

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 87418 OF 2018

[Arising out of Order-in-Original No: ME/COMM/VR/53-58/2017-18 dated 15th March 2018 passed by the Commissioner of GST & Central Excise, Mumbai East.]

Modern Cargo Services Private Ltd

Plot No. 14, Bapa House, Samhita Warehousing Complex
Off Andheri-Kurla Road, Saki Naka, Mumbai - 400072

... Appellant

versus

Commissioner of GST & Central Excise

Mumbai East

Lotus Info Centre, JB Marg, Parel, Mumbai - 400012

...Respondent

APPEARANCE:

Shri S B Gabhawalla, Chattered Accountant for the appellant

Shri Ajay Kumar Shrivastava, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 85231/2025

DATE OF HEARING:	21/08/2024
DATE OF DECISION:	19/02/2025

PER: C J MATHEW

While the consummation that M/s Modern Cargo Services Private Ltd looks for, as outcome of this appeal, is the erasure of

recovery of ₹ 7,36,70,783, fastened on them as tax unpaid on consideration of ₹ 67,70,96,243 to ‘overseas logistics agents’ for handling of cargo of their customers between April 2005 and March 2015, under section 73 of Finance Act, 1994, along with appropriate interest under section 75 of Finance Act, 1994, as well as penalties under section 78 and section 76 of Finance Act, 1994 in order of Commissioner of GST & Central Excise, Mumbai East upon adjudication of six show cause notices commencing with the first covering the period April 2005 to March 2000, the issue to be resolved by us is, verily, the scope for deploying of specific contingency in Finance Act, 1994, made operational by rule 2 of Service Tax Rules, 1994, Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 and Place of Provision of Service Rules, 2012 at different times, to the circumstances of their transactional engagement. That the appellant had engaged ‘overseas logistics agents’ in the course of delivering cargo shipped by their customers at doorstep of buyers is not in controversy. Nor too is the payment of tax liability on the charges pertaining to ‘clearance of cargo’ as provider of ‘custom house agents’ service’ for the customers. The other component of cost of logistics were, on their submission of having been recovered from customers as ‘reimbursements’ for local procurement of services, judicially held to be beyond the pale of taxation. It is, thus, only the payments made to overseas logistics agents’, similarly, for handling of cargo at the

destination end, and which the appellant believed to be similarly excludible from value of the taxable services that remains in the dispute with the jurisdictional tax authorities who conceived it to be consideration for rendering of ‘clearing and forwarding service’ prior to July 2012 and ‘taxable service’ for the period thereafter.

2. The proceedings against the appellant leading to the present dispute commenced after they had been subjected to notice for recovery of tax on payments made to providers of service utilized in India prior to export of goods which was set aside by the Tribunal, in accordance with the decision of the Hon’ble Supreme Court in *Union of India and anr v. Intercontinental Consultants and Technocrats Pvt Ltd [2018-TIOL-76-SC-ST]* holding that the inclusion of reimbursable expenses incurred by the service provider on behalf of recipient is *ultra vires*, on the finding of the claim of the appellant herein that impugned services had been procured on behalf of their customs to be correct. The liability arising on ‘customs house agent’s service’, rendered by appellant to customer at the last port before shipment out of India, was being discharged and the only element remaining to be resolved is that of exigibility of payment to ‘overseas logistics agents’ – concerned with handling of goods in destination country – to tax as ‘clearing and forwarding agency service’ rendered to the appellant which, as provided from outside India, was sought to be taxed in the hands of the assessee by deeming provision of law in both

regimes.

3. The adjudicating authority has, besides delving into interpretation of the elements put together as

‘(25) any person who is engaged in providing any service, either directly or indirectly, connected with clearing and forwarding operations in any manner to any other person and includes a consigning agent’

in section 65 of Finance Act, 1994 for defining ‘clearing and forwarding agent’, also assumed, from an alternative submission of assessee to counter the proposal to tax, that the conformity of the impugned activity to the enumeration had been conceded by the appellant herein. That submission sought exclusion of ‘clearing and forwarding agent’ service from the ambit of taxation by hearkening to ‘place of performance’ applicable to section 65(105)(j) of Finance Act, 1994 and, upon which, the adjudicating authority conveniently hung the conformity with the enumeration for the period prior to 1st July 2012. The counters of the noticee to the three stages, viz., prior to 18th April 2006 as bereft of authority under law to fasten deemed providing of service by resting upon the decision of the Hon’ble High Court of Bombay in *Indian National Shipowners Association v. Union of India* [2009 (13) STR 235 (Bom)] which found approval of the Hon’ble Supreme Court, for the period thereafter till operation of ‘negative list’ regime by drawing upon the exclusion in rule 3(2) of Taxation of

Services (Procured from Outside India and Received in India) Rules, 2006 and during the 'negative list' regime by invoking rule 4 of Place of Provision of Service Rules, 2012, were dealt with in separate constructs constituting the grounds of appeal for being erroneous.

4. We have heard Learned Chartered Accountant for the appellant and Learned Authorized Representative at length *vis-à-vis* their positions on the grounds of appeal. Learned Authorized Representative drew attention to the finding that appellant had, in addition to 'customs house agents service', rendered service taxable under section 65(105)(j) of Finance Act, 1994. He submitted that

'55.11 In view of above, I find that the Noticee, along with their OLAs provided composite services squarely covered under the definition /provisions of C&F agent services under section 65(25) and 65 (105)(i) as clarified by the Board Vide Circular No.43/7/97-TRU dated 11.07.1997, 39/2/2002 dated 20.02.2002, 37B order No. 2/1/2002-ST 24.04.2002. The combined reading of the said statutory provisions and the Board's Circulars/Orders will reveal that C&F agent service is an end to end composite service which may include outsourcing/providing of various taxable and non taxable input service components. It may be seen that all the components may or may not be required in all cases. I find that Board in both the Circular 43/1997 and Order No. 21/2002 has clarified the composite nature of C&F agent services.'

in the impugned order is conclusive on that score.

5. Before we adjudge the relative merits in conjunction with law as

enacted, as well as judicially determined, we cannot but take note of the manner in which the adjudicating authority has dealt with two significant decisions – one of the Hon’ble High Court of Bombay and the other of the Hon’ble High Court of Delhi – which have particular, and direct, bearing on the proposals in the show cause notice. The Hon’ble High Court of Bombay, in *re Indian National Shipowners Association*, dealt with the scope of Rules in deeming of one of the parties to a service transaction as ‘provider’ for shifting the liability to the ‘recipient’ in the tax jurisdiction owing to the provider, outside the tax jurisdiction, not being an efficient source of the tax. The finding that

‘17. Reliance is placed on the provisions of Rule 2(1)(d)(iv) quoted above for justifying the levy of service tax for the period from 16-8-2002. Perusal of the above quoted Rule 2(d)(iv) shows that by that provision a person liable for paying the service tax was defined to mean in relation to any taxable service provided by a person who is non-resident or is from outside India to a person receiving taxable service in India. Apart from the fact that this rule is contrary to the provisions of Section 68 and other provisions of the Act, under this provision the recipient of the service became liable for paying the service tax provided the service was received in India. The entire case of the Petitioners is in relation to the service received by the vessels and ships owned by the members of the Petitioner-association outside India. Therefore, it cannot be said that on the basis of Rule 2(1)(d)(iv), service tax can be levied on the members of the Petitioners-association. It is further to be seen here that Section 64 gives powers to the Central Government to make rules for carrying out the provisions of the Chapter. The chapter relates to taxing the

services which are provided, the taxing on the value of the service and it is only the person who is providing the service can be regarded as an assessee. The rules therefore, cannot be so framed as not to carry the purpose of the Chapter and cannot be conflicted with the provisions in Chapter V of the Act. In other words, as the Act makes the person who is providing the service liable, the provisions in the Rules cannot be made which makes the recipient of the service liable. It is, thus, clear that the provisions of Rule 2(1)(d)(iv) are clearly invalid.

18. So far as reliance placed on the notification dated 31-12-2004 for justifying levy of service tax from the members of the Petitioners-association is concerned, that notification has been issued under sub-section (2) of Section 68 of the Act. Sub-section 2 of Section 68 reads as under :-

68(2) Notwithstanding anything contained in sub-section (1), in respect of any taxable service notified by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in section 66 and all the provisions of this Chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service.

The above provision authorises the Central Government to notify the taxable service, in relation to which the rules can be framed, in relation to such service. By the notification dated 31-12-2004, any taxable service provided by a person who is a non-resident or is from outside India is notified. If Rule 2(d)(iv) is taken to be rule framed pursuant to this provision, then a person who receives taxable service in India from a person who is non-resident or is from outside India becomes taxable and not service rendered outside India by a person who is non-resident or is from outside India. Therefore, levy of service tax from the members of the Petitioners-association from 1-2-2005 (sic) 1-1-2005 cannot be justified.

19. Then reliance is placed on explanation which is added below Section 65(105). That explanation was added by Finance Act, 2005 with effect from 16-6-2005. That explanation reads as under :-

Explanation - For the removal of doubts, it is hereby declared that where any service provided or to be provided by a person, who has established a business or has a fixed establishment from which the service is provided or to be provided, or has his permanent address or usual place of residence, in a country other than India and such service is received or to be received by a person who has his place of business, fixed establishment, permanent address or, as the case may be, usual place of residence, in India, such service shall be deemed to be taxable service for the purposes of this clause.

By this explanation services provided by a non-resident outside India to a person residing in India has been declared to be taxable service. Therefore, though the services provided to the members of the Petitioners-Association outside India becomes taxable service, the charge of the tax continues to be on the provider of service as per the scheme of the Act, and because of the explanation also the Respondents do not get authority of law to levy a service tax in relation to the services rendered to the vessels and ships of the members of the Petitioners-association outside India.

20. It appears that a similar provision in the rules was made applicable by the Government in relation to the Clearing Agents by making customers of the Clearing Agent liable for levy of the service tax. That question has been decided by the Supreme Court by its judgment in the case of *Laghu Udyog Bharati (supra)* and the Supreme Court has clearly laid down that the imposition of the service tax is on the persons rendering the services and by making a provision in the Rules, levy of tax cannot be shifted to the recipients of the services and the Rule framed which brought about this situation has been declared by the Supreme Court to be invalid. The law laid down by the Supreme Court in its judgment in *Laghu*

Udyog (supra) is squarely applicable to Rule 2(1)(d)(iv), which is relied on in this case. It appears that it is first time when the Act was amended and Section 66A was inserted by Finance Act, 2006 w.e.f. 18-4-2006, the Respondents got legal authority to levy service tax on the recipients of the taxable service. Now, because of the enactment of Section 66A, a person who is resident in India or business in India becomes liable to be levied service tax when he receives service outside India from a person who is non-resident or is from outside India. Before enactment of Section 66A it is apparent that there was no authority vested by law in the Respondents to levy service tax on a person who is resident in India, but who receives services outside India. In that case till Section 66A was enacted a person liable was the one who rendered the services. In other words, it is only after enactment of Section 66A that taxable services received from abroad by a person belonging to India are taxed in the hands of the Indian residents. In such cases, the Indian recipient of the taxable services is deemed to be a service provider. Before enactment of Section 66A, there was no such provision in the Act and therefore, the Respondents had no authority to levy service tax on the members of the Petitioners-association.'

has the effect of legitimizing transfer of liability to a recipient of services procured from outside India only from 18th April 2006 when section 66A was incorporated in Finance Act, 1994. Such clear-cut articulation did not deter the adjudicating authority from attempting to discard the determination with a convoluted argument that did figure prominently in the submissions of Revenue before the Hon'ble High Court. We also notice far from implied rebuke in distinguishing the judgement by positing that a legal provision had not been considered in

a judgment that was sufficiently comprehensive as to pass muster before the Hon'ble Supreme Court at the threshold on challenge by special leave.

6. At another place in the impugned order, the adjudicating authority responded to the plea of the impugned expenses being reimbursable for having been procured on behalf of the appellant and seeking the application of the judgement of the Hon'ble High Court of Delhi in *re Intercontinental Consultants and Technocrats Pvt Ltd* with the sweeping assertion of not having attained finality. While there can be no argument that stamp of finality is accorded if, and when, an adjudgement is made by the Hon'ble Supreme Court, a decision by the High Court does not cease to have, in the interim, binding value in subordinate proceedings. It was bounden obligation of the adjudicating authority to consider the plea of reimbursables being excluded from the value of 'taxable services' as not manifesting the rendering of any service. These two are demonstrated acts of judicial indiscipline ventured upon by the adjudicating authority.

7. The upholding of demand of ₹ 11,97,047 for the period prior to 18th April 2006 in the impugned order is blatantly in breach of the legal provisions, stipulated judicially, that enable levy of tax on services procured from abroad only with effect from 18th April 2006. For the period thereafter and till the subsisting of Taxation of Services

(Provided from Outside India and Received in India) Rules, 2006, the mechanism for ensuring of credibility of parliamentary authorization, left unattended heretofore, for levy, in specified contingencies or not at all, on taxable services inextricably enmeshed with goods, specifies the identified enumeration of service to be deemed as provided in India only upon ascertainment of activity in relation to the goods. The adjudicating authority has referred to the entirety of transaction as ‘end-to-end’ before concluding that proportion of performance would have to be determined by actual value of such service *vis-à-vis* the whole. In that context, unwillingness to proffer the relative costs of several stages was seized at to arrive at the conclusion of substantial performance in India. The Tribunal has, by order¹ in *Modern Cargo Services Pvt Ltd v. Commissioner of Service Tax-VI, Mumbai* and, arising from challenge² to adjudication³ by Commissioner of Service Tax, Mumbai-VI, held that

‘5. Challenging the vires of sub-rule (1) of Rule 5 ibid, M/s. InterContinental Consultants and Technocrats Pvt. Ltd. has filed the Writ Petition being No. 6370/2008 before the Hon’ble Delhi High Court, which was disposed off vide judgment dated 30.11.2012, in declaring such Rule 5 as ultra vires. It has been ruled by the Hon’ble High Court that both under the un-amended and amended provisions of Section 67 ibid, the charge of service tax under Section 66 ibid has to be on the value of taxable service i.e., the value of service rendered by

¹ [final order no. A/86321/2022 dated 28th November 2022]

² [service tax appeal no. 85783 of 2017]

³ [order-in-original no. 73-76/Service Tax-VII/CD/2016 dated 2nd January 2017]

the assessee and nothing more. The Hon'ble High Court further observed in the said judgment that the expenditure or cost incurred by the service provider in the course of providing the taxable service can never be considered as the gross amount charged by the service provider 'for such service' provided by him. Civil Appeal filed by the Union of India against the judgment dated 30.11.2012 (supra) was dismissed by the Hon'ble Supreme Court vide judgment dated 07.03.2018, in upholding the views expressed by the Hon'ble Delhi Court. With regard to the Custom House Agent covered under the taxable head "Clearing and Forwarding Agent", the Hon'ble Supreme Court have ruled that even though the CHA issues two sets of invoices for reimbursement of various expenses and for service/agency charges separately, the invoice issued for service/agency charges alone is to be used for payment of service tax.'

bringing closure to taxability of the service procured on behalf of a client in India. Even otherwise, such conclusion derogates from amenability to determine the proportion rendered within India. Indeed, from that which remains, there are only the services of 'custom house agent' and services performed outside India leaving no scope for distinguishment

8. The adjudication order carved out the activity precedent to, and succeeding, the rendering of 'custom house agent service' to be chargeable to tax for having rendered service taxable under section 65(105)(j) of Finance Act, 1994 which, when procured from overseas entities, was liable to tax, in terms of

‘3. Taxable services provided from outside India and received in India.-

Subject to section 66A of the Act, the taxable services provided from outside India and received in India shall, in relation to taxable services

- (i) xxxxxxx
- (ii) *specified in sub-clauses (a), (f), (h), (i), (j), (l), (n),..... of clause (105) of section 65 of the Act, be such services as are performed in India:*

Provided that where such taxable service is partly performed in India, it shall be treated as performed in India and the value of such taxable service shall be determined under section 67 of the Act and the rules made thereunder:

- (iii) xxxxxxx’

in Taxation of Services (Provided from Outside India and Received in India) Rules, 2006, only to extent performed in India by the appellant. On behalf of the appellant, it was submitted that these had not been rendered by them but, on behalf of their customers, through others. There is a very thin line, in taxation of services, between services procured for rendering service and agency function of arranging a service unconnected with, or appended to, the core competence of assessee which must rest on the facts of the case for bringing within, or taken beyond, applicability of rule 5 of Service Tax (Determination of Value) Rules, 2006. Be that as it may, and notwithstanding the reliance placed by the adjudicating authority on sources for assigning

explanation for the expressions deployed in description of the taxable service for classification, the impugned order denied the benefit of exclusion from Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 solely for not having computed the value attributed for domestic element of 'clearing and forwarding agent service' for the period in dispute.

9. The scope for valuation by service provider is limited to rule 3 of Service Tax (Determination of Value) Rules, 2006 as also rule 5 of the said Rules and the adjudicating authority could well have detailed its computation in terms of the said Rules without any contribution from the assessee. Even assuming that it was the responsibility of assessee to provide the information, which appears not in the light of stipulation that disaggregation of value should be in conformity with section 67 of Finance Act, 1994, the decision of the Tribunal in *re Modern Cargo Systems Pvt Ltd* on non-taxability, in the light of the decision of the Hon'ble Supreme Court in *re Intercontinental Consultants and Technocrats Ltd*, of the domestic component puts to rest any lack of wherewithal for determination of the overseas component which alone remains in dispute. That tax liability does not arise on the service intended by section 65(105)(j) of Finance Act, 1994 when rendered outside India is not controverted in the impugned order. Consequently, the demand for the period upto 30th June 2012 does not sustain.

10. The liability for the period after 1st July 2012, being about ₹ 1,56,56,193, has been fastened on the finding that

‘58.8It clearly establishes that in the case of provision of Rue 7 (sic) of the POPS Rules, 2012 applies, and therefore, the place of provision in the instant case shall be in India because as per the workflow provided by the Noticee, they perform five activities in India, and through OLAs, three activities abroad. This shows the greatest portion of the subject C&F operation was performed in India.’

which was intended to be invoked only when multiple locations of place of provision, including taxable territory, of services are established implying that precursor elimination or application through rule 4, rule 5, rule 6, and rule 9 to 12 and conclusion of more than one place of provision is warranted. The impugned order is studiously silent on such processing. Indeed, it is questionable if, in the light of

‘5. The grounds and legal position as explained in earlier Show Cause Cum Demand Notices issued to M/s Modern Cargo Services Pvt Ltd by the Commissioner, Service Tax as mentioned in Para 3 is also applicable to the present case along with Section 66B and 66C of the Finance Act, 1994 w.e.f 01.07.2012; hence this statement of demand/show cause notice is issued in terms of Section 73(1A) of the Finance Act, 1994’

in notices for 2012-13 and 2013-14 respectively and

‘9. The grounds and legal position as explained in earlier Show Cause Cum Demand Notices issued to M/s Modern Cargo Services Pvt Ltd by the Commissioner/Additional

Commissioner of Service Tax as mentioned in Para 3 is also applicable to the present case; hence this statement of demand/show cause notice is issued in terms of Section 73(1A) of the Finance Act, 1994'

in notice for 2014-15, without placing appellant on notice of the particular situation sought to invoked under Place of Provision of Service Rules, 2012, could have expected the appellant herein to have produced computations or defence thereof. Furthermore, this finding in the impugned order is in jeopardy, let alone for any other reason, by the exclusion of those five activities as either having discharged tax as provider of 'customs house agents service' or, from the decision of the Tribunal in *re Modern Cargo Services Pvt Ltd* as not includible in the value for rendering 'clearing and forwarding agents service' during the disputed period and limiting the dispute only to service provided in foreign location. Moreover, tax liability could no longer, after 1st July 2012, be fastened on an enumerated service, save in the particular empowerment of section 66E of Finance Act, 1994. 'Taxable service', envisaged in section 66B of Finance Act, 1994, if not obviously rendered within 'taxable territory', will be required to find fitment within one or the other situations set out in Place of Provision of Service Rules, 2012 and, thereby, subject to tax or escapement from tax.

11. This aspect was disputed before the Tribunal in *ATA Freightline (I) Pvt Ltd v. Commissioner of CGST & CX-II, Pune [2022 (64) GSTL 97 (Tri.-Mumbai)]* on payments received by the appellant for services

in relation to export of goods, and with the sole distinction from the present dispute that the subsidiary of the provider therein was contrived by tax authorities to be an agent, in which it was held that the activity was of transportation and, therefore,

‘18. Place of Provision of Services Rules, 2012 is not a provision for charging of tax; it is limited to determination of location of taxable entity as an adjunct to the charging provision in Section 66B of Finance Act, 1994. The impugned order has not evaluated the impugned activity from that perspective. In the context of identifiable recipient of service located outside the taxable territory, and concomitant absence of ‘goods provided by recipient of service’ as well as the marked absence of recipient of service in the truncated segment of impugned activity and of the goods being put to use for rendering of service, Rule 4 of Place of Provision of Services Rules, 2012 is not applicable. That the activity is transportation of goods is the foundation of the proceedings against the appellant, as is evident from the contrived segmentation of stages according to geography and from the unarguable existence of recipient outside India; Rule 10 of Place of Provision of Services Rules, 2012 is unambiguously clear about the consequent non-taxability.’

12. This decision relied upon circular⁴ of Central Board of Excise and Customs (CBEC) which has clarified this

‘2.0 It may be noted that in terms of rule 10 of the Place of Provision of Services Rules 2012, (hereinafter referred to as ‘POPS Rules, 2012’, for brevity) the place of provision of the

⁴ [no. 197/7/2016-Service Tax dated 12th August 2016]

service of transportation of goods by air/sea, other than by mail or courier, is the destination of the goods. It follows that the place of provision of the service of transportation of goods by air/sea from a place in India to a place outside India, will be a place outside the taxable territory and hence not liable to service tax. The provisions of rule 9 of the POPS Rules, 2012, should also be kept in mind wherein the place of provision of intermediary services is the location of the service provider. An intermediary has been defined, inter alia, in rule 2(f) of the POPS Rules, 2012, as one who arranges or facilitates the provision of a service or a supply of goods between two or more persons, but does not include a person who provides the main service or supplies the goods on his own account. The contents of the succeeding paragraphs flow from the application of these two rules.

2.1 The freight forwarders may deal with the exporters as an agent of an airline/carrier/ocean liner, as one who merely acts as a sort of booking agent with no responsibility for the actual transportation. It must be noted that in such cases the freight forwarder bears no liability with respect to transportation and any legal proceedings will have to be instituted by the exporters, against the airline/carrier/ ocean liner. The freight forwarder merely charges the rate prescribed by the airline/carrier/ocean liner and cannot vary it unless authorized by them. In such cases the freight forwarder may be considered to be an intermediary under rule 2(f) read with rule 9 of POPS since he is merely facilitating the provision of the service of transportation but not providing it on his own account. When the freight forwarder acts as an agent of an air line/carrier/ocean liner, the service of transportation is provided by the air line/carrier/ocean-liner and the freight forwarder is merely an agent and the service of the freight forwarder will be subjected to tax while the service of actual

transportation will not be liable for service tax under Rule 10 of POPS.

2.2 The freight forwarders may also act as a principal who is providing the service of transportation of goods, where the destination is outside India. In such cases the freight forwarders are negotiating the terms of freight with the airline/carrier/ocean liner as well as the actual rate with the exporter. The invoice is raised by the freight forwarder on the exporter. In such cases where the freight forwarder is undertaking all the legal responsibility for the transportation of the goods and undertakes all the attendant risks, he is providing the service of transportation of goods, from a place in India to a place outside India. He is bearing all the risks and liability for transportation. In such cases they are not covered under the category of intermediary, which by definition excludes a person who provides a service on his account.

3.0 It follows therefore that a freight forwarder, when acting as a principal, will not be liable to pay service tax when the destination of the goods is from a place in India to a place outside India.'

and squarely covering the facts of the present dispute.

13. It would appear that a notice issued for a period prior to 1st July 2012 in the era of taxation of enumerated services, under the impression of overlap of 'customs house agents service' and 'clearing and forwarding agents service' on fact and law as also of impression of applicability to activity for which payment was effected to overseas entity, was sought to be deployed when the boundaries of service was no longer defined and a new framework for identifying rendition

eligible for exemption from tax and procurement liable to tax was established in Finance Act, 1994. In the process, the notices failed to elaborate on the manner in which the facts fitted the new scheme of tax liability and the adjudicating authority failed to take note of binding circulars and instructions on particular situations warranting eligibility. The clear, and unambiguous, stand of the Central Government on handling of service of transportation of goods, which is central to the present dispute, was overlooked in fastening the liability for the period after 1st July 2012.

14. For the above reasons, the impugned order is set aside to allow the appeal.

(Order pronounced in the open court on 19/02/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)