CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH
COURT No. I

Service Tax Appeal No. 87431 of 2015

(Arising out of Order-in-Original No. GOA-EXCUS-000-COM-002-2015-16 dated 29.06.2015 passed by Commissioner of Central Excise & Service Tax, Goa)

Commissioner of Central Excise, Goa **Appellant**
ICE House, EDC Complex,
Plot No.6, Patto,
Panaji, Goa 403 001.

Vs.

M/s. Sesa Goa Ltd. **Respondent**
Sesa Ghor, 20 EDC Complex,
Patto, Goa 403 001.

Appearance:

Shri N. Meshram, Additional Commissioner, Authorised Representative, for the Appellant
Shri Gopal Mundra, Advocate, for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. **A/87430/2019**

Date of Hearing: 22.10.2019
Date of Decision: 22.10.2019

PER: SANJIV SRIVASTAVA

This appeal filed by the revenue is directed against order in original No GOA-EXCUS-000-COM-002-2015-16 dated 29.06.2015 of the Commissioner Central Excise & Service Tax, Goa. By the impugned order Commissioner has held as follows:

(i) *"I drop the demand of Service Tax of Rs 1,57,03,769/- (Rupees One Crore Fifty Seven Lakhs Three Thousand Seven Hundred and Sixty Nine only) in respect of "Management Maintenance or Repair Service" initiated in the Show Cause Notice.*

(ii) I drop the demand of Service Tax of Rs 1,08,72,152/- (Rupees One Crore Eight Lakhs Seventy Two Thousand One Hundred and Fifty Two only) in respect of "General Insurance Service" initiated in the Show Cause Notice.

(iii) I drop the demand of Service Tax of Rs 16,07,582/- (Rupees Sixteen Lakhs Seven Thousand Five Hundred and Eighty Two only) in respect of "Business Support/ Professional/ Legal & Consultancy Fees" initiated in the Show Cause Notice.

(iv) I drop the demand of Service Tax of Rs 1,36,768/- (Rupees One Lakh Thirty Six Thousand Seven Hundred and Sixty Eight only) in respect of "Telecommunication Service" initiated in the Show Cause Notice.

(v) I drop the demand of Service Tax of Rs 12,84,568/- (Rupees Twelve Lakhs Eighty Four Thousand Five Hundred and Sixty Eight only) in respect of "Management or Business Consultant Service" initiated in the Show Cause Notice.

(vi) I drop the demand of Service Tax of Rs 3,55,668/- (Rupees Three Lakhs Fifty Five Thousand Six Hundred and Sixty Eight only) in respect of "Convention Service" initiated in the Show Cause Notice.

(vii) I confirm the demand of Service Tax of Rs 4,95,864/- (Rupees Four Lakhs Ninety Five Thousand Eight Hundred and Sixty Four only) on the taxable value of Rs 48,14,218/- received by them towards rendering of services "Technical Testing & Analysis Service" as defined under section 65B(44) of the Finance Act, 1994 as per proviso to Sub Section (1) of Section 73 of Finance Act, and drop proceedings for the service tax amount of Rs 60,73,553/- initiated in the Show Cause Notice.

(viii) I hold that interest at the appropriate is payable under Section 75 of the Finance Act, 1994.

(ix) I am not imposing any penalty under Section 76 of the Finance Act, 1994

(x) *I impose a penalty of Rs 4,95,864/- (Rupees Four Lakhs Ninety Five Thousand Eight Hundred and Sixty Four only). Under Section 78 of the Finance Act, 1994. However, if the Noticee pays the service tax confirmed along with interest and 25% of the penalty imposed within 30 days of receipt of this order the penalty imposed above will be reduced to 25% of the penalty imposed above.*

(xi) *I impose a penalty of Rs 10,000/- (Rupees Ten Thousand only) under Section 77 of the Finance Act, 1994."*

2.1 A show cause notice dated 18.04.2014 was issued by the revenue on the basis audit objections made by the officers of Central Excise Receipt Audit (CERA) demanding Service Tax on various services received by respondent from service providers located outside India in terms of Section 66A read with proviso to Section 73(1) of Finance Act, 1994, during the period October 2008 to March 2009.

2.2 The show cause notice was adjudicated by the Commissioner as per the impugned order referred in para 1, supra.

2.3 On review Committee of Chief Commissioners, did not found certain portions of the order as legal and proper and directed filing of this appeal.

3.1 We have heard Shri N Meshram, Additional Commissioner, Authorized Representative for the appellant revenue Shri Gopal Mundra, Advocate for the respondents.

3.2 Arguing for the revenue learned Authorized Representative referred to various paragraphs from the show cause notice, to show that

- demand of Rs 1,08,72,152/- in the Show Cause Notice was made under the category of "Ship Management Service". Commissioner has while adjudicating the demand decided the matter treating the same to be under taxable category of "General Insurance Service" and has dropped the same;

- demand of Rs 65,69,417/- under the category of "Technical Testing & Analysis Service" was made by invoking extended period of limitation as per proviso to Section 73(1) of Finance Act, 1994. Commissioner has upheld the demand made on merits but has dropped the major portion of demand holding that demand for period October 2008 to March 2009 amounting to Rs 53,41,144/- was made beyond the period of five years i.e. beyond the extended period of 5 yrs as provided. However as per the definition of relevant date, the period should have been reckoned from the date of filing the return. The return for the period October 2008 to March 2009 would have been filed in April 2009 and Commissioner should have determined the period of limitation by finding the date of filing of return, rather than the period of demand.

3.3 Arguing for the respondents learned Advocate reiterated the findings recorded by the Commissioner while adjudicating the matter. He further submitted by referring to para 32 and 33 of the order that Commissioner ahs while adjudicating the demand in respect of Technical Testing and Analysis Services has not recorded any finding on the issue of leviability of service tax under that category and has dropped major portion of demand holding it to be beyond the period of 5 years, i.e. extended period of limitation as provided by proviso to Section 73(1) of the Finance Act, 1994.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 Though by the impugned order Commissioner has dropped demands made under the taxable category of "Management Maintenance or Repair Service", "Business Support/ Professional/ Legal & Consultancy Fees", "Telecommunication Service", "Management or Business Consultant Service", "Convention Service", revenue has not filed any appeal against dropping of the demands under these category and they are not the subject matter of dispute before us.

4.3 Para 2 B, 8.3, 10, 11 and 13 of the Show Cause Notice are reproduced below:

2. During the course of scrutiny of records in January 2013 by the Officers from Central Excise Receipt Audit (CERA), it was observed that the noticee have short paid Service Tax during the period from 1.10.2009 to 31.3.2013 in different services either as provider or service recipient which are shown below:

A) Repairs & Maintenance under Section 66A of Finance Act ...

B) General Insurance/ Ship Management Services under Section 66A of Finance Act

As per Section 65(4) of the Finance Act, 1994, "General Insurance Business" has the meaning assigned to it in clause (g) of Section 3 of General Insurance Business 9Nationalization) Act, 1972 (57 of 1972), Sec 65 (56) defines "Insurance Auxiliary Service" as any service provided by an actuary, an intermediary or insurance intermediary or an insurance agent in relation to general insurance business and includes risk assessment, claim settlement, survey and loss assessment. Further, Section 65(96a) includes he services of dealing with insurance, salvage and other claims of arranging of insurance in relation to ship under the category of "ship management service". Further Section 66A stipulates that the recipient of the taxable service from outside India is liable to pay service tax under Rule 2((1)(d)(iv) of Service Tax Rules, 1994. It was observed from the records for the period 2009-10 to 2011-12 that the assessee had received insurance service for several purposes such as insurance of ship (i.e. M V Orissa) etc. from various foreign parties and paid consideration to them for the same. The noticee were also paying service tax under the category of general insurance services as a service recipient under Section 66A on it. However, it was revealed from the comparison of ST-3 returns and Balance Sheet that during 2009-10 to 2011-12, the noticee had paid to the foreign parties an amount totalling Rs

9,78,66,310/- out of which only Rs 65,39,547 was considered for payment of Service Tax, whereas no service tax was paid on the balance amount of Rs 9,13,36,763/-. This resulted in short payment of Service Tax of Rs 94,07,686/- as detailed below. The same is required to be paid along with interest. Work Sheet of the same is given below:-

Sl No	Year	Gross Amount	Value on which ST paid	Value on which ST still payable	Rate of S Tax	Amount of S Tax Payable
1	2009-10	3,15,96,230	26,35,665	2,89,60,565	10.30%	29,82,938
2	2010-11	3,35,26,976	29,27,976	3,05,99,000	10.30%	31,51,697
3	2011-12	3,27,43,104	9,65,906	3,17,77,198	10.30%	32,73,051
	Total	9,78,66,310	65,29,547	9,13,36,763		94,07,686

C) Business Support/ Professional/ Legal & Consultancy Fees under Section 66A of Finance Act ...

D) Frame Work convention, European Patent & Professional fee, Satellite Communication, Consultancy charges etc. under Section 66A of Finance Act ...

E) Technical Testing, Inspection and Certification Service under Section 66A of Finance Act ...

8.3 Whereas, from the above, it appears that amounts paid towards various service to the recipient of the said amount who has his permanent address or usual place of residence, in a country other than India as mentioned above and where Service Tax is payable is as under:

Year	Particulars of Services	Service Value in Rs	Status
	Management, Maintenance or Repair Service		
	Ship Management Service		
Oct 2008 to Mar 2009	Insurance Premium	21784574	Ship management Service is taxable service under

2009-10	***Service value on which Service Tax is not applicable***	***24215131***	***Section 65(105)(zzzt) of Finance Act, 1994 read with Section 65(96a) of Finance Act, 1994***
2010-11	***Service value on which Service Tax is not applicable***	***17316240***	
2011-12	***Service value on which Service Tax is not applicable***	***12395482***	
2012-13	***Service value on which Service Tax is not applicable***	***21338774***	
Business Support Service ...			
Telecommunication Service ...			
Management or Business Consultant's Service ...			
Convention Services ...			
Technical Testing and Analysis Service			
Oct 2008 to Mar 2009	***Analysis of Ore Destination***	***43213140***	***Technical Testing & Analysis Service under Section 65 (105) (zzh) of Finance Act, 1994 read with Section 65(106) of Finance Act, 1994 and Section 65(107) of Finance Act, 1994***
2011-12	***Service Value on Which Section 66A is not applicable***	***7110761***	
2011-12	***Service Tax is not payable***	***4814218***	

The Service Tax payable on the amounts paid towards various services by service provider who has his permanent address or usual place of residence, in a country other than India as mentioned above is as under

(A) ***Management, Maintenance or Repair Service***

(B) ***Ship Management Service***

Sl No	***Year***	***Value on which ST still payable***	***Rate of S Tax***	***Service Tax***	***E Cess***	***SHE Cess***	***Total***
1	***Oct***	***21784574***	***12.36%***	***2614149***	***52283***	***26141***	***2692573***

	2008 to Mar 2009						
2	***2009-10***	***24215131***	***10.30%***	***2421513***	***48430***	***24215***	***2494158***
3	***2010-11***	***17316240***	***10.30%***	***1731624***	***34632***	***17316***	***1783573***
4	***2011-12***	***12395482***	***10.30%***	***1239548***	***24791***	***12395***	***1276735***
5	***2012-13***	***21238774***	***12.36%***	***2548653***	***50973***	***25487***	***2625112***
	Total	***96950201***		***10555487***	***211110***	***105555***	***10872151***

(C) ***Business Support Service***

(D) ***Telecommunication Service***

(E) ***Management or Business Consultant's Service***

(F) ***Convention Service***

(G) ***Technical Testing and Analysis Service***

Sl No	***Year***	***Value on which ST still payable***	***Rate of S Tax***	***Service Tax***	***E Cess***	***SHE Cess***	***Total***
1	***Oct 2008 to Mar 2009***	***43213140***	***12.36 %***	***5185577***	***103712***	***51856***	***5341144***
2	***2011-12***	***11924979***	***10.30 %***	***1192498***	***23850***	***11925***	***1228273***
	Total	***55138119***		***6378075***	***127562***	***63781***	***6569417***
	(A)+(B)+(C)+(D)+(E) + (F) + (G) above	***3364668571***		***35465945***	***709319***	***3544659***	***36529924***

As discussed above, the noticee has not paid Service Tax of *Rs 3,54,65,945/-, Education Cess of Rs 7,09,319/-, SHE Cess of Rs 3,54,659/-, total tax of Rs 3,65,29,924/- (Rupees Three Crore Sixty Five Lakhs Twenty Nine Thousand Nine Hundred and Twenty Four only) in contravention of provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of Service Tax Rules, 1994*

10. Further, the above facts were not brought to the notice of the department until at the time of CERA audit of the records of *the assessee. Therefore it appears that the assessee have intentionally suppressed the facts from the department with an intention to evade payment of service tax on the services received by them on the services discussed above. Therefore, the service tax for the period beyond one year is invokable as per the proviso to Section 73(1) of the Finance Act, 1994 and the assessee is also liable to pay penalty in terms of Sec 78 of the said Act.*

11. It is also found that the noticee have failed to disclose the correct amounts paid by them towards Management Maintenance or Repair Service under Section 65 (105) (zzg) of Finance Act, 1994 read with Section 65(64) of Finance Act, 1994; ***Ship Management Services under Section 65(105)(zzzt) of Finance Act, 1994 read with Section 65(96a) of Finance Act, 1994;*** *Business Support Service under Section 65 (105) (zzzq) of Finance Act, 1994 read with Section 65(104c) of Finance Act, 1994; Telecommunication Service under Section 65 (105) (zzzx) of Finance Act, 1994 read with Section 65(109a) of Finance Act, 1994; Management or Business Consultant Service under Section 65 (105) (r) of Finance Act, 1994 read with Section 65(65) of Finance Act, 1994; Convention Service under Section 65 (105) (zc) of Finance Act, 1994 read with Section 65(32) of Finance Act, 1994 and Technical Testing & Analysis Service under Section 65 (105) (zzh) of Finance Act, 1994 read with Section 65(106) of Finance Act, 1994 and Section 65(107) of Finance Act, 1994 for the period from 1.10.2008 to 31.03.2013 as detailed above. The noticee never disclosed to the department all the amount received towards the said service. Thus noticee appears to have deliberately suppressed the value of services with a malafide intention to evade payment of Service Tax. Hence, service tax is recoverable from them under proviso to sub section (1) of Section 73 of Chapter V of the Finance Act, 1994.*

13 Now THEREFORE, the noticee, are hereby called upon to show cause to the Commissioner of Central Excise & Service Tax, *Goa, having his office at 2nd Floor, ICE House Patto Plaza, Panaji Goa, as to why:-*

i) Services they received, should not be classified under Management Maintenance or Repair Service under Section 65 (105) (zzg) of Finance Act, 1994 read with Section 65(64) of Finance Act, 1994; ***Ship Management Services under Section 65(105)(zzzt) of Finance Act, 1994 read with Section 65(96a) of Finance Act, 1994;*** *Business Support Service under Section 65 (105) (zzzq) of Finance Act, 1994 read with Section 65(104c) of Finance Act, 1994; Telecommunication Service under Section 65 (105) (zzzx) of Finance Act, 1994 read with Section 65(109a) of Finance Act, 1994; Management or Business Consultant Service under Section 65 (105) (r) of Finance Act, 1994 read with Section 65(65) of Finance Act, 1994; Convention Service under Section 65 (105) (zc) of Finance Act, 1994 read with Section 65(32) of Finance Act, 1994 and Technical Testing & Analysis Service under Section 65 (105) (zzh) of Finance Act, 1994 read with Section 65(106) of Finance Act, 1994 and Section 65(107) of Finance Act, 1994 as discussed above;*

ii) The Service tax of Rs 3,54,65,945/-, Education Cess of Rs 7,09,319/-, SHE Cess of Rs 3,54,659/-, total tax of Rs 3,65,29,924/- (Rupees Three Crore Sixty Five Lakhs Twenty Nine Thousand Nine Hundred and Twenty Four only) on the gross amount paid of Rs 33,64,68,571/- as detailed above to the recipient who has his permanent address or usual place of residence, in a country other than India, and which has escaped assessment during the period 1.10.2008 to 31.3.2013, should not be demanded and recovered from them under the first proviso of Section 73 (1) of the Act read with Section 68 ibid an Rule 6 of the Rules;

iii) Appropriate amount of interest at the prescribed rate, on service tax amount not paid on the due date till the date of payment should not be recovered from them under Section 75 of Chapter V of the Finance Act, 1994;

iv) Penalty should not be imposed upon them under the provisions of Section 76 of the Chapter V of the Finance Act, 1994 for non payment of service tax;

v) Penalty should not be imposed upon them under the provisions of Section 78 of the Chapter V of the Finance Act, 1994 for suppressing value of taxable service and for contravention of provisions of Finance Act, 1994 and/ or Rules made thereunder with intent to evade payment of service tax.

vi) Penalty should not be imposed upon them under the provisions of Section 77 of the Chapter V of the Finance Act, 1994 for contravention of the various provisions as explained above."

4.4 While adjudicating, the Commissioner has dropped the demand of Rs 1,08,72,151/- made in the Show Cause by treating the same under the category of "General Insurance Service". In para 20 of impugned order, the Commissioner has observed as follows:

"20. The next demand of Service Tax made is under the category of "General Insurance I Ship Management Services" under Section 66A of the Finance Act, 1994. The Show Cause Notice alleges that the Noticee has received "Insurance Service" for several purposes such as insurance of ship 'M. V. Orissa', etc. from various foreign parties and paid consideration for the same. Accordingly, the Show Cause Notice demands Service Tax under the category of "General Insurance Service" as recipient of service under Section 66A of Finance Act, 1994. In this regard, the Noticee submitted that they have made payment to M/s. Steamship Mutual Underwriting Association (Bermuda) Ltd. and Assurance Foreningen Skuld. The Steamship Mutual Underwriting Association (Bermuda) Limited ("Steamship Bermuda) and The Assurance Foreningen Skuld are mutual Protection and Indemnity Associations, otherwise known as P&I Clubs. Both Clubs are members of the International Group of P&I Clubs and participants in the International Group Pool. These Clubs are Associations of Ship-owners and charterers, owned and controlled by the member ship-owner or charterer "Members".

The Club is operated on a non-profit making mutual basis, that is to say the Members pool their resources together in order to meet losses suffered by each individual Member. The basic principle is that the contributions ("mutual premium") paid by the Membership in relation to anyone year should be sufficient to meet all the claims and administrative expenses of the Club for that year. If there is a shortfall because claims are high, the Members may pay a pro rata "additional call" and if there is a surplus, a return may be made to the Membership. Or the surplus transferred to reserve to meet losses on other years. The mutual system is therefore very different to most other forms of insurance, where the aim of the insurance company in accepting business is to make profit for its shareholders. Club Membership is composed of ship owners and charterers. Each Member has a voice in the formation of policy at Annual General Meeting, rather like the shareholders of a limited company. Because of the large number of Members which make up a modem P&I Club, the Membership as a whole has entrusted the direction of the Club to a Board of directors which is elected from the Membership. Membership of the Club is granted to any ship owner or charterer who has a vessel entered, and the insurance certificate, which states the terms of the cover provided, also serves the purpose of being a Membership document. For owners' entries, the vessels are named as part of the cover agreement and will be identified in a certificate of entry. So it can be said that the amount paid by member shipping companies to P&I Club, i.e., Association of ship owners is a contribution, known as calls, to have mutual protection against third party liabilities not covered by Insurance, such as claim for injury to crew and loss or damage of cargo. The P&I Club operates on a non-profit basis and has only ship owners as its members (it has no shareholders). Please note other than P&I cover taken from club as mentioned above, another Insurance cover has been taken from an Insurer engaged with General Insurance Business for indemnifying the loss from any unforeseen event on which Service Tax also has been paid to department by service provider itself. Accordingly it can be said *that the said amount paid to M/s. Steamship Mutual Underwriting Association (Bermuda) Ltd. and Assurance Foreningen Skuld are club or ship owner or charterer who operate on a non-profit making mutual basis running for the purpose of "Protection & Indemnity" of their ocean going vessels during their foreign voyage while carrying exported cargo. The aforesaid clubs provide exclusively P&I covers to the ships belonging to their members, and they do not carry-on the general insurance business. Therefore the P&I cover is provided to compensate its members against loss from any mishap, so this is mutual activity by its members in an organized manner where collected money would be utilized for compensating the loss happening from any mishap, so services provided by aforesaid two Clubs is not a "taxable service" as defined in sub-clause (d) of clause (105) of Section 65 of the Finance Act, 1994, and hence the said amounts are not chargeable to Service Tax."*

4.5 The above narration from the show cause notice makes it evident that this demand was made under the category of "ship Management Service". However while adjudicating the same, Commissioner has misdirected himself and dropped the same treating to be under the category of "General Insurance Services". Since Commissioner has not even considered the issue in respect of this demand under the taxable category in which it was made as per the Show Cause Notice the order of Commissioner in respect of this demand cannot be sustained. Since Commissioner has not recorded any finding in respect of this amount of demand in the taxable category in which it was made as per the show cause notice the matter needs to be remanded back to Commissioner for reconsideration of this demand afresh.

4.6 We are in agreement with the learned advocate that Commissioner has while adjudicating the show cause notice in respect of *"Technical Testing and Analysis Service"*, has not discussed the issue on merits and has decided the issue by dropping the major portion of demand by holding that demand has been made beyond the period of limitation as provided by Section 73 of the Finance Act, 1994. Commissioner has in para 32 observed as follows:

"32 The next issue is demand of service Tax of Rs 65,69,417/- on "Technical Testing and Analysis Service" on a total value of Rs 5,51,38,119/- received by the Noticee under Section 66A of the Finance Act, 1994. In their reply, the Noticee stated that irrespective of the contention of Dept and their claim for non-levy of Service Tax, the demand of Rs 53,41,144/- on a value of Rs 4,32,13,140/- pertaining to the period Oct 2008 to March, 2009 which was beyond 5 years so the same cannot be recovered under the prevailing provisions of Service Tax. For the Balance demand amount for the year 2011-12 on a value of for Rs 1,19,24,979/-, Rs 71,10,761/- has been paid to service provider having its office in India the copy of such Invoices also submitted to Dept and whereas based on provisions of Section 65 read with 66A of the Act, vendor is liable to pay service tax, whereas for remaining Rs 48,1 4,218/- the amount has been paid towards services provided and consumed outside India".

4.7 Commissioner has in para 33 and 34 of the impugned order recorded as follows:

"33. I find that part of demand issued covers the period October 2008 to March 2009. The SCN was issued on 18.04.2014. Hence the demand pertaining to the period October 2009 to March 2009 was beyond years period. Hence I agree with the claim of Noticee that the demand of Rs 53,41,144/- pertaining to Oct-2008 to March 2009 is time barred and cannot be demanded. Further, I find that the Noticee has not disputed the receipt of service from abroad. They stated that out of the total amount paid to a service provider Rs.71,10,761/- was paid to a service provider, who has his office in India. I find from the invoices submitted by the notice that the service was provided by "CCIC India Pvt. Ltd." having office in Panaji, Goa, in India and they have their head office in Defence colony, Delhi. Since the service provider has an office in India, I agree that service tax under reverse charge under Section 66A is not applicable in the

instant case. Hence, Noticee is not liable to pay Service Tax on the amount of Rs.71,10,761/- paid to service provider who is having office in India. Regarding the remaining amount of Rs.48,14,218/-, the Noticee stated that the service has been provided and consumed outside India, therefore, there is no liability of Service Tax. I find the argument of the Noticee not acceptable. The testing and analysis service was performed in connection with the export goods. The Noticee themselves have paid Service Tax in respect of all "Testing and Analysis Services" received from various service providers abroad. Hence, I hold that the Noticee is liable to pay Service Tax in respect of payment of Rs.48,14,218/-. Accordingly, I confirm the demand of Service Tax of Rs.4,95,864/-.

34. The next issue raised by the Noticee is that extended period is not invokable in this case as there is no suppression of facts involved. They stated that the Department has been conducting Audit regularly and the issue was never raised earlier. They contended that all the Returns filed by the Noticee have been scrutinized and accepted by the Department. Hence, the Notice issued by invoking extended period is not sustainable. I find that the Noticee is on self assessment. It is their responsibility to assess their duty and pay the Service Tax correctly. Some of the information furnished by them is exclusively within their domain. Unless the details of the information are furnished, it will not be possible for the department to ascertain the liability to Service Tax. The noticee has not submitted this information neither before the Audit Team nor in the ST-3 returns filed earlier. Hence, I hold that extended period has been rightly invoked and Service Tax has been demanded correctly by invoking extended period."

4.8 The observation made by the Commissioner to the effect that demand for the period October 2008 – March 2009 by the Show Cause Notice dated 18.04.2014, is beyond the period of five years from date of Show Cause Notice is contrary to the provisions of law. As per Service Tax Rules, 1994 as they existed then, ST-3 return for the period October 2009 to March 2014 was required to be filed upto 25th April 2014. Section 73(1) defined the period of limitation both normal and extended from the relevant date as defined in that section. The definition of relevant date is reproduced below:

"For the purposes of this section, "relevant date" means, —

(i) in the case of taxable service in respect of which service tax has not been levied or paid or has been short-levied or short-paid —

(a) where under the rules made under this Chapter, a periodical return, showing particulars of service tax paid during the period to which the said return relates, is to be filed by an assessee, the date on which such return is so filed;

(b) where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules;

(c) in any other case, the date on which the service tax is to be paid under this Chapter or the rules made thereunder;

(ii) in a case where the service tax is provisionally assessed under this Chapter or the rules made there under, the date of adjustment of the service tax after the final assessment thereof;

(iii) *in a case where any sum, relating to service tax, has erroneously been refunded, the date of such refund."*

4.9 We thus find that the observation made by the Commissioner to the effect that demand for the period October 2008 to March 2009 is beyond the period of limitation as provided by Section 73 of the Finance Act, 1994 without ascertaining the date of filing of return for that period is erroneous and contrary to express provision of law. Hence the same cannot be sustained. However since the Commissioner has while adjudicating the matter not recorded any finding on issue of leviability of service tax under the category in which the demand has been made, matter needs to be remanded back to

Commissioner for consideration of this demand both on merits and limitation.

4.10 In the result the appeal filed by the revenue needs to be allowed and matter remanded back to Commissioner for reconsideration of these demands.

5.1 Appeal filed by the revenue is allowed and matter remanded back to adjudicating authority to examine the issue in relation to demand of

i. Rs 1,08,72,152/- (Rupees One Crore Eight Lakhs Seventy Two Thousand One Hundred and Fifty Two only) made under the category of "Ship Management Service", which commissioner has as per impugned order dropped treating the same to be under "General Insurance Service"

ii. Rs 65,69,417/- (Rupees Sixty Five Lakhs Sixty Nine Thousand Four Hundred and Seventeen Only) made under the category of "Technical Testing & Analysis Service" both on merits and limitation.

(Order pronounced in the open court)

(Dr. D.M. Misra)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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