of the said services is the place of provision of performance based services, the place of provision of specified services and the place of provision of goods transportation services, for which reason the assessee claimed for deduction under Rules 4, 9 & 10 of POPS Rules, 2012.

17. We find that the ld.adjudicating authority has rightly examined the issue and held that the assessee is entitled for such deductions in terms of Rules 4, 9 & 10 of POPS Rules, 2012 and therefore, dropped the demand of Rs.143,01,41,936/- pertaining to the period from October, 2012 to June 2017.

18. In view of the above discussions, We do not find any infirmity in the impugned order to that extent and accordingly, the same is upheld.

19. We further take note of the fact that the assessee has also filed an appeal against the confirmation of demand of Rs.1,26,16,689/- on the ground that the charges has been paid by the assessee towards demurrage charges, which are independent penal charges paid for the delay in discharging of cargo and it is evident from the record that the invoices of such demurrage charges incurred by the assessee, the details thereof, is extracted herein below :

| Page No. | Paid to | Date of Issuance of Demurrage Invoice | Date of Issuance of Freight Invoice | Date Paid | Amount in USD |
|---|---|---|---|---|---|
| 01-03 | V8 Pool Inc. | 15-Jun-16 | 19-Aug-15 | 15-Jun-16 | 1,19,937 |
| 04-07 | Blue Fin Tankers Inc. | 24-Mar-16 | 13-Oct-15 | 01-Jul-16 | 2,22,002 |
| 08-10 | Frontline Shipping Limited | 06-Apr-16 | 15-Jan-16 | 11-Aug-16 | 1,42,942 |
| 11-13 | ISS International FZE | 30-Apr-16 | 02-Nov-15 | 21-Sep-16 | 11,456 |
| 14-15 | ISS International FZE | 30-Apr-16 | 16-Nov-15 | 21-Sep-16 | 1,53,623 |
| - | ISS International FZE | 15-Jan-16 | 17-Nov-15 | 21-Sep-16 | 34,066 |
| 16-19 | ISS International FZE | 20-Sep-16 | 13-Jan-16 | 21-Sep-16 | 46,130 |
| 20-23 | Angelina Navigation Inc. | 07-Jun-16 | 22-Dec-15 | 04-Nov-16 | 34,371 |
| 24-25 | Romeo Investments Inc. | 31-May-16 | 10-Feb-16 | 28-Nov-16 | 5,320 |
| 26-29 | Marathon Navigation Co | 21-Nov-16 | 29-Sep-15 | 09-Mar-17 | 3,36,400 |
| 30-31 | Ocean Tankers International Co | 03-Mar-17 | 07-Mar-16 | 14-Mar-17 | 1,62,206 |
| | **Total Amount in USD** | | | | **12,68,450** |
| | **Total Amount in INR** | | | | **8,57,75,203** |

and some of the sample invoices are also placed on record and the same extracted below :

V8

INDIA STEAMSHIP

(A Division of Chambal Fertilisers & Chemicals Ltd) BIRLA BUILDING, 9th Floor
9/1 R N Mukherjee Road
Kolkata – 700 001

| | |
|---|---|
| Invoice Date | 15Jun 2016 |
| Invoice No. | V8POOLIN/I/3752A |
| Our Reference | 2015/2517 |

**DEMURRAGE INVOICE**

| | | | |
|---|---|---|---|
| *C/P Date:* | *6Aug2015* | *Voyage no.:* | 33 |
| *Vessel:* | *Afra Oak* | | |
| *Charterer:* | *INDIA STEAMSHIP* | | |
| *Fixture Ref.:* | *2015/2517* | | |

**Note all values are in USD**

| | |
|---|---|
| Demurrage Crude Oil: Loading Mina Al Ahmadi Discharging New Mangalore | 113,003.47 |
| Address Commission of 2.500% | -2,825.08 |
| TOTAL | 110,178.39 |
| | E. & O. E. |

***PLEASE INDICATE OUR INVOICE NO., VESSEL NAME & VOYAGE NO. IN YOUR REMITTANCE ADVICE***

***PAYMENT TERMS:***
***PROMPT NET CASH BY TELEGRAPHIC TRANSFER OF IMMEDIATELY AVAILABLE FEDERAL FUNDS***
**** WIRE TRANSFER ORIGINATOR TO DISCLOSE NECESSARY PARTICULARS TO COMPLY WITH MAS (MONETARY AUTHORITY OF SINGAPORE) NOTICE 626 & COMPULSORY INTERNATIONAL REGULATION***
CITIBANK,N.A., SINGAPORE BRANCH
ACCOUNT NO: 0-850809-003
BENEFICIARY NAME: V8 POOL INC
SWIFT CODE: CITISGSG
BANK CODE: 7214
BRANCH CODE: 001

Invoice issued By: V8 Pool Inc, Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Republic of the Marshall Islands

Corresponding Item No. (1)

(2)

V8

INDIA STEAMSHIP

(A Division of Chambal Fertilsers & Chemicals Ltd) BIRLA BUILDING, 9th Floor
9/1 R N Mukherjee Road
Kolkata – 700 001

| | |
|---|---|
| Invoice Date | 15Jun2016 |
| Invoice No. | V8POOLIN/I/A |
| Our Reference | 2015/2517 |

**INTEREST INVOICE**

| | | | |
|---|---|---|---|
| *C/P Date:* | *6Aug2015* | ***Voyage no.:*** | 33 |
| *Vessel:* | *Afra Oak* | | |
| *Charterer:* | *INDIA STEAMSHIP* | | |
| *Fixture Ref.:* | *2015/2517* | | |

**Note all values are in USD**

| | |
|---|---|
| Interest due to outstanding Demurrage | 9,753.73 |
| TOTAL | 9,753.73 |

E. & O. E.

***PLEASE INDICATE OUR INVOICE NO., VESSEL NAME & VOYAGE NO. IN YOUR REMITTANCE ADVICE***

***PAYMENT TERMS:***
***PROMPT NET CASH BY TELEGRAPHIC TRANSFER OF IMMEDIATELY AVAILABLE FEDERAL FUNDS***
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CITIBANK,N.A., SINGAPORE BRANCH
ACCOUNT NO: 0-850809-003
BENEFICIARY NAME: V8 POOL INC
SWIFT CODE: CITISGSG
BANK CODE: 7214
BRANCH CODE: 001

Corresponding Item No. (1)

**BLUE FIN Tankers Inc.**

Heidmar (Far East) Pte. Ltd., as agents for Blue Fin Tankers Inc.
65 Chulia Street, #42-01 OCBC Centre,
Singapore 049513
Tel: +65-6224-0115
Fax: +65-6224-0116
Email: bulletin@heidmar.com.sg

India Steamship
India Steamship
(A Division of Chambal Fertilisers& Chemicals Ltd)
BIRLA BUILDING, 9th Floor
9/1 R N Mukherjee Road
Kolkata Å¢â‚¬â€œ 700 001
INDIA

Attn: Matt Collis

Re: Ridgebury John Zipser/India Steamship Charter Party Dated Sep 22, 15

DEMURRAGE INVOICE

| | | | |
|---|---|---|---|
| **Yanbu** | | | |
| **Load** | Sep 30, 15 00:01 | 0% | NOR tendered. |
| | 06:01 | 100% | NOR+6. Time starts. |
| | Oct 03, 15 02:42 | 0% | Shifting to berth, Time stops |
| | 10:00 | 100% | All fast Aramco Crude Oil Terminal, Time resumes |
| | 11:00 | 100% | Hoses connected. |
| | 12:15 | 100% | Commenced loading. |
| | Oct 04, 15 03:35 | 100% | Completed loading. |
| | 04:35 | 100% | Hose(s) disconnected, Time stops. |
| | 3 D 15 H 16 M | | Time used |
| **New Mangalore** | | | |
| **Discharge** | Oct 12, 15 10:42 | 0% | NOR Effective |
| | 16:42 | 100% | NOR+6. Time starts. |
| | Oct 19, 15 06:12 | 0% | Anchor up, Time stops. |
| | 09:24 | 100% | All fast SBM, Time resume |
| | 10:24 | 100% | Hoses connected. |
| | 11:24 | 100% | Commenced discharging. |
| | Oct 20, 15 19:00 | 100% | Completed discharging. |
| | 19:46 | 100% | Hose(s) disconnected. Time stops. |
| | 7 D 23 H 54 M | | Time used |

**Recap**

| | |
|---|---|
| Yanbu | 3 D 15 H 16 M |
| New Mangalore | 7 D 23 H 54 M |
| Time Used | 11 D 15 H 10 M |
| Time Allowed | 3 D 12 H 00 M |
| Excess Time | 8 D 03 H 10 M = 8.13194 days |
| Rate(PDPR): | USD 28,000.00 |
| Time Cost: | USD 227,694.44 |
| Address (2.5%): | USD 5,692.36 |
| Net Demurrage: | USD 222,002.08 |

**TOTAL DUE: USD 222,002.08**

Please remit the above amount to:

Intermediary Bank (Required):
Bank of New York Mellon, New York
ABA 021000018
Swift Code IRVTUS3N

Beneficiary Bank:
DNB Bank ASA, New York
Swift Code DNBAUS33
Blue Fin Tankers Inc.
Account No. 19584001

Ref Invoice #: BF4459

Corresponding Item No. (2)

***Service Tax Appeal Nos.75621,76110/2025***

304

8

FRONTLINE

**DS RENDITE-FONDS NR.96 MT FRONT SYMPHONY GMBH & CO**

To: INDIA STEAMSHIP (A Division of Chambal Fertilizers & Chemicals Ltd) 08.04.2016

BIRLA BUILDING
9TH FLOOR
9/1 .N. MUKHERJEE ROAD
700001 KOLKATA 700001
India

Agreed Demurrage Invoice
Invoice no. 4318.15001/ 4318/ 22038347

**M.V. FRONT SYMPHONY (COMM MAN)** **CP DATE 24.12.2015**

| | |
|---|---|
| Agreed Demurrage: 119hrs 02mins @ USD 30,000 PDPR | 148,791.67 |
| Less 2.50% address commission | (3,719.79) |
| Less 1.25% broker commission (CLARKSON SHIPPING SERVICES INDIA PVT LTD) | (1,859.90) |
| Less 14.5% Service Tax on brokerage amount USD 1,859.90 | (269.68) |
| Balance due to owners: | USD 142,942.30 |

(U.S. Dollar One Hundred Forty Two Thousand Nine Hundred Forty Two And Thirty Cents Only)

INVOICE PAYABLE BY about: 08/04/2016.

DS RENDITE-FONDS NR.96 MT FRONT SYMPHONY GMBH & CO. TANKSCHIFF KG, DORTMUND, GERMANY
BERENBERG BANK : BANK CODE 201 200 00
SWIFT CODE: BEGODEHHXXX
IBAN: DE35201200000564103000
ACCOUNT NO: 564103000

Under reference:
M.V. FRONT SYMPHONY (COMM MAN) CP 24.12.2015INDIA STEAMSHIP

FRONTLINE MANAGEMENT AS
AS AGENTS TO OWNERS

DS RENDITE-FONDS NR.96 MT FRONT SYMPHONY GMBH & CO
TANKSCHIFF KG, DORTMUND, GERMANY

Corresponding item No. (3)

Admittedly, the demurrage charges cannot form part of the services received by the assessee, therefore, no service tax is payable by the assessee on the said demurrage charges.

10. We further take note of the fact that the same view has been taken by this Tribunal in the appellant's own case vide Final Order No.76064-76065/2024 dated 11.06.2024, wherein this Tribunal has observed as under :

> *"9.3…………………We observe that Demurrage charges were in the nature of penal charges paid by the Appellant. Such penal charges were not for any services received by the Appellant. Therefore, it is not leviable to Service tax. We observe that this issue has been clarified by Board Circular No. 121/2/2010 dated 26.04.2010. This view has also been taken by the Tribunal in the case of Tiger Logistics (India) Limited Vs. Commissioner of Service Tax – II, Delhi [2022 (63) G.S.T.L. 337 (Tri. – Delhi)]. Accordingly, we hold that the demand of service tax confirmed on these foreign currency payments id not sustainable."*

11. Further, in the case of Tiger Logistics (India) Ltd. Vs. Commissioner of Service Tax II, Delhi reported in 2022 (63) GSTL 337 (Tri.-Del.), this Tribunal again held as under :

> *"**10.**As far as the container detention charges are concerned, these are charged by the owner of the container if the container is not returned to it within time. In other words, it is in the form of a penal rent. It is in the form of liquidated damages for failure to return the container within the time indicated in the contract and not a consideration for a service. There is a difference between 'consideration under the contract' which is what each party to the*

*contract does in return to the other party doing its part of the contract and 'compensation under the contract' which is a penalty for breach of contract by either frustrating the contract through non-performance or by not performing as per the conditions in it. This compensation can take the form of unliquidated damages where the Court awards the compensation or liquidated damages where the compensation for breach of contract or its conditions is pre-decided and incorporated in it. The liquidated damages are not the purpose of the contract but are in terrorem to provide a strong incentive against breaching its conditions.*

***11.****We also find that the Central Board of Excise and Customs has also clarified this aspect as far as the container detention charges are concerned, as follows :*

**Circular No. 121/2/2010-ST**
F. No. 332/29/2009-TRU
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
(Tax Research Unit)
*****
New Delhi-110001 dated the 26th April, 2010.

To

Director General of Service Tax, Mumbai

Director General of Central Excise Intelligence, Delhi

Chief Commissioner of Central Excise (All)

Chief Commissioner of Customs and Central Excise (All)

Commissioner of Service Tax (All)

**Madam/Sir,**

*Subject : Service tax on Container Detention Charges - Regarding*

*Generally marine containers are temporarily brought into a customs territory and have to be re-exported within a specified period. Normally, a Full Container Load is taken out of the port* *and the activity of stuffing or de-stuffing takes place at the premises of the exporter/importer. The shipping companies/steamer agent provide a pre-determined period within which the container (that has gone out of the port) is to be returned. This is called as 'pre-holding period' and the duration of the same is mentioned in the contract. In case there is any delay on the part of the customer in returning the container, the charges known as 'detention charges' are collected over and above the contracted amount by the shipping line.*

*Representations have been received in the 3. Board that service tax has been demanded on such 'detention charges' under the 'Business Support Service (BSS)' or 'Business Auxiliary Service (BAS)'.*

*The issue has been examined. To retain the 4. container beyond the pre-holding period is neither a service provided on behalf of the client (Business Auxiliary Service) nor is it an infrastructural support in the business of either the shipping lines or the customer (Business Support Service). Such charges can at best be called as 'penal rent' for retaining the containers beyond the pre-determined period. Therefore, the amount collected as 'detention charges' is not chargeable to service tax.*

*The Board desires that pending cases, if 5. any, on this issue may be decided in line with the above clarification.*

Yours faithfully,
(Gautam Bhattacharya)
Joint Secretary
(TRU-II)
Tel. : 2309302

**12.** In view of the above, the demand of service tax on container detention charges is unsustainable and is liable to be set aside."

12. It is evident from the record that the assessee has paid the demmurage charges, which are in the nature of penal charges. Therefore, no service tax is payable by the assessee on this count. Accordingly, the demand confirmed by way of impugned order amounting to Rs.1,26,16,689/-, is set aside. Consequently, we also hold that no penalty is imposable on the assessee.

13. In view of the above, we set aside the impugned order qua confirmation of demand of Rs.1,26,16,689/- against the assessee and affirmed the order of dropping of the demand of Rs.143,01,41,936/.

14. In the result, the appeal filed by the Revenue is dismissed and the appeal filed by the assessee is allowed with consequential relief, if any.

(Pronounced in the open Court on **25.09.2026**)

**(Ashok Jindal)**
**Member (Judicial)**

**(K.Anpazhakan)**
**Member (Technical)**

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