

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

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 2671 of 2012

[Arising out of Order-in-Appeal No. 200-202/BK/PKL/2012 dated 30.04.2012 passed by the Commissioner (Appeals), Central Excise, Delhi, Gurgaon]

M/s Punjab Advertising Co.
2, Vikas Vihar, Amabal City

.....Appellant

VERSUS

**Commissioner of Central Excise &
Service Tax, Panchkula**
SCO 407-408, Sector-8, Panchkula-134119

.....Respondent

WITH

ST/2672/2012

ST/7/2016

ST/8/2016

ST/9/2016

ST/60090/2018

APPEARANCE:

Shri Sudhir Malhotra and Ms. Kanika Malhotra, Advocates for the Appellant
Shri Aniram Meena and Shri Narinder Singh, Authorized Representatives
for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60375-60380/2026

DATE OF HEARING: 24.02.2026

DATE OF DECISION: 27.05.2026

P. ANJANI KUMAR:

The appellant, M/s Punjab Advertising Co, filed these 6
appeals against various impugned orders.

2. Briefly stated the facts of the case are that the appellant, a proprietary concern with Shri Ashwani Oberoi as proprietor is engaged in providing Advertising Services to Hero Cycles Ltd., Ludhiana, Usha International Ltd., Majestic Auto Ltd., Hero Honda Motor Ltd., Delhi etc. by way of painting the advertisement on the walls and to display advertisements on hoardings situated at strategic points. The Appellant was holding Service Tax Registration No. AACPO3105AST001 under the category of Advertising Agency Services. During the audit of the Appellant, conducted for the period 2004-2005 to 2006-2007 on 16.08.2007 to 17.08.2007, it was revealed that the Appellant has provided advertising services to above companies; Appellant used to make payments to the wall owners on account of wall rent and provided services by painting the given matter of advertisement on the surface of such rented walls; the Appellant raised invoices to the recipients of the services without including the amount of wall rent in the gross amount of the service for the purpose of discharging Service Tax liability; the Appellant utilized the services of other service providers who arranged for the structures for such hoarding for a fixed period of time and flexes containing printed material used in the advertisement through hoardings; the Appellant did not include the expenditure incurred on the printed flex in the gross value of the service; M/s Sonia Plastics, an HUF with Shri Ashwani Oberoi, operating from the same address; were supplying the printed flex for the advertisements on the hoardings; M/s Sonia Plastics and the Appellant i.e. M/s Punjab Advertising Agency are having common business interest as the

former is an HUF with Shri Ashwani Oberoi as Karta who is also the proprietor in the latter.

2.1. Accordingly, show cause notices, for different periods, were issued and were confirmed by the orders-in-original which were upheld by the impugned orders. Appeal wise details are given in the table as below.

Appeal No.	SCN	Period	O-in-O		Impugned Order (O-in-A No. & Date)
			Date	ST confirmed	
ST/2671/ 2012	18.09.2008	2003-04 to 2006-07	24.08.09	73,48,072.00	200- 202/BK/PKL/2012 dated 30.04.2012
	15.04.2009	10/07 to 09/08			
ST/2672/ 2012	16.04.2010	09/08 to 09/09	11.02.11	27,86,413.00	
	20.10.2010	10/09 to 03/10			
ST/7/ 2016	25.09.2013	2012-13	05.05.14	10,47,642.00	37- 39/ST/DLH/2015 dated 23.10.2015
ST/8/ 2016	31.12.2012	2011-12	26.02.14	9,99,649.00	
ST/9/ 2016	10.11.2011	2010-11	28.02.13	7,14,848.00	
ST/60090/ 2018	01.04.2015	2013-14	23.12.16	5,75,530.00	Appeal/ST/PKL/53 /2017 dated 19.09.2017
	13.04.2016	2014-2015			

3. Shri Sudhir Malhotra, Learned Counsel for the Appellants takes us through the provisions of Section 67 and submits that Section 67 envisages that service tax is payable on the value attributed for rendering "such service". The word 'for such service' has been

interpreted by the Hon'ble Supreme Court in the case of Union of India Vs Intercontinental Consultants and Technocrats P Ltd 2018 (10) GSTL 401 (SC) holding that value of taxable services shall be the gross amount charged by the service provider 'for such service' and the valuation of taxable service cannot be anything more or less than the consideration paid as *quid pro qua* for rendering such a service. Learned Appellate Authority erred in demanding service tax on rent paid to "wall owner" on behalf of the company; the agreement form cum receipt were signed by wall owner; the said receipt is a contract entered between the company and the "wall owner"; the appellant charged the actual amount paid to "wall owner" as per receipt issued from voucher slip of the company.

3.1. Learned Counsel takes us through the provisions of Rule 5 of Service Tax (Determination of Value) Rules, 2006 and submits that Rule 5 envisages that where service provider act as pure agent of the recipient of service and makes payment to the third party for the goods and services procured, the same are not includible in the taxable value; the said Rule stipulates that activities performed as the pure agent are not liable to service tax; Circular No. B-43/1/97-TRU dated 06.06.97 and instructions issued under F. No. B1/4/2006-TRU dt. 19.04.2006 clarify that various other reimbursable expenses incurred are not to be included for computing the service tax. He submits it is not in dispute that the appellant paid rent to wall owner on behalf of companies and same was reimbursed to them as per actuals; the appellant acted as pure agent of the company and payment was made by them to

"wall owner" by raising voucher of company; the appellant being a pure agent and the same is not includible in the taxable value as per ibid Rule 5 & ibid circulars.

3.2. Learned Counsel further submits that the "wall owner" is a service provider in respect of "wall" given on rent to company; the service tax on rent is required to be paid by the "wall owner" under category of "Renting of Property Services" as per section 68 of Finance Act; "Renting of Property Services" was brought under service tax net vide Notification No. 23/2007 ST dt. 22.05.2007 w.e.f. 01.06.2007; Hon'ble Bombay High Court in the case of Indian National Shipowners' Associations Vs. UOI 2009 (14) STR 289 (Bom) held that introduction of a new entry and inclusion of certain services in that entry presupposes that there was no earlier entry covering such services; Tribunal in the case of Board of Control for Cricket in India Vs. Commissioner of Service Tax 2007 (7) STR 384 (T) held that introduction of a new category implies coverage of new area not taxable under previous entries; CBEC vide circular No. 62/11/2003-ST dt. 21.08.2003 clarified that if there are no consideration no service tax is chargeable; the service provider in this case is "wall owner" he is liable to pay service tax, under category of "Renting of Immovable Property Services", subject to notification No. 6/2005 ST.

3.3. Learned Counsel submits that CESTAT in the case of Rekha N. Publicity Vs. CCE 2018 (10) GSTL 476 (T) held that advertising agency not gaining anything out of such rent amount received from client, rent not to form part of gross value for computation of service

tax liability; service tax in case payable, if any, was to be paid by the service provider i.e. wall owner and not by the appellant.

4. Learned Counsel submits that service tax on material supplied by M/s. Sonia Plastics directly to the recipient of service has been demanded on the ground that appellant had business interest as the former is an HUF with Sh. Ashwani Oberoi as Karta, who is a proprietor of appellant firm. Learned Appellate Authority failed to appreciate that the appellant & M/s. Sonia Plastics are independent firms having separate Income Tax, Sales Tax Number & have separate identity in the eyes of law; there are no statutory provisions debarring a proprietor of firm to be an Karta in HUF firm; no statutory provisions have been brought on record for clubbing the value of services/clearances by the appellant & HUF firm; no financial flow back was brought on record, with evidence that M/s. Sonia Plastics were dummy firm; the clubbing of sale and demand of service tax thereto has been made on surmises & conjectures which is bad in law.

4.1. Learned Counsel submits further that Notification No. 12/2003-ST dated 20.06.2003 effective from 01.07.2003 exempts the value of goods & materials sold by service provider to the recipient of service subject to furnishing documentary proof thereto; intent of legislation is to levy service tax on the service charges received & not on the material sold while providing taxable service. Hon'ble Gujrat High Court in the case of Addition Advertising Vs. UOI 1998 (98) ELT 14 (Guj.) held that service tax is not a tax on "sale or purchase of goods"; it is in respect of services rendered; as per

entry No. 92-C of Union List in Schedule VII of constitution it is a "tax on services"; it is against the edifice of constitution to demand service tax on the gross amount received; the material bought and sold as such are chargeable to sale tax, which is a state subject; Central Government has no power to tax on purchase or sale of goods under the garb of service tax; supply of goods involved in a works contract is subjected to sales tax in view of the legal fiction created by the 46th amendment to the constitution, w.e.f. 02.02.1983.

4.2. Learned Counsel submits also that as per Section 65B (44) – "Service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include

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(a) an activity which constitutes merely, -

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

(ii) such transfer, delivery or supply of any goods which is deemed to be sale within the meaning of clause (29A) of article 366 of the Constitution; or

....

Section 65B (44) of Finance Act, 1994 defines "Service" & stipulates that value of goods shall not be included which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution.

4.3. Learned Counsel submits in addition that decision relies on Rainbow Colour Lab Vs. State of Madhya Pradesh 2001 (134) ELT

332 (SC); C.K. Jidheesh Vs. UOI 2006 (1) STR 3 (SC) and Imagic Creative Pvt Ltd Vs. Commissioner of Commercial Taxes 2008 (9) STR 337 (SC) and submits that service tax and VAT are mutually exclusive.

5. Learned Counsel submits that the Learned Appellate Authority erred in upholding imposition of penalties under sections 77 & 78 of Finance Act, 1994; there were neither any mens-rea nor any mala fide to draw any unlawful benefit; all the transactions are duly recorded in statutory records; service tax was not paid on "wall rent" as appellant was neither an owner of the wall nor received any amount on account of rent; it was incorrect to demand service tax from appellant on material sold directly by M/s Sonia Plastic to Customers; it is incorrect to impose penalty when issue relates to interpretation of Statutory provisions; benefit of Section 80 of Finance Act, 1994 should be extended.

6. Shri Narinder Singh, Learned Authorised Representative, for the Revenue, reiterates the findings of the impugned order. He takes us through the definition of Taxable Service over the years and submits that the Appellant makes payment to the wall owners, against individual contracts for fixed period with the owners, on account of wall rent and provides his services by painting the given matter of advertisement on the surface of such rented walls of walls; the Appellant raised invoices to the recipients of the services without including the amount of wall rent in the gross amount of the service for the purpose of discharging Service Tax liability; the amount of wall rent was recovered by the Appellant from the recipients of the

services through debit notes. He submits that though in the said 'Agreement Form Cum Receipt' it is stated that the amount is received from M/s Hero Cycles Ltd Ludhiana on account of rent, it is the appellant who pays the 'Wall Owners' in cash; the cost of wall rent is incurred by the Appellant though recovered/ got reimbursed from the clients; a perusal of the rent receipts, claimed to be agreements/invoices by the appellants, indicates that only the 'wall owners' signed the same; Commissioner rightly held that the charges recovered by the Appellant from the wall owners cannot be said that of a Pure Agent, as it is essential component of cost of taxable service and that the contention of the Appellant that the "Wall Owners' are the service providers and only they are required to pay the service tax is not correct; it's another matter that the said wall owners are required to pay service tax, if otherwise payable, under 'renting of immovable property services' and that the appellant would have been eligible for credit under Cenvat credit Rules, 2004. He submits that in the instant case, conditions, specified under rule 5(2) of the Service Tax Valuation Rules 2006, are not satisfied to treat the service provider as pure agent and therefore, the costs of expenditure or the amount reimbursed to the clients are not allowed to be deducted or excluded except in the case of pure agent; He relies on the following case laws:

- *Prithvi Associates -2015 (40) S.T.R. 625 (S.C.)*
- *Shri Ads 2008 (1) TMI 270 - CESTAT CHENNAI*
- *P.K. Ghosh & Sons 2017 (3) GSTL 429 (Tri. - Kolkata)*
- *Quadrant Communications Ltd 2012 (2 6) STR 33 (Tri. - Mumbai)*

- *Broadcast Engineering Consultants India Ltd 2018 (9) GSTL 112 (Tri. - Del.)*
- *Sercon India Pvt Ltd 2018 (14) GSTL 375 (Tri. - Del.)*

6.1. Learned Authorised Representative submits that reliance placed on the decision of the Intercontinental Consultants and Technocrats Pvt Ltd (supra) is misplaced as the same has been distinguished in the case of Sercon India Pvt Ltd (supra) on similar facts and circumstances. He submits that the receipts titled as 'Agreement Form Cum Receipt', shown to have been issued by the wall owners to the Service recipients of the appellant do not help their case for the following reasons.

- The receipts show that the wall owners have received the said amount directly from the companies, whereas the show cause notices have been issued in respect of the amounts of rent which was received by the appellants, through debit notes, from their service recipient companies.
- 'Agreement Form Cum Receipts', cannot be treated as agreements between the wall owners and the companies as they contain the signatures of only wall owners and not of respective companies.
- The said receipts do not indicate that the said payments have been made by the appellant on behalf of the respective client-companies.
- it is not coming out from the said 'Agreement Form Cum Receipts' that these receipts are in respect of the services provided by the appellant as there is no reference of the same on such receipts.

- There is no other document to indicate any link between the impugned services with the amounts mentioned on the receipts, received by the wall owners.

6.2. Learned Authorised Representative submits that the contention of the appellant that the service tax on Renting of Property Services was required to be paid by the wall owner has no relevance in the instant case; as the rent paid for the walls has been consumed in providing the service by the appellant and therefore, the same is includible in the assessable value for the purposes of payment of service tax by the appellant; it is another matter that had the wall owner charged and paid service tax on Renting of wall, the appellant could have availed Cenvat credit on the same; however, it is not fact record that the wall owner has paid service tax and therefore, the question of availability of Cenvat credit on the same does not arise.

7. Learned Authorised Representative submits that the impugned order rightly holds that since the service in question i.e. displaying of advertisement on hoarding could not be provided without use of Flex printed with advertising material, its cost is an essential component of the advertising service; Manager (Marketing & Admn.) of the Appellant, in his statement dated 23.4.08, admitted that their clients do not supply them any material except the design of Advertisement and the value of Flex pertains to M/s Sonia Plastics only; though M/s Sonia Plastics has raised bills directly to the recipient of the services, fact remains that the Flexes were never delivered to the recipient of Services; they were used by the

Appellant in relation to provision of the advertising services by displaying of advertisement on the hoardings; M/s Sonia Plastics and the appellant are same; he relies on Allied Industrial Enterprises 2009 (234) E.L.T. 87 (Tri. - Del.) where it has been held that when two units, managed by one person, cannot be considered as separate units; further, the appellant is not a pure agent and therefore, the claim for deduction of expenditure incurred on printed flex board is not permissible; printed flex board is advertisement as per the definition under Section 65(2) of the Finance Act 1994; cost of the same cannot be otherwise excluded from the taxable value of the said services.

8. Learned Authorised Representative submits that the reliance placed by the appellants on the various case laws are totally misplaced for the following reasons.

- In the case of Rekha N. Publicity 2018 (10) GSTL 476 (Tri. - Del.) benefit was given to the assessee on basis of the facts that the amount of rent actually collected by the appellant from its client were paid to the house owners; in the instant case there is no document or evidence to show that the amount of rent actually collected by the appellant from its client were paid to the house owners.
- Addition Advertising 1998 (98) E.L.T. 14 (Guj.) deals with vires of the provisions of Sections 65(16)(d) and 66(2) of the Chapter V of Finance Act, 1994 as amended, by which a service tax is imposed on advertising service; the petition was dismissed by the Hon'ble Court.

- Rainbow Colour Lab 2001 (134) ELT 332 (SC) deals with the issue as to whether turnover from the job done by the photographers would be exigible to the levy of sales tax under M.P. General Sales Tax Act. The ratio is not applicable to the instant where the issue involved is in respect of valuation of taxable service; the case supports the departmental case as per Para 14 *ibid*.
- C.K. Jidheesh 2006 (1) STR 3 (SC) in fact supports the case of revenue that contracts of the type entered into by persons like the Petitioner therein are nothing else but service contracts pure and simple and there is no element of sale of goods.
- Imagic Creative Pvt Ltd - 2008 (9) STR 337 (SC) and Bharat Sanchar Nigam Ltd- 2006 (2) STR 161 (SC) pertain to levy of vat/ sales tax; BSNL case in fact supports Revenue's case.

9. Learned Authorised Representative submits that the appellant has failed to make correct and full declaration in the mandatory returns; the appellant intentionally chose not to disclose the amount collected by them from the customer with intent to evade payment of Service Tax. He relies on

- Days Inn Deccan Plaza 2016(45) STR 502 (Mad.)
- Star India Pvt Ltd 2015 (38) STR 884 (Tri. - Mumbai).
- Tech Mahindra Ltd 2015 (38) STR 1200 (Tri. - Mumbai)

10. Heard both sides and perused the records of the case. There is no dispute as to the fact that the appellant is providing taxable services. The appellant is engaged in advertising on the walls by getting the publicity material painted on the walls and flexes and

displays the flexes in vantage points. Section 65(2) defines "advertisement" to cover hoardings and visual representations. Section 65(3) defines "advertising agency" to include any person engaged in preparation, display or exhibition of advertisements. Therefore, the appellant is an 'advertising Agency. The activities undertaken by the appellant, namely painting advertisements on walls and display through hoardings, fall within the statutory definition of taxable advertising agency service. Any service provided by an advertising agency in relation to advertisement is taxable under Section 65(105) (e). Section 65(105) (e) as it stood during different periods defines taxable service as under.

1.11.1996 to 15.06.2005

Taxable service means any service provided to a client, by an advertising agency in relation to advertisement, in any manner.

16.06.2005 to 15.05.2008

Taxable service means any service provided or to be provided to a client, by an advertising agency in relation to advertisement, in any manner

With effect from 16.05.2008

Taxable service means any service provided or to be provided to any person, by an advertising agency in relation to advertisement, in any manner.

11. The issues that require our consideration, in the facts and circumstances of the case, are as to whether

(i). the expenses incurred by the appellant on 'wall rent' be included in the assessable value for the purposes of payment of Service Tax

(ii). whether the value of the flexes supplied by m/s Sonia plastics be included in the assessable value for the purposes of payment of Service Tax

(iii). whether the department is correct in invoking extended period of limitation for issue of Show Cause Notice.

12. Coming to the issue at no. (i) above, we find that the appellant has provided advertising services to M/s Hero Cycles Ltd., Ludhiana, M/s Usha International Ltd., M/s Majestic Auto Ltd., M/s Hero Honda Motor Ltd., Delhi etc. The Appellant makes payment, allegedly against individual contracts for a fixed period, to the wall owners, on account of wall rent. The appellant provides services by painting the given publicity matte/ advertisement on the surface of such rented walls. The Appellant raises invoices to the recipients of the services without including the amount of wall rent in the gross amount of the service for the purpose of discharging Service Tax liability. The appellants raise debit notes on the service recipients towards such rent claimed to have been paid by them. We find that Section 67 stipulates that:

Section 67 of Finance Act, 1994(w.e.f. 1-5-2006):
"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 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."

13. We find that the argument by the appellant is twofold; firstly, the amount received as a reimbursement and is not towards the service provided and secondly, the same is paid by them as a pure agent. Appellant argues that the wall rent paid by them to the individual wall owners is reimbursed by their customers and therefore, it's a reimbursable expenditure in their hands in the discharge of service and the same is not taxable in their hands. However, we find that there is no agreement, to such extent, with the service providers, with the service recipients. Thus the amount on account of rent fulfils the requirement of Section 67 making it liable to be included in the assessable value. We find that Tribunal in Sercon India Pvt Ltd (supra), a case involving similar facts, held, distinguishing the case of Intercontinental Consultants, that where expenditure forms an essential ingredient of taxable service, the same remains includible in assessable value. Tribunal held that

17. The effect of the Hon'ble High Court of Delhi decision is that Rule 5(1) of the Service Tax Rules cannot be used to include expenditure incurred by the service provider into the value which otherwise will not be includible, as consideration for providing of service. In the present case we find that the reimbursed expenditure is for activities which are part of the overall event management services. Some of them are towards services employed by the appellant in the process of providing the event management service. Consequently, we are of the view that all such cost incurred by the appellant and reimbursed by the client are nothing but a part of the overall consideration towards rendering of the event

management service. By issuing separate invoices for professional fee as well as reimbursable cost, the appellant has attempted to avoid payment of service tax.

14. Another argument/contention of the appellant is that wall rent represented reimbursable expenditure incurred as a "pure agent" and therefore could not form part of taxable value. Ongoing through the records of the case, we do not find any tripartite or bipartite agreement which indicates that the appellant is an agent of his customers, leave alone 'pure' agent. All that the appellant could place on record are some documents titled "Agreement Form Cum Receipt" to claim the same as agreement between the wall owners and the companies. However, ongoing through the so-called receipts, we find that they contain the signatures of the wall-owners alone. It appears that they are just receipts for the rent received by the respective owners of the walls. We find that the same cannot be held to be agreements, as they are not executed between two contracting parties. In addition to the inadequacies of the 'Agreement-cum-Receipts', what is important is that the so called 'Agreement-cum-Receipts' are not relatable to the service provided by the appellants. The demand is in respect of amounts received/liable to be received by the appellants from their customers as they have raised debit notes. Therefore, the only conclusion one would get is that the so called rent is only an expenditure in the hands of the appellant in the course of provision of service. We find that in the case the wall rent constituted an intrinsic and inseparable component of the taxable advertising activity undertaken by the

appellant. We find that reliance on the case of Intercontinental Consultants and Technocrats Pvt Ltd would be of no help as the issue related therein was about inclusion of reimbursable expenditure which was entirely independent of the service rendered.

15. As discussed above, Section 67 of the Finance Act, 1994 provides that Service Tax is chargeable on the gross amount charged for providing taxable service. Rule 5(1) of the Valuation Rules specifically provides that expenditure or costs incurred by the service provider in the course of providing taxable service shall be treated as consideration for taxable service. We find that rent paid to wall owners was not an independent transaction. It was organically connected with the taxable service. There was no way the appellant could have rendered the impugned service. A service Tax provider may have a number of expenses incurred during the course of rendering service tax. If one goes on deducting each of the items of expenditure and argue that only the amount net of expenditure should be taxed, Section 67 of the finance Act, 1994 and valuation rules would be rendered otiose and the difference between income tax and service tax would be obliterated.

16. We find that tribunal in the case of Sercon India Pvt Ltd (supra) held that the concept of "pure agent" under Rule 5(2) is a narrowly carved exception and strict compliance with all prescribed conditions is mandatory. In the present case, the appellant has failed to establish existence of any direct contractual arrangement between the clients and wall owners and authorization by clients appointing

the appellant merely as an intermediary. The so-called "Agreement Form Cum Receipt" being signed only by wall owners do not suffice for agreement between the clients and wall owners. We find that the exclusion applicable for a "pure agent" is not available to the appellant. We take support from the decision in Broadcast Engineering Consultants India Ltd. - 2018(9) GSTL 112. Reliance on Rekha N. Publicity (supra) is of no help due to a categorical finding that the appellant therein collected the rent amount from their clients and paid to the house owners acting just as an intermediary. In the instant case, the so called "Agreement Form Cum Receipt" does not even indicate that the rent was collected from the appellant. Thus, the first question is answered in affirmative in favour of Revenue.

17. We now proceed to examine the issue relating to printed flex material supplied through M/s Sonia Plastics. It is alleged in the show cause notice that M/s Sonia Plastics and the Appellant i.e. M/s Punjab Advertising Agency are having common business interest as the former is an HUF with Shri Ashwani Oberoi as Karta who is also the proprietor in the latter. We find that mere commonality of management or relationship between persons cannot automatically give rise to the conclusion that justify clubbing of turnover or disregard of separate legal identity. The records demonstrate that M/s Sonia Plastics and the appellants possessed separate registrations under fiscal statutes, maintained independent books of account, issued separate invoices. M/s Sonia Plastics have discharged VAT/sales tax on the printed flex material. On the

contrary, no evidence to the effect that M/s Sonia Plastics was merely a dummy or non-existent entity. Department failed to discharge the burden to prove the same. The allegation of the revenue is that M/s Sonia Plastics raised the bills on customers of the appellant but the supplied the material to the appellant. We find that the printed flex material constitutes identifiable movable goods separately invoiced and subjected to VAT/sales tax. We find that Notification No. 12/2003-ST specifically exempts the value of goods sold during provision of taxable service subject to documentary proof. Even assuming that the appellants supplied the said flexes and paid VAT on the same, there was no way the value could be included to arrive at the value of taxable services. It is not disputed that applicable VAT/sales tax was paid on the printed flex material. Once the transaction is of sale of goods, the value is separately ascertainable and supplied by someone else than the appellant, the value of such goods cannot be said to be for the service provided and thus, not includible in the value of service to charge Service Tax merely because the goods were utilized in execution of service. For this reason, reliance placed by the department on Allied Industrial Enterprises is misplaced. Thus, the second question is answered in the negative in favour of the appellant.

18. Coming to the third issue of limitation, The Show Cause Notice dated 18.09.2008 invokes the proviso to Section 73(1) of the Finance Act, 1994. The appellant submits that the appellant was registered and were regularly paying Service Tax and filing ST-3

returns and all the transactions are duly recorded in statutory records and therefore, there was no *mens rea* or any mala *fide* intent to draw any unlawful benefit. We find that there is force in the submission of the appellant. We find that the department alleges that the appellant has not disclosed the fact of recovery of the amount of rent and that constitutes suppression of fact. We find that a consistent judicial stance is being taken in order to prevent the invocation of extended period by default for any non-declaration. A consistent judicial stance is being taken to give a strict and narrow interpretation of the *mens rea* elements. This means the assessee must have actively concealed, misrepresented, or taken affirmative steps to hide facts, rather than just failing to declare something they might have genuinely overlooked or misunderstood. The Hon'ble Supreme Court has repeatedly held that mere negligence, bona fide mistakes, or divergent interpretations of law are insufficient grounds for invoking the extended period. It is for the department to prove a deliberate intent to evade duty. One of the foundational judgments in the series is that of Pushpam Pharmaceuticals Company 1995 (78) E.L.T. 401 (S.C.). It was laid down that "suppression of facts" and "wilful misstatement" demand deliberate intent and positive acts of evasion. It places the burden to prove the satisfaction of these pre-conditions on the Revenue. It is also consistently held that prior knowledge on part of the department, or the department's capacity to acquire such relevant knowledge (e.g., through audits, filed returns, or site visits), effectively negates any allegation of suppression.

19. We find that Show Cause Notice dated 18.09.2008 was issued consequent to an audit. It has been held in many cases that under the circumstances, extended period cannot be invoked. We find that Principal Bench held in the case of Sunshine Steel Industries (2023) 8 Centax 209 (Tri.-Del) held that

20. The Department cannot be permitted to invoke the period of limitation by merely stating that it is a case of self-assessment as even in a case of self-assessment, the Department can always call upon an assessee and seek information. It is under sub-rule (1) of rule 6 of the Central Excise Rules, 2002 (the Rules) that the assessee is expected to self-assess the duty and sub-rule (3) of rule 12 of the Rules provides that the proper officer may, on the basis of information contained in the return filed by the assessee under sub-rule (1), and after such further enquiry as he may consider necessary, scrutinize the correctness of the duty assessed by the assessee. Sub-rule (4) of rule 12 also provides that every assessee shall make available to the proper officer all the documents and records for verification as and when required by such officer. Hence, it was the duty of the proper officer to have scrutinized the correctness of the duty assessed by the assessee and if necessary call for such records and documents from the assessee, but that was not done. It is, therefore, not possible to accept the contention of the learned authorized representative appearing for the Department that the appellant should have filed a proper assessment return under rule 6 of the Rules.

20. In view of the above, we find that Revenue has not made out any case for invocation of extended period. Thus, the second question is answered in the negative in favour of the appellant as far as the Show Cause Notice dated 18.09.2008 is concerned in appeal No. ST/2671/2012. In view of the same, we find that the penalties also can not be sustained. We find that the argument of the

appellant that benefit of Section 80 could have been extended is acceptable. Taking into consideration the facts and circumstances of the case, we are of the view that penalties imposed under Sections 76 and 77 are not warranted and deserve to be set aside in respect of all the appeals.

21. In view of the above, the appeals are partly allowed as follows.

(i). Appeal No. ST/2671/2012 is partly allowed by setting aside the entire demand raised by the Show Cause Notice dated 18.09.2008.

In respect of other Show Cause Notices impugned in the appeal No. ST/2671/2012, demands confirmed are upheld as far as they relate to the rent of the walls used in providing taxable Service.

(ii). In respect of Appeals No. ST/2672/2012, ST/7/2016, ST/8/2016, ST/9/2016, ST/60090/2018 demands confirmed are upheld as far as they relate to the rent of the walls used in providing taxable Service.

(iii). All penalties imposed, in respect of all the appeals are set aside.

(Order pronounced in the open court on 27/05/2026)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)