

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Service Tax Appeal Nos. 41480 & 41481 of 2016

(Arising out of Order in Appeal No. 43/2016 (STA – II) dated 18.4.2016 passed by the Commissioner of Service Tax (Appeals – II), Chennai)

Consolidated Construction Consortirum Ltd. Appellant

No. 5, 2nd Link Street, C.I.T. Colony
Mylapore, Chennai – 600 004.

Vs.

Commissioner of GST & Central Excise Respondent

Chennai North Commissionerate
26/1, Mahatma Gandhi Road
Nungambakkam, Chennai – 600 034.

APPEARANCE:

Shri N. Viswanathan, Advocate for the Appellant
Smt. O.M. Reena, Authorised Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)

Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NO. 40417-40418/2026

Date of Hearing: 21.11.2025
Date of Decision: 25.03.2026

Per M. Ajit Kumar,

This appeal is filed by the appellant against Order in Appeal No. 43/2016 (STA – II) dated 18.4.2016 passed by the Commissioner of Service Tax (Appeals – II), Chennai (impugned order).

2. The appellant is registered with the Service Tax Department for providing Consulting Engineer and Works Contract services. During audit, it was observed that the appellant deducted 0.5% from the bills of sub-contractors as "administration charges," which was appeared as taxable under 'Support Services for Business or Commerce' under the Finance Act, 1994. As no service tax was paid on this amount, a Show

Cause Notice dated 23.07.2014 was issued demanding ₹41,07,109/- for the period May 2011 to September 2012, followed by a Statement of Demand dated 09.12.2014 demanding ₹20,20,402/- for October 2012 to March 2014. The adjudicating authority confirmed the demands with interest and imposed penalties under Sections 76, 77, and 78. The Commissioner (Appeals) upheld the order, setting aside only the penalty under Section 77. Hence, the present appeal.

3. The learned Advocate Shri N. Viswanathan appeared for the appellant and Ld. Authorized Representative Smt. O.M. Reena appeared for the respondent.

3.1 Shri N. Viswanathan Ld. Counsel for the appellant submitted that:

A. The appellant is engaged in industrial and residential construction and is duly registered under various taxable services, holding centralized registration and regularly discharging service tax and filing statutory returns.

B. Construction activities involve a large workforce, including migrant labour employed directly and through sub-contractors.

C. To meet its Corporate Social Responsibility (**CSR**), the appellant incurred substantial expenses for common accommodation, drinking water, medical camps, education for labourers' children, and safety measures.

D. As these facilities also benefited labour engaged by sub-contractors, a nominal contribution was recovered by deducting 0.5% from their bills, initially termed "administrative charges" and later renamed "rebate/discount" from July 2012.

E. It is undisputed that sub-contractors paid service tax on the full value of their bills, and the 0.5% retained was only partial reimbursement of welfare expenses, not consideration for any service rendered by the appellant.

F. During audit, the department treated the said deduction as taxable under "support services of business or commerce" prior to 01.07.2012 and under Section 65B(44) thereafter, and issued a show cause notice dated 23.07.2014 invoking extended limitation with interest and penalties.

G. The appellant challenges the impugned order as unsustainable in law, contending that the demand is based solely on nomenclature, ignores settled law on non-taxability of reimbursements, results in double taxation, wrongly invokes extended limitation in a revenue-neutral situation, and imposes unwarranted penalties.

H. He relied on the judgment of the Hon'ble Supreme Court in the case of **UOI Vs Intercontinental Consultants and Technocrats Pvt. Ltd** [2018 (10) GSTL 401 SC], in support of his submissions.

The Ld. Counsel prayed that the impugned order be set aside.

3.2 Smt. O.M. Reena Ld. A.R. submitted on behalf of revenue that:

A. The assessee provides construction-related services like providing consulting engineering service. works contract service, construction of commercial and residential complex services etc., through contractors and claims to offer labour welfare facilities under CSR. Costs of these facilities are recovered from contractors at 0.5% of bill value, described as administrative charges.

B. The assessee failed to produce any contracts or evidence proving the recoveries were purely for CSR welfare.

C. Percentage-based recovery linked to bill value indicates administrative and operational business support, not welfare.

D. Accounting treatment as "administrative charges" supports this conclusion. CSR services are not exempt under service tax law.

E. The activity qualifies as "Support Services of Business or Commerce" and is taxable up to 30.06.2012.

F. No double taxation arises, as contractors were taxed for construction services, while the assessee is taxed for support services.

She prayed that the appeals may be rejected.

4. We have heard the parties to the dispute and perused the appeals.

5. The admitted facts are that the appellant incurred expenses for common labour welfare facilities such as accommodation, drinking water, medical camps, education for workers' children, and safety measures. A contribution towards these facilities was recovered by deducting 0.5% from sub-contractors' bills, initially described as "administrative charges" and later renamed "rebate/discount" from July 2012. The dispute arises because the appellant claims the activities were CSR initiatives and that the recoveries were merely partial reimbursement of welfare expenses, not consideration for any service, and hence not taxable. No alternative classification of the service has been averred by the appellant as an alternate plea. Per contra revenue contends that no evidence was produced to substantiate this claim. Further CSR activities are not exempt, and the percentage-based recovery linked to bill value indicates administrative and operational business support. The accounting treatment as "administrative charges" supports this view. Further the allegation

against the appellant is that the amount being deducted by them, was towards administration charges for preparing abstract to specialized agency bill (ERP) for services provided to the agencies and labourers such as maintaining their records accounts and providing accommodation, conduct of safety drills etc., and other miscellaneous work, which are classifiable as "Support Services of Business or Commerce" and taxable up to 30.06.2012. Para 5 at Annexure B of D.O.F.No.334/3/2011-TRU New Delhi, dated: 28.02.2011, referred to by the appellant in the Appeal Memorandum, clarifies Business Support Service as under:

5. Business Support Service [section 65(105)(zzzq)]:

5.1 The scope of the service **is being expanded to include operational or administrative assistance of any kind.**

The scope will cover all support activities for others on a contract or fee, that are ongoing business support functions that businesses and organizations commonly do for themselves but sometimes find it economical or otherwise worthwhile to outsource.

5.2 The words "operational and administrative assistance" have wide connotation and can include certain services already taxed under any other head of more specific description. The correct classification will continue to be governed by Section 65A.

(emphasis added)

The demand in the OIO which was upheld by the impugned order, pertains to the period from May 2011 to March 2014 and the classification adopted by revenue is supported by the clarification.

6. Under the Finance Act, 1994, a "service" is an activity performed by a service provider for consideration and consumed by the recipient. Service tax is therefore a tax on the activity itself and is in the nature of a value-added tax. It is attracted each time a taxable service is

rendered, the taxable event being the act of rendering the service. Prior to the negative list regime, a service had to qualify as a "taxable service" under Section 65(105). With effect from 01.07.2012, any activity carried out for consideration constitutes a service unless it falls under the negative list or is exempt. The appellant has not claimed exclusion on any of these grounds, either before or after the negative list regime, except by contending that the amount collected is not consideration, which is examined below.

7. The appellant has submitted that the impugned activity is part of its CSR. No evidence of the same has been submitted. We find that companies exceeding the threshold limit specified under section 135 of Companies Act, 2013 are expected to undertake CSR activity. These activities are not exempt from tax. CSR also excludes activities undertaken in pursuance of the normal course of business of the company.

8. The appellant has stated that they are only collecting partial reimbursement of welfare expenses and this amount is not a consideration for any service rendered by them. It was initially termed "administrative charges" and later i.e. from July 2012 (after the introduction of the negative list), it was renamed "rebate/discount". However, it was stated by revenue and not refuted by the appellant that the sub-contractors while claiming payment did not mention any discount/rebate in their invoices/bills. The Hon'ble Supreme Court in **Indian Chambers Of Commerce Vs C.I.T., West Bengal II, Calcutta** [AIR 1976 SUPREME COURT 348 / 1976 (1) SCC 324], has cautioned that verbal labels are convenient but not infallible. We have to be careful not to be victimised by adjectives and appellations which

mislead, if pressed too far, although they may loosely serve in the ordinary run of the case.

9. The appellant has stated that the amount collected by them from the contractors was not a consideration but only a reimbursement. The term 'reimbursement' came to be examined by the Hon'ble Bombay High Court in **Jet Airways (India) Limited Vs Sahara Airlines Limited & Ors.** [2011 Vol.113(6) Bom. L.R. 3835 / EXECUTION APPLICATION NO.161 OF 2009, IN ARBITRATION AWARD DATED 12 APRIL 2007]. It held:

29. . . The expression 'reimbursed' has similarly arisen for interpretation in several decided cases. In **Tata Iron and Steel Co Ltd. vs. Union of India** [(2001) 2 SCC 41], the Supreme Court interpreted the words "reimbursed to the exporter" in the context of the International Price Reimbursement Scheme. The Supreme Court held as follows:

"In common acceptation the word "reimburse" means and implies "to pay back or refund": **As a matter of fact it denotes restoration of something paid in excess**; as regards the respondent Union of India it cannot but mean to indemnify having regard to the common grammatical meaning of the word "reimbursement". Reimbursement has to mean and imply restoration of an equivalent for something paid or expended. **Reimbursement presupposes previous payment.**"

The Supreme Court held that as a matter of fact, there could be no reimbursement for expenses which had never been incurred.

30. In a judgment of a Division Bench of the Patna High Court in **Nandlal Singh vs. Ram Kirit Singh** [AIR 1950 Patna 212], the Court made a distinction between the words 'reimburse' with 'contribute' or 'contribution' in Section 43 of the Contract Act, 1872. In the context of the Fertilizer Control Order, 1985 issued under the provisions of the Essential Commodities Act, a Division Bench of the Delhi High Court in **Deepak Fertilizer & Petrochemicals Corporation Ltd. vs. Union of India** [1996 (38) DRJ 229], held that **'reimbursement' means "in ordinary parlance repayment of what has been spent"**.

In a judgment of the Rajasthan High Court in **Rajasthan State Electricity Board vs. Employees' State**

Insurance Corporation, [1975 WLN (UC) 261] the expression 'reimburse' has been construed to mean "**to repay, to pay in equivalent to for loss or expense**".

31. **Black's Law Dictionary** [Sixth Edition], defines the expression 'reimburse' as follows:

"Reimburse. **To pay back, to make restoration**, to repay that expended; to indemnify, or make whole. Los Angeles County v. Frisbie, 19 Cal.2d 634, 122 P.2d 526."

In **P. Ramanath Aiyer's The Law Lexicon** [2nd Edition page 1641], the meaning of the expression 'reimburse' has been defined thus:

"To reimburse is to pay back, and this primary meaning to the word is to be imputed to it, where the meaning is not controlled by context or contract stipulations.

The primary meaning of the word "reimburse" is to pay back; to make return or restoration of an equivalent for something paid, expended, or lost; to indemnify; to make whole."

Justice C.K.Thakker's, **Encyclopaedic Law Lexicon** [Vol.4 page 4038], adverts to the meaning of expression 'reimbursement' as:

"To pay back an equivalent for what has been spent or lost, to indemnify, to refund to recompense, to return the money."

(emphasis added)

From a conspectus of the decisions above, it can be stated in the context of Service Tax, that any costs incurred by the service provider on behalf of a person in the course of providing a taxable service and subsequently recovered from such person shall constitute reimbursements.

10. Hence to claim the payments received as 'reimbursement', the appellant should first show that he had incurred a payment, towards cost, to a third party on behalf of workmen of the contractor, which was subsequently recovered. No such evidence has been shown. In reality, the appellant pays contractors for construction services, and

describing deductions from these payments as reimbursements for CSR activities is misleading. At para 8 of the SCN dated 23.07.2014 and para 2 of the SOD dated 09.12.2014, the appellant was required to produce all evidence relied upon in support of its defence while replying to the SCN. The onus therefore lay on the appellant to adduce evidence, within its exclusive knowledge, to rebut the allegation that the deductions made were towards administrative charges for services such as preparation of ERP abstracts, record-keeping, accommodation, safety drills, and other miscellaneous activities. Production of such evidence would have enabled the Revenue to examine the same and would also have shifted the onus of proof back to the Revenue. However the OIO at para 5.3.2 records that neither in written reply to the notices nor during the personal hearing, the assessee could provide any evidence to prove the fact that the amount recovered was towards the expenses incurred toward their corporate social responsibility. Assessee also couldn't produce any contract, written agreement or any other documents supporting their claim that the amount recovered was toward providing of facilities to the workmen of the contractors. In fact it is seen that the payment received is for service rendered by the appellant himself for gain. Hence the same cannot be labelled as a reimbursement.

11. In **Intercontinental Consultants** (supra), cited by the appellant, the Hon'ble Supreme Court held that reimbursed costs do not form part of the taxable value of services. However, in the present case, the service provider incurred no costs on behalf of the workmen. As rightly held in the OIO, welfare facilities such as accommodation, drinking water, education, and medical camps ordinarily consist of

predominantly fixed costs. In the present case, however, recovery has been made at a uniform rate of 0.5% of the contractors' bill value, which is variable and not payments towards a fixed cost. The recovery, being variable and value-linked, assumes the character of consideration for services rendered. In the absence of documentary evidence regarding the alleged welfare activities, the description of the recovery as "administrative charges" itself indicates the understanding of the parties to the nature of services provided. If the activity were purely in discharge of a welfare or CSR obligation, there would be no occasion for recovery from contractors. The recovery thus constitutes a quid pro quo for services rendered. Hence the judgment of the Hon'ble Supreme Court cited by the appellant does not help their cause.

12. It is settled law that the burden to establish the taxability of a service lies on the Revenue, which must discharge this burden by adducing proper evidence. However, in tax matters, the standard of proof is one of 'preponderance of probability' and not 'proof beyond reasonable doubt' as required in criminal cases. Mathematical precision is not necessary. At the same time, the onus to produce relevant details and information necessary for examining the issue rests on the assessee. Once such information is furnished, the onus shifts to the Revenue to rebut the assessee's stand. Where the relevant documents and facts are within the assessee's special knowledge, transparency and cooperation are imperative. In the present case, the appellant failed to furnish the necessary documents at the stage of inquiry and even after the issue of SCN. Accordingly, the initial onus of rebuttal lay on the assessee, consistent with Section 106 of the Indian Evidence

Act **which gives statutory recognition to this universally accepted rule of evidence.** The Supreme Court in **Commissioner of Income Tax, Madras Vs Messrs. Best & Co.** [1966 SCR (2) 430 / AIR 1966 SC 1325], held that where the Revenue discloses sufficient direct or circumstantial evidence, an adverse inference may be drawn if the assessee withholds material exclusively in his possession, reflecting the shifting nature of onus during adjudication. While the burden of proof remains static, the onus of proof is dynamic and shifts in the course of appreciation of evidence during adjudication. [See: **Mahakali Sujatha Vs Future Generali India Life Insurance Co. Ltd.** - (2024) 8 SCC 712]. Once the Revenue creates a high degree of probability, the onus shifts to the assessee, and failure to discharge it results in the Revenue's burden being deemed discharged. Mere pleadings regarding the nature of the payment do not constitute evidence, much less proof. Hence we do not find any merits in the appellants averments.

13. As regarding the appellants averment of double taxation revenue has stated that the plea is unfounded. The service tax paid by sub-contractors relates to construction activities provided by them to the assessee, whereas the present demand concerns distinct services of administrative and operational support provided by the assessee to the contractors. A 5 Judge Bench of the Hon'ble Supreme Court in **Jain Bros. & Others Vs The Union Of India & Others** [1970 AIR 778 / 1970 SCR (3) 253], held that it is not disputed that there can be double taxation if the legislature has distinctly enacted it. Hence any service (transaction) can be taxed only once unless otherwise specifically provided for in the statute. However, as stated by the Hon'ble Supreme

Court in **Sri Krishna Das Vs Town Area Committee** [(1990) 3 SCC 645]:

“28. We do not find any merit in the appellant's submission that there was double taxation in this case. The expression “double taxation” is often used in different senses, namely, in its strict legal sense of direct double taxation and in its popular sense of indirect double taxation. **Double taxation in the strict legal sense means taxing the same property or subject matter twice, for the same purpose, for the same period and in the same territory.** To constitute double taxation, the two or more taxes must have been (1) levied on the same property or subject matter, (2) by the same government or authority, (3) during the same taxing period, and (4) for the same purpose.”

(emphasis added)

The impugned activity fails the above test of double taxation. Further service tax is a value added tax and service tax is imposed every time service is rendered to another person. Hence if distinct service activities are involved, as in this case, then the purpose is not the same and there can be no double taxation. Hence the appellants plea fails in this regard also.

14. As regards the question of time bar, we find that the issue has been examined at para 6.4 of the OIO and is reproduced below;

“6.4. In SCN No. 174/2014 dated 23.07.2014 issued for the period May 2011 to September 2012, proviso to Section 73(1) of the Act has been invoked for raising demand and penalty has been proposed under Section 78 of the Act. As regard imposition of penalty under Section 78 of the Act, since the assessee has **not declared the recovery of administrative charges recovered by them in their ST-3 returns filed with the department.** Further, when pointed out by the Audit officers, that deduction of administrative charges attracts service tax, immediately with effect from July, **the assessee changed the nomenclature in their system and ERP bills from administrative charges to discount rebate received.** It is very clear that Rebate or discount is a return of a portion of purchase price by a seller to a buyer usually on purchase of specified quantity or value of goods within a specified

period and Rebate Discount is given after the payment of full invoice amount. In the instant case the assessee while making payment to their sub-contractors has deducted certain percentage as rebate/discount for the period from July 2012 onwards. **However, the sub-contractors while claiming payment did not mention any discount/ rebate in their invoices/ bills. In view of the above, it is very evident that the assessee changed the nomenclature with intention to evade payment of service tax. But for the Audit, the non-payment of Service Tax would have gone unnoticed and undetected.** Assessee also did not take any bonafide step in coming forth to the department and seeking necessary clarification from the department on the taxability of same, I find that the failure and contraventions on the part of the noticee are established clearly. I observe that once it is held that they have suppressed the facts with intention to evade payment of service tax, penalty under Section 78 is mandatorily imposable as has been held by the Apex court in the case of **Dharmendra Textile Mills Ltd.** - 2008 (231) ELT 3 (SC) and **Rajasthan Spinning & Weaving Mills Ltd.** - 2009 (238) ELT 3 (SC), Therefore, I hold that they are liable for imposition of penalty under Section 78 of the Act, I also hold that extended period of limitation provided under proviso to section 73(1) of the Act has been rightly invoked in the show cause notice to demand the service tax."

(emphasis added)

As noted above, the appellant has failed to produce documents within its possession even to substantiate its claim. Further, as discussed in the paragraph extracted from the OIO, there is sufficient evidence to establish the appellant's knowledge of the taxability of the activity and deliberate suppression of facts. Accordingly, the invocation of the extended period cannot be faulted. The Commissioner (Appeals), after considering the relevant case law, found no grounds to interfere with the Order-in-Original and has granted relief only to the extent of penalty under Section 77 of the Finance Act, 1994. It is settled law that appellate interference with discretionary decisions of the Original Authority is warranted only where the discretion is exercised illegally,

arbitrarily, or perversely. Unless the decision is illogical or shocks the conscience, its merits are not open to reappreciation. As the reasons recorded by the Ld. Adjudicating Authority suffer from no such infirmity, no ground exists to substitute a fresh view for that of the Original Authority. [See: **V. Ramana Vs S.P. SRTC**, (2005) 7 SCC 338; **Caretel Infotech Ltd. Vs Hindustan Petroleum Corpn. Ltd.**, (2019) 14 SCC 81]. The impugned order which upholds the OIO, therefore requires no interference.

14. We find no merit in the appeals. The impugned order is upheld and the appeals are dismissed.

(Order pronounced in open court on 25.03.2026)

Sd/-
(AJAYAN T.V.)
Member (Judicial)

Sd/-
(M. AJIT KUMAR)
Member (Technical)

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