

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

REGIONAL BENCH – COURT No. I

Service Tax Appeal No. 41891 of 2015

(Arising out of Order-in-Original No.CHN-SVTAX-001-COM-034-2015-16), dated 29.05.2015 passed by the Commissioner of Service Tax – I, Newry Towers, No.2054-I, II Avenue, Anna Nagar, Chennai 600 040)

M/s. Toll India Logistics Private Limited

No.9A, Puzhal – Ambattur Road
Puzhal, Chennai 600 066

...Appellant

Versus

Commissioner of GST & Central Excise

Newry Towers, No.2054 – I
II Avenue, Anna Nagar
Chennai 600 040

...Respondent

APPEARANCE:

Mr. S. Muthu Venkataraman , Advocate for the Appellant
Ms. G. Krupa, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No.40457/2026

DATE OF HEARING: 03.12.2025
DATE OF DECISION : 01.04.2026

Per Mr. AJAYAN T.V.

Toll India Logistics (P) Ltd., the appellant herein, has challenged the Order in Original No.CHN-SVTAX-001-COM-034-2015-16), dated 29.05.2015 (impugned order) to the extent the Adjudicating Authority has confirmed the demand of Rs.2,06,44,717 being the service tax short paid under 'C & F service' for the period 2008-09 to 2011-12 along with the demand of Rs.2,38, 394/- being the ineligible input service credit availed towards the 'Outdoor Catering Services' along with the applicable interest and imposed equivalent penalties under Section 78 of the Finance Act, 1994 (Act) along with a penalty of Rs.5,000/- under Section 77 (2) of the Act.

2. Brief facts are that the appellant is registered service provider of clearing and forwarding agent services. During the course of audit of accounts of the assessee, it was noticed that the appellant was providing C & F Agent Service to various companies. On perusal of the appellant's C & F agreement with major customers, it was observed that the scope of service under the C & F agreement includes transportation of goods for delivery to the ultimate customers as per the instructions of the principals. It was observed that in addition to collecting C & F service charges from the Principals, the appellant also collected transport charges separately. However, for the purpose of calculation and payment of service tax under C & F service the appellant was not including the value of transportation charges. It was found that the appellant makes payment to the transporter and was not claiming such payment as reimbursement from the principal, and was showing it as expenses. The Department was of the opinion that in this case, for the transportation charges paid by the appellant, the service tax liability cannot be fixed on the principal for the reason that it is not the principal who is making payment to the transporter. The Department was of the opinion that since the transport charges were paid by the appellant in the capacity as C & F Agent to the Principal, the transport charges are part of the service charges of the appellant. The Department also found that the appellant had wrongly availed Cenvat credit of Rs.2,38,394/- on outdoor catering services from September 2011 to March 2012. The department also proposed a demand of Rs.38,07,145/- under the category of Goods Transport Agency Service (GTA). Therefore, a Show Cause Notice dated 30.10.2013 invoking the extended period of limitation was issued to the appellant proposing to demand the service tax short paid of Rs.2,06,44,717/- for the period 2008-09 to 2011-12, as well as the ineligible cenvat credit of Rs.2,38,394/- along with the applicable interest thereon and proposing to impose penalties under various sections. After due process of law, the proceedings culminated in the impugned order, whereby the Adjudicator dropped the demand under the category of GTA and confirmed the demands to the extent as noticed above. The appellant being aggrieved to the extent the demands had been confirmed, preferred this Appeal.

3. Shri S Muthu Venkataraman, Ld. Advocate appearing for the appellant argued that the impugned order was passed on an incorrect appreciation of facts. Factually, the appellant is rendering C & F agent services and does not engage in transportation activities. If transportation activity is involved, it is the customer who would pay the tax under reverse charge mechanism. It is further submitted that in the appellant's own case reported as ***Toll India Logistics Pvt. Ltd. Vs. CCE, Puducherry, 2018 (3) TMI 112 – Cestat, Chennai***, it has been held that the value of GTA services cannot be treated as to be included in C & F services provided by the appellant. It was contended that the ruling in Intercontinental Consultants and Technocrats Pvt Ltd is squarely applicable in the Appellant's case. Reliance was placed on the decisions in ***Synergy Baxi Logistics Pvt. Ltd. Vs. CCE, Jaipur, 2019 (11) TMI 1166 – CESTAT, New Delhi and Transglobal Logistics Vs. CST, Service Tax III, Commissionerate, Chennai, 2025 (IV), TMI, 450, Cestat, Chennai***.
4. It was also submitted that since the valuation of the appellants C & F Agency Services have been the subject matter of dispute earlier and since the ingredients required for invoking the extended period of limitation has not been brought out, the invocation of extended period of limitation was incorrect in the present case. Reliance was placed on the decision in ***M/s. Adarsh Marketing v. CCE, Jaipur, 2017 (2) TMI 22-Cestat New Delhi***, in support of the contention that extended period was not invocable. It was further submitted that the appeal may be allowed.
5. Ms. G. Krupa, Ld. Authorised Representative appearing for the respondent Ld. AR argues that on perusal of the suppliers services agreement between the appellant and M/s. Value India Pvt. Ltd. clause 9.2 which deals with 'primary and secondary transportation services', the appellant has been entrusted with the responsibility of the transportation. She draws attention to various clauses of the Agreements with various customers to contend that they list the nature of transportation services that the Appellant renders. She draws attention to the clauses indicating the compensation for transportation

and warehousing services to be rendered by the appellant as well as the rates at which primary and secondary transportation are to be rendered. Attention is also drawn to the Appellant's agreement with clause 10 of the Appellant's agreement with SKF which deals with forwarding of the goods and mentions that Appellant at all times dispatch the goods on behalf of SKF to various customers and detail the responsibilities of the appellant on that account. Ld. AR therefore contends that as a C & F agent, transportation was part of the Appellant's combined service as could be seen from the various agreements and this transportation cost had nothing to do with the stand alone transportation services rendered by the appellant as a GTA. It was therefore contended that inclusion of the value of such transportation charges in the C & F service become mandatory. As regards the denial of cenvat credit availed on outdoor catering services it is argued that outdoor catering has been specifically excluded vide clause (c) of Rule 2 (I) of the Cenvat credit Rules, 2004 and therefore the cenvat credit cannot be allowed. Ld. AR also argued that but for the investigation done by the Department the entire issue of non inclusion of the transportation charges in the taxable value of the C & F service would have gone unnoticed and therefore the extended period of limitation was correctly invoked.

6. Heard both sides. Perused the appeal records and the decisions submitted as relied upon.
7. At the outset we notice that the SCN, that has invoked the extended period of limitation, had proposals to demand service tax on three allegations, first, that since the transport charges were paid by the appellant in the capacity as C & F Agent to the Principal, the transport charges are part of the service charges of the appellant and ought to be taxed as such; second, on the allegation that the Appellant is incurring the transport expenses while acting as an agent of the principal, and since the freight is paid by the appellant to the Goods Transport Operator who issues Goods Consignment Note, the appellant is liable to pay service tax on the said transport expenses under the category of Goods Transport Agency Service (GTA); and third, a demand of the

wrongly availed Cenvat credit on outdoor catering services from September 2011 to March 2012. However, the Adjudicator, vide the impugned order had dropped the demand of Rs.38,07,145/- raised under 'GTA Service' as detailed in para 3.2 of the SCN.

8. Therefore, the issues that arise for our determination are :
- A) Whether the transport charges collected by the appellant in addition to collecting C & F Charges from the Principals is liable for inclusion in the gross value for arriving at the service tax liability under clearing and forwarding Agent service?
 - B) Whether the denial of cenvat credit availed by the appellant on outdoor catering services during the period September 2011 to March 2012 is correct?
 - C) Whether the extended period of limitation was invocable in this case?
9. Before proceeding further, it is apposite to take note of the relevant statutory provisions providing the definition of clearing and forwarding agent as well as what constitutes the "taxable service".
- Section 65(25) stipulates that "clearing and forwarding agent" means any person who is engaged in providing any service, either directly or indirectly, connected with the clearing and forwarding operations in any manner to any other person and includes a consignment agent;
- Section 65(105)(j) provides that "taxable service" means any service provided or to be provided to any person, by a clearing and forwarding agent in relation to clearing and forwarding operations, in any manner;
10. We also notice that when the services rendered by clearing and forwarding agents was initially brought under Service Tax net vide Section 88 of the Finance Act, 1997 w.e.f. 16-7-1997 vide Notification Nos. 26/97-S.T. and 27/97-S.T., both dated the 11th July, 1997 issued then, the Madurai 2-Commissionerate had issued a Trade Notice No.87/97 (10/Service Tax/97) dated 14-07-1997, detailing in paragraph 2.2 thereof, the activities normally undertaken by clearing and forwarding agents, which is as reproduced under:

"2.2 Normally, there is a contract between the principal and the clearing and forwarding agent detailing the terms and conditions and also indicating the

commission or remuneration to which the C&F agent is entitled. A clearing and forwarding agent normally undertakes the following :

- (a) Receiving the goods from the factories or premises of the principal or his agents;
- (b) Warehousing these goods;
- (c) Receiving despatch orders from the principal;
- (d) Arranging despatch of goods as per the directions of the principal by engaging transport on his own or through the authorised transporters of the principal;
- (e) Maintaining records of the receipt and despatch of goods and the stock available at the warehouse;
- (f) Preparing invoices on behalf of the principal."

11. The trade notice also went on to further state in para 2.4 as under:

"2.4 Further under the Finance Act, 1997 the value of taxable service rendered by a clearing and forwarding agent has been defined as the gross amount charged by such agent from the client for the services of clearing and forwarding operations in any manner. However, under Service Tax Rules it has been provided that the value of taxable service in relation to services rendered by clearing and forwarding agents to a client shall deemed to be the gross amount of remuneration or commission (by whatever name called) paid to such agent by the client engaging such agent (Notification No. 27/97-S.T. refers.)

12. Thus, we note that what was intended to be brought within the value of taxable service in relation to services rendered by clearing and forwarding agents to a client, even as per the Service Tax Rules prevalent then, was the gross amount of remuneration or commission paid to such agent by the client engaging such agent.

13. At this juncture, it would also be apposite to notice the decision of the Hon'ble Apex Court in ***Coal Handlers Pvt Ltd v. CCE, Range Kolkata-I, 2015 (38) STR 897 (SC)***, wherein the aforesaid definition of Clearing and Forwarding Agent as provided in Section 65(25) was considered and noticing the definition of forwarding agent in legal

parlance it was stated as to what would constitute clearing and forwarding operations. The relevant portions are as under:

"10. It would be relevant to point out the definition of '*forwarding agent*', as known in legal parlance, from Black's Law Dictionary (Seventh Edition), which is as under :

forwarding agent. 1. A person or company whose business is to receive and ship goods for others - Also termed freight-forwarder. 2. A freight-forwarder who assembles less-than-carload shipments 'small shipments' into carload shipments, thus taking advantage of lower freight rates."

The Penguin Business Dictionary defines this expression in the following words :

Forwarding agent. A General Agent who specializes in moving goods from a factory or port of entry to their proper destination. Such an agent normally owns the transport necessary for this work and often arranges FREIGHT and Customs formalities for his principal."

In Fourth Edition of Halsbury's Laws of England (Volume 5), the characteristics of 'forwarding agents' are narrated in the following manner :

"442. Characteristics of forwarding agents. - A forwarding agent is one who carries on the business of arranging for the carriage of goods for other people. It must be clearly understood that a forwarding agent is not, in general, a carrier: he does not obtain possession of the goods: and he does not undertake the delivery of them at the other end. All that he does is to act as agent for the owner of the goods to make arrangements with the people who do carry, such as shipowners, road hauliers, railway authorities and air carriers, and to make arrangements, so far as they are necessary, for the intermediate steps between the ship and the rail, the Customs or anything else.

Although there is a clear distinction between a forwarding agent and a carrier, the same person may carry on both activities at once, and contract sometimes as one and sometimes as the other. The fact that a person describes himself as a forwarding agent is not conclusive : and it is a question of fact to be decided according to the circumstances of each case whether a person normally carrying on business as a forwarding agent contracts solely as agent so as to establish a direct contractual link between his customer and a carrier (or possibly with several carriers, each undertaking a different part of the transit), or whether he contracts as principal to carry the goods, the customer appreciating that he will perform the contract vicariously through the employment of sub-contractors. The nature of the carriage, the language used by the parties in describing the role of the person concerned, and any course of dealing between the parties will be relevant factors.

Persons properly described as shipping and forwarding agents frequently act as carriers themselves with respect to part of the carriage, for example, by performing collection and delivery services between the customers' premises, their own depots, and warehouses, docks and carriers' depots. In such cases they would have the

rights and duties of carriers with respect to such carriage as they undertake personally, but the rights and duties of forwarding agents with respect to the remainder of the transit.

443. Rights and liabilities of forwarding agents. - The rights and liabilities of a forwarding agent are governed by the general principles of the law of agency : and so he is entitled to be indemnified against all expenses incurred on behalf of his principal and to be paid his proper charges for his services. He is liable for failure to make proper arrangements for the carriage and for ancillary matters which he has undertaken, such as Customs clearance. **He is not liable for the failings of persons with whom he makes contracts on behalf of his principal, unless he know of those failings and ought to have taken action either to remedy them or at least to inform his principal so that damage might be avoided or mitigated: thus he is under no duty to supervise the actions of carriers whom he reasonably and properly expects to perform their normal obligations competently.**

In ordinary transactions a forwarding agent is not liable for failing to insure the goods, in the absence of instructions from his customer to do so: but he may, in certain circumstances, be liable for not consulting his customer and advising him as to the proper transport and insurance arrangements which should be made for valuable goods.

A forwarding agent is not normally personally liable to pay the charges of carriers whom he engages to carry the goods on behalf of his principal; but there is a Custom of the London freight market that forwarding agents incur personal liability to shipowners for the payment of freight or of dead freight for booked space left unfilled.

A forwarding agent who tenders dangerous goods to carriers without warning them of their nature or of the precautions which should be taken in their carriage is personally liable to the carriers for any resulting damage through breach of the implied warranty that the goods are fit for carriage."

11. From the reading of the definition contained in the aforesaid provision, together with its dictionary meanings contained in Legal and Commercial dictionaries, it becomes apparent that in order to qualify as a C&F Agent, such a person is to be found to be engaged in providing any service connected with 'clearing and forwarding operations'. Of course, once it is found that such a person is providing the services which are connected with the clearing and forwarding operations, then whether such services are provided directly or indirectly would be of no significance and such a person would be covered by the definition. **Therefore, we have to see as to what would constitute clearing and forwarding operations. As is clear from the plain meaning of the aforesaid expression, it would cover those activities which pertain to clearing of the goods and**

thereafter forwarding those goods to a particular destination, at the instance and on the directions of the principal.” (emphasis supplied)

14. We notice that the SCN in para 2 states that the Appellant, in addition to collecting C & F Service charges from the principals also collect transportation charges separately. It is noted that the transportation charges so collected, has not been included for the purpose of calculation and payment of service tax under C & F Service. It further states that on perusal of the C & F agreement with major customers, it is observed that the scope of service under C & F agreement includes transportation of goods for delivery to the ultimate customer as per the instruction of the Principals. In para 2.1, the definition of Clearing and Forwarding Agent under Section 65(25) as well as the “taxable service” as per Section 65 (105) (j) is noted. Thereafter the term “consideration” as provided in clauses (a) of the Explanation to Section 67 is extracted along with clause (c) of the explanation ibid defining “gross amount charged” and then it is alleged that from the above, it appears that any other amount collected under the head “Transportation charges” is liable for inclusion in the gross value for arriving at the service tax liability under Clearing and Forwarding Service. The service tax payable is thereafter tabulated in para 2.2.
15. We also notice that in the impugned order the Adjudicator has framed the issue to be decided as whether the Appellant is contractually obligated to undertake transport of goods as part of the ‘C & F Agency service’, thereby the transportation charges are to be part of the gross value charged for the ‘C & F Agency services” or they act as a pure agent and the transportation charges incurred on behalf of the principal is reimbursed to appellant and thereby the transportation charges are not includible in the gross value charges for C & F Services. Thereafter, in para 8, the Adjudicator goes on to hold that there is no dispute that the service rendered by the appellant are ‘Clearing and Forwarding Agency service’ and the appellant is paying service tax on the service charges raised and received as C & F service charges. It is also stated that the Appellant undertakes transportation of goods as per the directions of the principal and bills transportation charges separately on

the principal. The Adjudicator goes on to reproduce certain extracts from the agreements of the appellant and its customers and holds that in the present case it is for the appellant to make the transport or arrange for the same and the agreement provides for the transport charges to be paid by the principal to the appellant and there is no separate contract between the principal and the transporters for transport of goods to the desired destination. It is concluded that the above facts establish that transportation of the goods are undertaken by the appellant as a part of the C & F service and therefore he finds no merit to consider the transportation charges incurred by the appellant as reimbursable expenditure. It is also held that the appellant's contention on application of the decision of the Hon'ble Delhi High Court in the case of ***Intercontinental Consultant and Technocrats Pvt Ltd v UOI, 2013 (29) STR 9*** wherein the High Court has held that Rule 5 (1) of the Service tax (Determination of Value) Rules as ultra vires Section 66 and Section 67 of the Finance Act has no application as such charges are necessarily part of the gross value for the services of C & F and Rule 5(1) ibid has not been invoked in the notice. Therefore, the adjudicator contends, the amount of transport charges collected is liable for inclusion in the gross value and confirms the demand of service tax as worked out in para 2.2 of the Notice. Thus, from a cumulative

16. We have perused the agreements as available in the appeal records. Inasmuch as the fact that the Appellant is engaged in C & F Services is undisputed, the scope of these agreements pertaining to warehousing, storage, etc., enumerated are not being detailed herein to avoid prolixity and given that the dispute pertains to transportation, the clauses as are germane to our discussion are noticed hereinafter. We find that in all these agreements the ownership of the goods that have been entrusted to the appellant for forwarding to the customers of the Principal, are at all times with the Principal. (Eg:- clause 3 of agreement with SKF). Clause 5 (b) stipulating the scope of operations state that the appellant shall be responsible for liasoning with customers and transporters. Clause 10.5 of the agreement with SKF requires the appellant to ensure that the relevant transport receipt in

respect of the goods being transported bears the name of SKF as the consignor of the goods and the Appellant also has to collect the proof of delivery from the Transporter. Clause 19 stipulates that the SKF shall be responsible for insuring the goods against all risks at all times including while the goods are in transit. Clause 20 that details the terms of payment under clause 20.1 stipulates the consideration for services as more particularly specified and enumerated in Annexure B and clause 20.2 states that SKF shall reimburse such expenses after verification incurred by the appellant on submission of the actual bills/statements with supporting vouchers by the appellant. Annexure B does not indicate Transportation charges as part of the consideration in the schedule of charges and specifically states that consideration does not include reimbursable expenses. Likewise, in the spaces and services agreement dated 26th March 2010 entered between the Appellant and Bosch Chassis Systems India Limited (RBIC), it is seen that clause 4(c) under Scope of Services states that the appellant shall arrange for delivery of the products of RBIC to customs of RBIC as per instructions received from the authorised representatives of RBIC, clause 4€ stipulates that all dispatches shall be made by the appellant only through authorised carriers nominated by RBIC. Under clause 32 titled reimbursement of expenses it is stipulated that payment to the transporter shall be made only after receipt of payment from RBIC. Again, in the Suppliers Services Agreement dated 11th October 2012 entered into between the Appellant and Valeo India Pvt Ltd (supplier), article 2.1 allows the appellant to subcontract all or some of the performance of supplier services which is defined in clause 1.5 as meaning warehousing services and secondary transportation services. Article 8 thereof titled payment of service charges, reimbursement of expenses etc, under 8.1 stipulates that the supplier shall pay the appellant for the services provided in Exhibit C and any payments made by the appellant on the supplier's behalf. Having perused the agreements and considering them in their respective totality, we are unable to concur with the finding of the Adjudicator as it is evident that the parties to the agreement namely the Appellant and the Principals are *ad idem* that Appellant as a clearing and forwarding agent, has to arrange for transportation of the principal's goods on behalf of the

principal. In other words, the transportation that otherwise has to be arranged by the principal was being so arranged by the Appellant on behalf of the principal and it is such Transportation charges that the Appellant has paid to the transporter and that too by engaging the transporters as approved by the principal, that is being reimbursed by the Principal. The SCN as well as the Adjudicator has conceded that such charges are billed separately and paid by the Principals to the Appellant. When examined in light of the Trade Circular of the Department aforementioned as well as the Apex Court decision in Coal Handler's case expounding as to the nature of a C & F transaction as reproduced above, it is evident from the agreements on record that the Appellant, while acting as a C & F agent and arranging for transportation of the Principal's goods on behalf of the Principal, is therefore indemnified against such transportation expenses incurred on behalf of the Principal. The Appellant is not liable to pay the transportation charges of the carriers whom the Appellant engages to transport the goods of the Principal. The specimen evidences adduced by the Appellant at Annexure 18 of the Appeal paper book and addressed to the Revenue, showing the fact of payment of service tax by the consignors also remain uncontroverted. It is also pertinent that admittedly, for the services of the Appellant as a C & F agent, it is conceded in the SCN, as well as by the Adjudicator, that such service charges are separately charged and collected and there is no dispute that the Appellant is not paying the service tax thereon.

17. That apart, we also notice that the SCN has merely invoked the definition of consideration and gross amount charged under the explanation to section 67 to include the Transportation Charges in the taxable value.

18. At this juncture, it is apposite to refer to Section 67 of the Act, which is reproduced as under:

"67. Valuation of taxable services for charging Service tax -

(1) Subject to the provisions of this Chapter, service tax chargeable on any taxable service with reference to its value shall,—

(i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;

(ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money, with the addition of service tax charged, is equivalent to the consideration;

(iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.

(2) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

(3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.

(4) Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed.

Explanation.—For the purposes of this section,—

(a) “consideration” includes any amount that is payable for the taxable services provided or to be provided;

(b) [* * *]

(c) “gross amount charged” includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and 2[book adjustment, and any amount credited or debited, as the case may be, to any account, whether called “Suspense account” or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise **(emphasis supplied)**

19. When Section 67(4) stipulates inter-alia that the value shall be determined in such manner as may be prescribed, recourse can be had only to the Service Tax (Determination of Service) Rules, 2006, which provides for determination of the value of service as per the rules prescribed thereunder.

20. We notice that Rule 5 of the Service Tax (Determination of Service) Rules, 2006, stipulates as under:

“5. Inclusion in or exclusion from value of certain expenditure or costs. – (1) Where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging service tax on the said service.

(2) Subject to the provisions of sub-rule (1), the expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely :-

- (i) the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured;
- (ii) the recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;
- (iii) the recipient of service is liable to make payment to the third party;
- (iv) the recipient of service authorises the service provider to make payment on his behalf;
- (v) the recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party;
- (vi) the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;
- (vii) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and
- (viii) the goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.

Explanation 1. - For the purposes of sub-rule (2), “pure agent” means a person who -

- (a) enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;
- (b) neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the

recipient of service;

(c) does not use such goods or services so procured; and

(d) receives only the actual amount incurred to procure such goods or services.”

21. Thus, the transport charges billed separately by the appellant, if being sought to be treated as an expenditure or costs incurred by the appellant in the course of providing its C & F services, and is therefore sought to be included in the value of such C & F services, it can be done only in a manner known to law. This would necessarily entail taking recourse to the said Rule 5(1) of the Service Tax (Determination of Service) Rules, 2006 to include the value of such transportation charges. On the contrary, by not putting the appellant to notice of the said Rule 5 of the Service Tax (Determination of Service) Rules, 2006 at the first instance, which was necessary to be invoked even to justify the inclusion of such expenditure for raising the demand, the SCN suffers from an incurable defect at the first instance in that, how such transportation charges are includible in the value of taxable service for charging service tax as per Section 67, was not put to the notice of the Appellant. This is an inherent and fundamental legal infirmity in the SCN. Therefore, the finding of the Adjudicator that Rule 5(1) has no application and yet the amounts can still be added to the value of C & F services rendered by the appellant to be made exigible to service tax is misconceived.

22. Be that as it may, Rule 5(1) *ibid*, even if it had been invoked, has since been found to be *ultra vires* Section 67. We find that the issue of levy of service tax on expenditure or costs that are incurred by the Service Provider in the course of providing taxable service on behalf of the customers and which are reimbursed by the customers to the Service Provider, is no more *res-integra* in view of the decision of the Honourable Supreme Court in the case of ***UOI v Intercontinental Consultants and Technocrats Pvt Ltd, 2018 (10) GSTL 401 (SC)*** which has considered the issue of liability to pay service tax on such expenses received by the service provider, apart from the consideration received for rendering the services, on which the service provider has discharged the liability to pay service tax. The Honourable Supreme

Court affirmed the decision of the Delhi High Court in ***Intercontinental Consultants & Technocrats Pvt Ltd v UOI, 2013 (29) STR 9 (Del)***, wherein Rule 5(1) of the Service Tax Valuation Rules, 2006 which provided for inclusion of expenditures or costs incurred by the service provider in the course of providing taxable services, in the value of such taxable services, was struck down as ultra vires Section 66 and Section 67 of the Act and as travelling beyond the scope of the said sections. The Honourable Supreme Court has held as under:

"21. Undoubtedly, Rule 5 of the Rules, 2006 brings within its sweep the expenses which are incurred while rendering the service and are reimbursed, that is, for which the service receiver has made the payments to the assesseees. As per these Rules, these reimbursable expenses also form part of 'gross amount charged'. Therefore, the core issue is as to whether Section 67 of the Act permits the subordinate legislation to be enacted in the said manner, as done by Rule 5. As noted above, prior to April 19, 2006, i.e., in the absence of any such Rule, the valuation was to be done as per the provisions of Section 67 of the Act.

22. Section 66 of the Act is the charging Section which reads as under:

"there shall be levy of tax (hereinafter referred to as the service tax) @ 12% of the value of taxable services referred to in sub-clauses of Section 65 and collected in such manner as may be prescribed."

23. Obviously, this Section refers to service tax, i.e., in respect of those services which are taxable and specifically referred to in various sub-clauses of Section 65. Further, it also specifically mentions that the service tax will be @ 12% of the 'value of taxable services'. Thus, service tax is reference to the value of service. As a necessary corollary, it is the value of the services which are actually rendered, the value whereof is to be ascertained for the purpose of calculating the service tax payable thereupon.

24. In this hue, the expression 'such' occurring in Section 67 of the Act assumes importance. In other words, valuation of taxable services for charging service tax, the authorities are to find what is the gross amount charged for providing 'such' taxable services. As a fortiori, any other amount which is calculated not for providing such taxable service cannot a part of that valuation as that amount is not calculated for providing such 'taxable service'. That according to us is the plain meaning which is to be attached to Section 67 (unamended, i.e., prior to May 1, 2006) or after its amendment, with effect from,

May 1, 2006. Once this interpretation is to be given to Section 67, it hardly needs to be emphasised that Rule 5 of the Rules went much beyond the mandate of Section 67. We, therefore, find that High Court was right in interpreting Sections 66 and 67 to say that in the valuation of taxable service, the value of taxable service shall be the gross amount charged by the service provider 'for such service' and the valuation of tax service cannot be anything more or less than the consideration paid as quid pro qua for rendering such a service.

25. This position did not change even in the amended Section 67 which was inserted on May 1, 2006. Sub-section (4) of Section 67 empowers the rule making authority to lay down the manner in which value of taxable service is to be determined. However, Section 67(4) is expressly made subject to the provisions of sub-section (1). Mandate of sub-section (1) of Section 67 is manifest, as noted above, viz., the service tax is to be paid only on the services actually provided by the service provider.

26. It is trite that rules cannot go beyond the statute. In *Babaji Kondaji Garad*, this rule was enunciated in the following manner :

"Now if there is any conflict between a statute and the subordinate legislation, it does not require elaborate reasoning to firmly state that the statute prevails over subordinate legislation and the byelaw, if not in conformity with the statute in order to give effect to the statutory provision the Rule or bye-law has to be ignored. The statutory provision has precedence and must be complied with."

27. The aforesaid principle is reiterated in *Chenniappa Mudaliar* holding that a rule which comes in conflict with the main enactment has to give way to the provisions of the Act.

28. It is also well established principle that Rules are framed for achieving the purpose behind the provisions of the Act, as held in *Taj Mahal Hotel* :

"the Rules were meant only for the purpose of carrying out the provisions of the Act and they could not take away what was conferred by the Act or whittle down its effect."

29. In the present case, the aforesaid view gets strengthened from the manner in which the Legislature itself acted. Realising that Section 67, dealing with valuation of taxable services, does not include reimbursable expenses for providing such service, the Legislature amended by Finance Act, 2015 with effect from May 14,

2015, whereby Clause (a) which deals with 'consideration' is suitably amended to include reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service. Thus, only with effect from May 14, 2015, by virtue of provisions of Section 67 itself, such reimbursable expenditure or cost would also form part of valuation of taxable services for charging service tax. Though, it was not argued by the Learned Counsel for the Department that Section 67 is a declaratory provision, nor could it be argued so, as we find that this is a substantive change brought about with the amendment to Section 67 and, therefore, has to be prospective in nature. On this aspect of the matter, we may usefully refer to the Constitution Bench judgment in the case of Commissioner of Income Tax (Central)-I, New Delhi v. Vatika Township Private Limited [(2015) 1 SCC 1] wherein it was observed as under :

"27. A legislation, be it a statutory Act or a statutory rule or a statutory notification, may physically consists of words printed on papers. However, conceptually it is a great deal more than an ordinary prose. There is a special peculiarity in the mode of verbal communication by a legislation. A legislation is not just a series of statements, such as one finds in a work of fiction/non-fiction or even in a judgment of a court of law. There is a technique required to draft a legislation as well as to understand a legislation. Former technique is known as legislative drafting and latter one is to be found in the various principles of "interpretation of statutes". Vis-a-vis ordinary prose, a legislation differs in its provenance, layout and features as also in the implication as to its meaning that arise by presumptions as to the intent of the maker thereof.

28. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as *lex prospicit non respicit* : law looks forward not backward. As was observed in *Phillips v.*

Eyre [(1870) LR 6 QB 1] , a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.

29. The obvious basis of the principle against retrospectivity is the principle of "fairness", which must be the basis of every legal rule as was observed in L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co. Ltd. Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later."

30. *As a result, we do not find any merit in any of those appeals which are accordingly dismissed." (emphasis supplied)*

23. Thus, the law of the land as laid down by the Apex Court in its decision in ***Union of India v Intercontinental Consultants and Technocrats Pvt Ltd, 2018 (10) GSTL 401 (SC)***, puts it beyond the pale of any controversy that Section 67 which deals with valuation of taxable services for charging service tax does not provide for inclusion of the aforesaid expenditure or cost incurred while providing the services as they cannot be treated as element/components of service, till the amendment to Section 67 made effective from May 14, 2015. Under Section 67, the value of taxable service shall only be the gross amount charged by the service provider 'for such service' and the valuation of tax service cannot be anything more or less than the consideration paid as *quid pro quo* for rendering such a service. Concededly, the period involved in the present Appeal is from 2008-09 to 2011-12, and hence the aforesaid decision would squarely apply, rendering the entire demand of the alleged service tax short paid under C & F services, as confirmed in the impugned order, unsustainable, and liable to be set aside.

Resultantly, we are also of the opinion that the consequential demand of interest and penalties imposed in this regard are also unsustainable and liable to be set aside. We also find that the reliance placed by the Appellant on the decision of a coordinate bench of this Tribunal in ***Synergy Baxi Logistics Pvt. Ltd. Vs. CCE, Jaipur, 2019 (11) TMI 1166 – CESTAT, New Delhi*** appropriate as the Tribunal has in the said decision, noticed the aforecited Trade Notice issued by Revenue and held that the activity of C & F agent is primarily responsible for delivery and forwarding and not the transport activities as such. The Tribunal had also observed that in has been held in the cases including those by Hon'ble Supreme Court that C & F Agent services and GTA services are distinct and the transportation would not be part of C & F agent service.

24. As regards the denial of cenvat credit availed by the appellant on outdoor catering services during the period September 2011 to March 2012, we find that the definition of input service under Rule 2(I) of the Cenvat Credit Rules, 2004 has been substituted with effect from 01-04-2011 and excludes services such as those provided in relation to outdoor catering when such services are used primarily for personal use or consumption of any employee. The Appellant has stated that they had availed the services to provide lunch to their contract labourers employed at their premises in a remote area. The appellant had since reversed the credit. Given the specific exclusion, we are of the considered view that the denial of cenvat credit by the Adjudicator cannot be faulted, subject to our finding on limitation given infra. However, considering that the issues were debatable and of interpretative nature, we are also of the firm opinion that penalties imposed are unsustainable and are liable to be set aside.
25. We find that the Appellant has contested the invoking of extended period of limitation. Indisputably the Appellant has been regularly filing its ST-3 returns and discharging the Service Tax for the services that it has been registered for. The SCN does not even allege wilful suppression of facts with intent to evade payment of service tax, much less let in any evidence of a positive act of fraud, collusion, wilful misstatement or suppression of facts with intent to evade payment of

service tax. We also find that in an earlier proceedings the Department had sought to include the value of the GTA services rendered by the appellant in the value of the C & F services rendered by the appellant and the issue that had travelled upto this Tribunal was settled in the Appellant's favour in the decision in ***Toll India Logistics Pvt. Ltd. Vs. CCE, Puducherry, 2018 (3) TMI 112 – Cestat, Chennai***, wherein it has been held that the value of GTA services cannot be treated as to be included in C & F services provided by the appellant. It is a settled position in law that the burden to show that the Appellant is exigible to tax as alleged and that the Appellant has willfully suppressed facts or made any misstatement with intent to evade payment of duty lies heavily on the Revenue and we find that the said burden has not been discharged in this instance rendering the invoking of extended period untenable. There are a plethora of decisions laying down the aforesaid position in law, and a reference to the Judgements of the Apex Court in ***CCE v. H.M.M. Ltd, 1995 (76) ELT 497, Pushpam Pharmaceuticals Company v CCE, Bombay, 1995 (78) ELT 401 (SC)*** and ***Uniworth Textiles v CCE, Raipur, 2013 (288) ELT 161 (SC)*** would amply suffice. We are therefore of the considered view that the Department could not have invoked the extended period of limitation and the demand of ineligible cenvat credit is hence confined to the normal period.

26. We hereby modify the impugned Order to the extent challenged, and hereby set aside the demand of service tax short paid under C & F services along with the demand of applicable interest that has been confirmed, while confirming the demand of ineligible cenvat credit taken on Outdoor Catering Services for the normal period, and if utilized, alongwith interest thereon. We also set aside the penalties imposed under the impugned order.

Appeal is partly allowed in the aforesaid terms with consequential reliefs in law, if any.

(Order pronounced in open court on 01.04.2026)

(AJAYAN T.V.)
MEMBER (JUDICIAL)

ra

(M. AJIT KUMAR)
MEMBER (TECHNICAL)