

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

REGIONAL BENCH – COURT No. I

Service Tax Appeal No. 42065 of 2015

(Arising out of Order-in-Original No. 10/ST/COMMR/2015 dated 29.05.2015 passed by Commissioner of Central Excise, Central Revenue Building, NGO 'A' Colony, Tirunelveli – 627 007)

M/s. Vinoth Shipping Services

No. 1/422, Chinnakannupuram,
Melavittan Road,
Tuticorin – 628 003.

...Appellant

Versus

Commissioner of GST and Central Excise

Tirunelveli Commissionerate,
Central Revenue Building,
NGO 'A' Colony,
Tirunelveli – 627 007.

...Respondent

APPEARANCE:

For the Appellant : Mr. K. Sankaranarayanan, Advocate
For the Respondent : Mr. Sanjay Kakkar, Authorised Representative

CORAM:

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

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

FINAL ORDER No. 40666 / 2026

DATE OF HEARING : 08.04.2026
DATE OF DECISION : 02.06.2026

Per Mr. VASA SESHAGIRI RAO

The present appeal is directed against Order-in-Original No. 10/ST/COMMR/2015 dated 29.05.2015 (hereinafter referred to as the "impugned order") whereby service tax demand amounting to Rs.90,26,819/- together

with applicable interest and penalties under Sections 76, 77 and 78 of the Finance Act, 1994 came to be confirmed against M/s. Vinoth Shipping Services, Tuticorin (hereinafter referred to as the "appellant") under the category "Transport of Goods by Road Service / Goods Transport Agency Service" for the period 2007-08 to 2011-12.

2. The appellant, engaged in steamer agency, port and allied logistics services at Tuticorin Port, was subjected to audit scrutiny wherein the Department noticed that the appellant had arranged transportation of cargo for M/s. Aspinwall & Co. Pvt. Ltd. and paid freight charges without discharging service tax under the reverse charge mechanism applicable to GTA services. Alleging that the appellant was the person liable to pay freight under Rule 2(1)(d)(v) of the Service Tax Rules, 1994, audit objections were raised to which the appellant stated that it acted only as a sub-contractor to M/s. Aspinwall & Co. Pvt. Ltd., that consignment notes were issued by Aspinwall and that service tax on transportation charges had already been paid by Aspinwall. Though the Department had already examined the same arrangement in earlier proceedings initiated vide show cause notice dated 03.12.2009, a fresh Show Cause Notice No.15/COMMR/ST/2012 dated 19.10.2012 was issued

invoking the extended period for the period 2007-08 to 2011-12. The adjudicating authority, by the impugned order, rejected the subcontractor defence, held the appellant liable as a Goods Transport Agency/person liable to pay freight and confirmed the demand with interest and penalties.

3. Aggrieved by the impugned order, the appellant is before this Tribunal.

4.1 The Ld. Advocate Shri K. Sankaranarayan, appearing for the appellant, submitted that the entire demand proceeds on a misconception of the contractual arrangement between the appellant and M/s. Aspinwall & Co. Pvt. Ltd. According to him, the appellant merely acted as a contractor/sub-agent arranging transportation on behalf of Aspinwall, which alone dealt with customers, issued consignment notes, billed transportation charges and discharged service tax on the gross value after availing abatements. It was argued that the appellant neither functioned as an independent Goods Transport Agency nor acted as consignor/consignee under Rule 2(1)(d)(v) of the Service Tax Rules, 1994.

4.2 The Ld. counsel strongly relied upon the appellant's reply dated 19.09.2008 furnished during audit proceedings, wherein the entire modus operandi and subcontracting arrangement with Aspinwall had been disclosed to the Department. It was contended that despite full departmental knowledge from 2008 onwards and earlier proceedings initiated vide show cause notice dated 03.12.2009 concerning the same business arrangement, the impugned show cause notice dated 19.10.2012 wrongly invoked the extended period, contrary to the ratio laid down by the Hon'ble Supreme Court in *Nizam Sugar Factory v. CCE, A.P.*, reported in 2006 (197) E.L.T. 465 (S.C.).

4.3 The Ld. counsel further submitted that the Department failed to verify the records of M/s. Aspinwall & Co. Pvt. Ltd. despite production of undertaking letters confirming that service tax had already been discharged on the transportation component billed to customers. It was argued that confirmation of the impugned demand would therefore result in double taxation. Reliance was placed upon *Evergreen Suppliers v. CCE, Mangalore* reported in 2008 (9) S.T.R. 467 (Tri.-Bang.) and the Tribunal's decision in the appellant's own case reported in 2021 (55) G.S.T.L. 313 (Tri.-Chennai).

4.4 It was additionally contended that the freight amounts represented reimbursable expenditure incurred on behalf of Aspinwall in a pure-agent capacity and were therefore excludible from taxable value under Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006. The appellant also relied upon the decision of the Hon'ble Madras High Court in *Cuddalore Municipality v. Joint Commissioner of GST & Central Excise* reported in 2021 (55) G.S.T.L. 397 (Mad.) to contend that the adjudicating authority wrongly imported the post-01.07.2012 definition of "person" into the pre-negative list regime.

5.1 The Ld. Authorized Representative Shri Sanjay Kakkar for the Revenue supported the impugned order and submitted that the appellant admittedly engaged transporters, paid freight charges and arranged transportation of goods. Therefore, they squarely fall within the ambit of Rule 2(1)(d)(v) read with Notification No.36/2004-ST.

5.2 It is argued that the appellant paid freight to transporters and therefore became the "person liable to pay freight". According to Revenue, once the appellant made freight payment, the liability under reverse charge

automatically attached to them irrespective of the subcontracting arrangement.

5.3 Revenue further submitted that the appellant failed to produce documentary evidence conclusively establishing that Aspinwall had discharged service tax on the exact freight amounts in dispute. The undertaking letters produced by the appellant were stated to be insufficient.

5.4 The Department also contended that the appellant did not disclose GTA transactions in ST-3 returns and did not obtain GTA registration during the relevant period. Hence suppression of facts stood established and extended limitation was rightly invoked.

5.5 The Revenue relied upon CBEC Circular dated 23.08.2007 to contend that sub-contractors are independently liable to service tax and therefore the appellant cannot avoid tax merely because Aspinwall also discharged service tax.

6. We have carefully considered the rival submissions, perused the records of the case, Order-in-

Original, grounds of appeal and the judicial precedents relied upon by both sides.

7. Upon consideration the following questions arise for determination in the present appeal: -

- i. Whether, in the facts and circumstances of the case, the appellant can be treated as an independent provider of taxable GTA service or as the person liable to pay freight under Rule 2(1)(d)(v) of the Service Tax Rules, 1994, despite the admitted contractual arrangement with M/s. Aspinwall & Co. Pvt. Ltd., and whether the impugned demand results in double taxation in view of service tax allegedly discharged by the principal contractor?
- ii. Whether the extended period under the proviso to Section 73(1) of the Finance Act, 1994 is invocable in the facts of the present case and, consequently, whether interest and penalties imposed under Sections 75, 76, 77 and 78 are sustainable?

8. We now proceed to examine the aforesaid issues sequentially as they arise for consideration.

9. The entire case of the Revenue proceeds on the assumption that the appellant was the "person liable to pay freight" and therefore liable to discharge service tax under Rule 2(1)(d)(v) of the Service Tax Rules, 1994 read with Notification No.36/2004-ST dated 31.12.2004. Section 65(50b) of the Finance Act, 1994 defines "Goods Transport Agency" to mean any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called. Section 65(105)(zzp) defines taxable service in relation to transport of goods by road rendered by a Goods Transport Agency. Rule 2(1)(d)(v) fastens liability upon the consignor/consignee or the person liable to pay freight in respect of transportation by road. Thus, issuance of consignment note and identification of the real consignor/consignee assume statutory significance for determining liability under GTA provisions

10. The documentary evidence on record, including the agreement between the appellant and M/s. Aspinwall & Co. Pvt. Ltd., Form 16A certificates, vessel-wise reimbursement statements, vehicle chits, weighbridge slips and freight cash receipts, consistently establishes that the appellant merely arranged vehicles and coordinated cargo movement on behalf of Aspinwall in connection with

import/export consignments handled through Tuticorin Port. The vessel-wise reimbursement documents at pages 52 to 56 of the appeal records further indicate that freight amounts were reimbursed by Aspinwall to the appellant for transportation undertaken in relation to specific vessels and cargo movements, thereby demonstrating that the appellant merely incurred expenditure in a representative capacity on behalf of the principal contractor. The records do not indicate that the appellant independently dealt with customers, issued consignment notes or undertook carriage obligations in its own name. On the contrary, the materials on record consistently establish that Aspinwall remained the principal contractor who received work orders from customers, issued consignment notes, billed transportation charges inclusive of service tax and discharged service tax on the gross amount collected from customers.

11. The statutory requirement relating to issuance of consignment note assumes considerable significance in the present case. Under the scheme of Section 65(50b), issuance of consignment note is an essential attribute of a "Goods Transport Agency". Admittedly, consignment notes were issued only by M/s. Aspinwall & Co. Pvt. Ltd. and not by the appellant. The appellant neither acted as

consignor/consignee nor independently rendered transportation service in its own right. Mere routing of freight payments through the appellant or temporary handling of freight disbursements cannot automatically render the appellant liable under Rule 2(1)(d)(v), particularly when the records establish that the freight element represented reimbursable expenditure incurred on behalf of Aspinwall on pure-agent basis.

12. The adjudicating authority has also placed reliance upon CBEC Circular F.No.354/28/2007-TRU dated 23.08.2007 relating to taxability of subcontractors. In our considered view, the said circular is clearly distinguishable on facts and law. The circular merely clarifies that a subcontractor independently providing a taxable service to the main contractor may also be liable to service tax notwithstanding payment of tax by the principal contractor. However, such clarification proceeds on the premise that the subcontractor himself satisfies all statutory ingredients provision of the taxable service in question.

13. In the present case, the foundational requirement for levy under GTA service itself is absent. Under Section 65(50b) of the Finance Act, 1994, issuance of

consignment note is an essential statutory attribute of a "Goods Transport Agency". Admittedly, the appellant never issued consignment notes on its own name, and the records consistently establish that consignment notes were issued only by M/s. Aspinwall & Co. Pvt. Ltd., which dealt with customers and discharged service tax on the transportation component. The appellant has only acted for Aspinwall and has not provided GTA service to any customer directly. The appellant merely arranged vehicles and incurred freight expenditure on behalf of Aspinwall on reimbursement basis. Consequently, the appellant cannot be artificially treated as a GTA merely by invoking the concept of subcontractor liability under the aforesaid circular, particularly when such interpretation would result in impermissible double taxation of the very same transportation activity.

14. The Show Cause Notice itself records in paragraph 4 that the appellant had produced undertaking letters from M/s. Aspinwall & Co. Pvt. Ltd. stating that service tax had been paid on the transportation charges. However, the notice proceeds to allege that the appellant "failed to produce any evidence to show that service tax on the transportation charges had been paid by M/s. Aspinwall & Co. (P) Ltd., Tuticorin." This allegation, in our considered view, cannot by itself justify confirmation of demand against

the appellant without proper verification of the records of M/s. Aspinwall & Co. Pvt. Ltd. Once the appellant had specifically disclosed the subcontracting arrangement and produced undertaking letters asserting payment of service tax by the principal contractor, the burden shifted upon the Department to verify the records of Aspinwall before proceeding against the appellant. The records further reveal that Aspinwall had specifically informed the appellant that service tax on transportation charges relating to cargo movement from Port to Godown and Godown to Port had been discharged by them since consignment notes for such transactions were issued by Aspinwall itself. In spite of such disclosures, the Department neither conducted effective verification from Aspinwall nor produced any material conclusively disproving the appellant's claim regarding payment of tax by the principal contractor.

15. The appeal records including copies of ST-3 Returns filed by M/s. Aspinwall & Co. Pvt. Ltd., with taxpayer's counterfoil of the tax paid challans, related correspondence, undertaking letters and Form 16A certificates consistently support the appellant's stand that service tax on the transportation component had already been discharged by Aspinwall. Despite repeated disclosures

made by the appellant, the Department failed to verify the records of Aspinwall before confirming the impugned demand.

16. The appellant has relied upon *Evergreen Suppliers v. CCE, Mangalore* reported in *2008 (9) S.T.R. 467 (Tri.-Bang.)*, wherein the Tribunal held that once the assessee had informed the Department that the principal contractor had discharged service tax on the services rendered through the subcontractor, the Department was duty-bound to verify such assertion before issuing demand against the subcontractor. The Tribunal further held that failure of the Department to conduct such verification cannot be used against the assessee and that in a revenue-neutral situation, intention to evade payment of tax cannot ordinarily be alleged. The ratio squarely applies to the present case where the appellant had disclosed the arrangement with M/s. Aspinwall & Co. Pvt. Ltd. and produced undertaking letters confirming payment of service tax by Aspinwall, yet no verification was undertaken by the Department before confirming the impugned demand.

17. Likewise, in the appellant's own case reported in *2021 (55) G.S.T.L. 313 (Tri.-Chennai)*, the Tribunal

examined the same arrangement with M/s. Aspinwall & Co. Ltd. and recorded that Aspinwall had collected the entire consideration from customers and discharged service tax on the gross value, while the appellant functioned only as a sub-contractor. The Tribunal further found absence of wilful suppression or deliberate concealment and consequently set aside the demand raised through invocation of the extended period and penalties. These findings assume considerable significance since the present proceedings also arise from the very same contractual arrangement and factual matrix already examined by the Department in the earlier round of litigation.

18. The principles emerging from *Evergreen Suppliers* and the appellant's own case reported in *2021 (55) G.S.T.L. 313 (Tri.-Chennai)* clearly establish that once the Department was informed about the subcontracting arrangement and discharge of service tax by M/s. Aspinwall & Co. Ltd., it was duty-bound to verify the records of the principal contractor before proceeding against the appellant. The said decisions further show that in interpretational disputes involving subcontractor liability and revenue neutrality, wilful suppression cannot be readily alleged. Significantly, the Tribunal in the appellant's own case had

already rejected invocation of the extended period on the very same factual arrangement.

19. We also find force in the appellant's contention that the adjudicating authority erroneously imported the post-01.07.2012 definition of "person" under Section 65B(37) into the pre-negative list regime. The Hon'ble Madras High Court in *Cuddalore Municipality v. Joint Commissioner of GST & Central Excise* reported in 2021 (55) G.S.T.L. 397 (Mad.) held that prior to 01.07.2012, charging provisions under the Finance Act, 1994 could not be artificially widened by importing meanings from other enactments and that taxing statutes require strict construction. The aforesaid principle squarely applies to the present case.

20. Viewed from any angle, we are unable to sustain the finding that the appellant independently rendered taxable GTA service or became the person liable to pay freight under Rule 2(1)(d)(v) of the Service Tax Rules, 1994. The records overwhelmingly establish that the appellant merely functioned as contractor/sub-agent facilitating transportation on behalf of M/s. Aspinwall & Co. Pvt. Ltd., which alone issued consignment notes, billed customers and discharged

service tax on the transportation component. Confirmation of the impugned demand against the appellant would therefore result in impermissible double taxation of the very same transportation activity and is consequently unsustainable in law and liable to be set aside. Accordingly, the issue is answered in favour of the appellant and against the Revenue.

Invocation of Extended Period and Sustainability of Interest and Penalties

21. The entire demand in the impugned proceedings has been confirmed by invoking the extended period under the proviso to Section 73(1) of the Finance Act, 1994 and by imposing penalties under Sections 76, 77 and 78. Under the said provision, extended limitation can be invoked only in cases involving fraud, collusion, wilful misstatement, suppression of facts or contravention of statutory provisions with intent to evade payment of service tax. The burden therefore squarely rests upon the Department to establish deliberate suppression coupled with intention to evade tax.

22. The records before us completely negate such allegation. The issue first surfaced during audit proceedings in 2008 when objections were raised alleging non-payment of service tax on transportation charges relating to services

rendered to M/s. Aspinwall & Co. Pvt. Ltd. Immediately thereafter, the appellant furnished a detailed reply dated 19.09.2008 explaining that it functioned only as subcontractor to Aspinwall; that consignment notes were issued by Aspinwall; that freight liability was borne by Aspinwall; and that service tax on transportation charges had already been discharged by Aspinwall. Thus, as early as 2008 itself, the Department was placed in possession of the entire factual matrix concerning the appellant's relationship with M/s. Aspinwall & Co. Pvt. Ltd.

23. Subsequently, the Department issued Show Cause Notice No.06/COMMR/ST/2009 dated 03.12.2009 concerning cargo handling/business auxiliary services arising out of the same contractual arrangement between the appellant and Aspinwall. In those proceedings also, the Department specifically examined the appellant's role as subcontractor and the billing arrangement adopted by Aspinwall. The appellant has also relied upon the decision of this Tribunal in their own case reported in *M/s. Vinoth Shipping Services v. Commissioner of Central Excise & Service Tax, Tirunelveli, 2021 (55) G.S.T.L. 313 (Tri.-Chennai)*, arising from the said show cause notice, wherein the Tribunal rejected invocation of the extended period and

penalties after recording that the appellant had throughout maintained that service tax had already been discharged by M/s. Aspinwall & Co. Pvt. Ltd. on the full consideration collected from customers.

24. The aforesaid findings assume considerable significance since the present show cause notice dated 19.10.2012 also arises from the very same contractual arrangement and factual foundation already examined by the Department in the earlier proceedings. In *Nizam Sugar Factory v. CCE, A.P.* reported in 2006 (197) E.L.T. 465 (S.C.), the Hon'ble Supreme Court categorically held that where the Department was already aware of the relevant facts through earlier proceedings, repeated invocation of the extended period on the same factual foundation is legally impermissible. The ratio of the said judgment squarely applies to the present case. Once the Department had already investigated the appellant's relationship with Aspinwall in the earlier proceedings and the Tribunal itself had rejected the allegation of suppression on the same set of facts, invocation of the extended period in the present proceedings becomes wholly unsustainable.

25. The materials on record further establish that the issue regarding liability of subcontractors during the relevant period was highly interpretational and subject matter of conflicting judicial views. The appellant had throughout maintained that they were neither consignor nor consignee and that service tax had already been discharged by Aspinwall. Such stand was never concealed from the Department. Mere non-payment of tax or non-registration cannot automatically amount to suppression unless accompanied by deliberate intent to evade payment of tax, which is conspicuously absent in the present case.

26. Further, the impugned show cause notice came to be issued only on 19.10.2012 for the period commencing from 2007-08. Consequently, major portion of the demand would fall beyond the normal period prescribed under Section 73(1) of the Finance Act, 1994 even independently of the issue relating to suppression.

27. Accordingly, we hold that invocation of the extended period under the proviso to Section 73(1) of the Finance Act, 1994 is legally unsustainable and the demand beyond the normal period is barred by limitation.

28. Once the extended period fails, the consequential liabilities of interest and penalties also cannot survive. Penalty under Section 78 specifically requires fraud, wilful misstatement or suppression with intent to evade payment of tax. We have already held that the Department possessed complete knowledge of the appellant's activities and contractual arrangement from 2008 onwards. Likewise, penalties under Sections 76 and 77 are also unsustainable in the facts of the present case involving a bona fide interpretational dispute concerning liability under GTA reverse charge provisions in a subcontracting arrangement. As regards interest under Section 75, it is merely consequential to the principal demand and cannot independently survive once the demand itself fails on merits and limitation. Accordingly, interest and penalties imposed under Sections 75, 76, 77 and 78 of the Finance Act, 1994 are liable to be set aside.

29. In view of the foregoing findings, we conclude as follows: -

- i. The appellant was not the consignor, consignee or independent person liable to pay freight within the

meaning of Rule 2(1)(d)(v) of the Service Tax Rules, 1994.

- ii. The appellant merely acted as a sub-contractor / intermediary arranging transportation on behalf of M/s. Aspinwall & Co. Pvt. Ltd., who was the principal service provider dealing with end customers.
- iii. The records establish that M/s. Aspinwall & Co. Pvt. Ltd. had discharged service tax on the transportation component billed to customers and therefore the impugned demand results in impermissible double taxation.
- iv. The Department was fully aware of the nature of transactions through audit proceedings and earlier show cause proceedings commencing from 2008 onwards. Hence, in terms of the ratio laid down by the Hon'ble Supreme Court in Nizam Sugar Factory, (Supra) invocation of the extended period under proviso to Section 73(1) is unsustainable.
- v. Consequently, the demand for the extended period is barred by limitation.
- vi. Interest and penalties imposed under Sections 75, 76, 77 and 78 are unsustainable and liable to be set aside, which we hereby do.

30. Accordingly, the impugned Order-in-Original No.10/ST/COMMR/2015 dated 29.05.2015 is set aside and the appeal is allowed with consequential reliefs, if any, in accordance with law.

(Order pronounced in open court on 02.06.2026)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

MK

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)