

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

REGIONAL BENCH – COURT No. I

Service Tax Appeal No. 41995 of 2015

(Arising out of Order-in-Original No. 01/ST/COMMR/2015 dated 29.05.2015 passed by Commissioner of Central Excise, Central Revenue Buildings, NGO-'A' Colony, Tirunelveli – 627 007)

M/s. Vedanta Ltd.

(Formerly known as Sesa Sterlite Ltd.),
SIPCOT Industrial Complex,
Madurai Bypass Road,
T.V. Puram,
Tuticorin – 628 002.

...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. Ramnath Prabhu, Advocate
For the Respondent : Ms. O.M. Reena, Authorised Representative

CORAM:

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No. 40828 / 2026

DATE OF HEARING : 19.03.2026
DATE OF DECISION : 25.06.2026

Per Mr. VASA SESHAGIRI RAO

The present appeal is filed by M/s. Vedanta Ltd., Tuticorin (hereinafter referred to as the "Appellant" for short) arising out of Order-in-Original No. 01/ST/COMMR/2015 dated 29.05.2015 (hereinafter referred to as the "Impugned Order" for short), whereby service tax demand amounting to

Rs. 2,42,70,786/- along with applicable interest and penalties, including penalty under Section 78 of the Finance Act, 1994, was confirmed against the Appellant. The Appellant is engaged in the manufacture of copper cathodes and related products and is also registered with the Service Tax authorities. During the relevant period from 16.05.2008 to 31.08.2009, the Appellant entered into agreements with foreign vessel owners for transportation of coastal goods through voyage charter arrangements. The Department entertained a view that payments made to such foreign vessel owners would fall under the taxable category of "Supply of Tangible Goods for Use Service" under Section 65(105)(zzzzj) of the Finance Act, 1994 and accordingly proposed demand of service tax under the reverse charge mechanism. The show cause notice culminated in the Impugned Order confirming the demand.

2. Aggrieved by the Impugned Order, the Appellant has filed the present Appeal before this Tribunal.

3. The Ld. Advocate Shri Ramnath Prabhu appeared on behalf of the Appellant. The Ld. Authorized Representative Ms. O.M. Reena, appeared for the Revenue.

4. The Learned Counsel for the Appellant submitted that the entire demand is unsustainable as the contracts entered into are voyage charters involving transportation of goods and not supply of vessels. It was submitted that the vessels were never placed at the disposal of the appellant and that no possession or effective control was transferred. The consideration was paid based on freight linked to tonnage of goods transported and not for use of the vessel. Reliance is placed on the decision of the Hon'ble Supreme Court in *Union of India v. Gosalia Shipping Pvt. Ltd., 1978 (5) TMI 1 (SC)*. and the decision of the Tribunal in *Core Minerals v. CST, Chennai*. It was further submitted that the test laid down in *BSNL v. Union of India* is not satisfied as there is no transfer of right to use goods. It was also contended that the Department itself has accepted the classification under transport of coastal goods for the subsequent period and therefore the same activity cannot be taxed under a different category for earlier transactions. On limitation, it is submitted that the issue is interpretational and there is no suppression of facts or intention to evade could be attributed to the appellant.

5. *Per Contra*, the Ld. Authorized Representative Ms. O.M. Reena Revenue supported the findings of the impugned order and further submitted that the contracts are

not mere transportation contracts but involve several elements such as demurrage, dead freight and other obligations indicating that the vessel was made available to the appellant. It was argued that the arrangement falls within the scope of supply of tangible goods service. Further, the Ld. Authorized Representative has relied upon the decision rendered by the Hon'ble Apex Court in *BSNL v. Union of India [2006 (3) TMI 1 - SUPREME COURT]*, to contend that the five fold test detailed therein satisfies the condition for supply of tangible goods for use service in this appeal. It is submitted that there is no transfer of right to use and the vessel is kept at the disposal of the appellant without transferring legal possession and effective control. It was further contended that the appellant failed to declare the transactions in statutory returns and therefore suppression is established, justifying invocation of extended period and imposition of penalties.

6. We have carefully heard the submissions advanced by both sides, examined the appeal records in detail, and considered the statutory provisions and the case laws cited.

7. Upon consideration, the following issues arise for our consideration and determination: -

- i. Whether the activity of chartering vessels under voyage charter agreements entered into by the appellant with foreign vessel owners is classifiable under "Supply of Tangible Goods for Use Service" or whether the same is in the nature of transportation of goods?
- ii. Whether the demand is sustainable on limitation and whether penalties are imposable in the facts and circumstances of the present case?

Issue No. (i): Classification of voyage charter agreements—whether taxable as "Supply of Tangible Goods for Use Service" or as transportation of goods.

8.1 The determination of the present issue requires a comprehensive examination of the statutory provisions, the nature of the contractual arrangements entered into by the appellant, and the applicable judicial precedents. Section 65(105)(zzzzj) of the Finance Act, 1994 defines taxable service as supply of tangible goods for use without transferring right of possession and effective control, whereas Section 65(105)(zzzzl) deals specifically with transportation of goods, including coastal goods, which is defined as goods transported from one port in India to another. The legislative intent, as clarified by the Tax Research Unit vide D.O.F. dated 29.02.2008, is that only those transactions where goods are made available for use by the recipient fall within the scope of "Supply of Tangible

Goods for Use Service". Further, CBEC Instruction dated 09.02.2009 relating to chartering of aircraft clarifies that where the owner retains operational control, particularly when the crew is provided by the owner, effective control is not transferred. Thus, the statutory and administrative framework clearly establishes that the decisive test is whether possession and effective control, coupled with the right to use, are made available to the recipient.

8.2 In the present case, the agreements entered into by the appellant with foreign vessel owners reveal that the arrangements are in the nature of voyage charters, wherein the vessel owner undertakes transportation of specified cargo from one port to another for agreed freight based on quantity of goods transported. The vessels remain under the command, possession and operational control of the owners, who provide the crew and are responsible for navigation, seaworthiness and overall management. The appellant does not acquire any independent right to use, deploy, sub-let or otherwise commercially exploit the vessels. It is also relevant to note that out of 23 charter arrangements, 5 pertain to voyages from foreign ports to India, which are not liable to service tax during the relevant period, while the remaining 18 relate to coastal transportation between Indian ports. The impugned order has failed to segregate these categories and

has mechanically subjected the entire value to tax, which itself vitiates the demand.

8.3 We observe another significant aspect which reinforces the nature of the transaction is the issuance of Bills of Lading and the manner in which consideration payable has been computed. The records indicate that the vessel owners have issued Bills of Lading in respect of the cargo transported, which is a characteristic feature of contracts of carriage of goods. A Bill of Lading serves as a document of title as well as evidence of receipt and undertaking to transport goods and is fundamentally associated with transportation services rather than hiring of vessels. Further, the consideration has been charged in the form of freight, calculated on the basis of quantity of cargo transported, and reflected in freight invoices. There is no indication of any separate charge for use or hire of the vessel as such. These factors clearly establish that the essence of the transaction is transportation of goods and not supply of the vessel for use. The documentation thus supports the conclusion that the appellant has merely availed carriage of goods and has not been provided with any tangible goods for use.

8.4 We find that the Department has sought to characterize the contracts as time charter arrangements based on clauses relating to war risk, exclusive use of the vessel, demurrage, dead freight, piloting expenses, overtime expenses and port expenses. Further, there are restrictions imposed on the vessel owner to not to permit the use of the vessel by any other than the appellant. However, the appellant has rightly contended that such clauses are standard features of maritime contracts and do not alter the essential nature of a voyage charter. The distinction between voyage charter and time charter is well recognized, the former being a contract of carriage where the owner retains control, and the latter involving transfer of operational control to the charterer. A careful examination of the agreements clearly shows that the appellant has no control over navigation or operation of the vessel and that all risks and responsibilities remain with the owner. The Department has proceeded on an erroneous understanding by equating incidental commercial clauses with transfer of control, which is legally impermissible.

8.5 We also find that the Hon'ble Supreme Court in the case of *Union of India v. Gosalia Shipping Pvt. Ltd., 1978 (5) TMI 1 (SC)* has held that a voyage charter is essentially a contract of carriage of goods and not a contract of hire of the

vessel. Further, the Hon'ble Supreme Court in *BSNL v. Union of India* [2006 (3) TMI 1 - SUPREME COURT], has held that transfer of right to use goods requires transfer of possession and effective control for terming it as a deemed sale along with the right to use the goods to the exclusion of the transferor. Whereas in this case, the vessels remained under the control of the foreign vessel owners at all times and were never placed at the disposal of the appellant. Legal possession and effective control always remained with the vessel owners and the contracts entered into were meant to carriage of goods and only freight charges were collected as per the agreed terms from the appellant on the basis of quantity of goods transported. What is envisaged in the contract is provision of transportation service. It is not that if there is no deemed sale, the contract means only supply of vessel. In order to understand, entire contract has to be analyzed and such an analysis would clearly indicate that the service provided is transportation of goods and not a vessel for use. These vessels were never kept at the disposal of the appellant. All the conditions incorporated in the contract are meant only regarding the sharing of the expenditure involved in relation to use of the vessels by the appellant for transportation of goods from one port to the other.

8.6 The appellant has also relied upon the decision of this Tribunal in *Core Minerals v. Commissioner of Service Tax, Chennai 2023 (11) TMI 218 - CESTAT CHENNAI*. In the said case, this Tribunal, after examining the nature of charter agreements, has categorically held that where the contract is for carrying specified goods on a defined voyage for agreed freight, the arrangement is in the nature of a voyage charter and not a contract for supply of the vessel for use. It was observed that in such cases, the vessel owner undertakes the obligation of transportation while retaining possession and operational control over the vessel, and the charterer does not obtain any right to use the vessel independently. The Tribunal further held that such transactions are essentially contracts of carriage of goods and cannot be classified under "Supply of Tangible Goods for Use Service". The said decision, being rendered by a coordinate Bench of this Tribunal on an identical issue, has persuasive value and is squarely applicable to the facts of the present case, in the absence of any distinguishing features brought on record by the Revenue.

8.7 The appellant has also relied upon the decision of the Tribunal in *Greatship (India) Ltd. v. Commissioner, CGST & Central Excise, Mumbai Central*. In the said case, the Tribunal examined the terms of a BARECON 2001 bareboat

charter and applied the settled test of transfer of right to use goods, namely transfer of possession and effective control. It was observed, inter alia, in Paras 10 and 13 of the decision, that where the charterer is placed in possession of the vessel with the right to use and operate the same to the exclusion of the owner, the transaction would amount to transfer of right to use goods and so a deemed sale and would fall outside the scope of "Supply of Tangible Goods for Use Service". The Tribunal further clarified that the taxable entry of "Supply of Tangible Goods for Use Service" is attracted only in cases where goods are supplied for use without transferring the legal right of possession and effective control. In this appeal, we are of the considered view that the vessels were not kept for appellant's use but to transport the goods from one port to other and the consideration payable is to be calculated on the basis of the quantity and weight of the goods transported. The appellant's submission regarding chartering galaxy maritime for carrying minimum 7900 to 8000 MT of Sulphuric Acid at the agreed freight of USD 25 per MT is noted in this regard.

8.8 The reliance placed by the Respondent on the decision in *Caravel Logistics Pvt. Ltd. v. Commissioner of Service Tax, Chennai* 2024 (7) TMI 1582 - CESTAT CHENNAI is distinguishable on facts. The said case pertains to leasing

of containers, where the issue involved was determination of transfer of possession and effective control in the context of container usage. In contrast, the present case concerns with voyage charter of vessels, which is fundamentally a contract of carriage of goods. The vessel is not handed over to the appellant for use; rather, the vessel owner undertakes transportation of goods while retaining complete control over navigation and operations. Therefore, the factual matrix in the present case is materially different, and the ratio of the said decision cannot be directly applied to vessel charter arrangements of the nature involved herein.

8.9 The contention of the Revenue that the complexity of contractual terms converts the transaction into supply of tangible goods is untenable. Charges such as demurrage, dead freight and port expenses are incidental to maritime transport contracts and do not confer any right of exclusive possession or control over the vessel. The consistent conduct of the Department in accepting the same activity as transportation of coastal goods for the subsequent period further renders the present classification inconsistent and unsustainable. It is well settled that the same activity cannot be classified differently in the absence of any change in facts or law.

8.10 In view of the statutory provisions, the Board's clarification and binding judicial precedents as discussed above, it is evident that the essential requirement of making the goods available for use by the recipient is not satisfied. The appellant has merely availed transportation services under voyage charter arrangements, and the vessels have been used by the owners themselves for carrying out such transportation. The Department cannot recharacterize a contract of carriage as a contract for supply of tangible goods. Accordingly, the activity undertaken by the appellant is correctly classifiable as transportation of goods and not as "Supply of Tangible Goods for Use Service", and the demand is so not sustainable.

Issue No. (ii): Sustainability of demand on limitation and applicability of penalties in the facts of the case

9.1 The demand in the present case has been raised by invoking the proviso to Section 73(1) of the Finance Act, 1994, which permits recovery of service tax for an extended period only in cases involving suppression of facts, wilful misstatement or fraud with an intent to evade payment of tax. The burden to establish the existence of such elements squarely lies on the Department.

9.2 The Revenue has contended that the appellant failed to disclose the transactions in statutory returns and

that the same came to light only during investigation. However, the records clearly indicate that the appellant had entered into formal agreements with foreign vessel owners in the normal course of business and that the transactions were duly recorded in the books of accounts. The issue involved is one of classification of service and interpretation of statutory provisions, and the appellant has consistently taken a *bona fide* view that the activity is not taxable under "Supply of Tangible Goods for Use Service".

9.3 It is also pertinent to note, as borne out from the records (Page 78 of the Appeal Paper Book), that the appellant was subjected to repeated audits by both the Office of the Accountant General (CERA) and the departmental Internal Audit (IAD) during the period from 2005 to 2011. Multiple audit exercises conducted by the Accountant General's, CERA formations at Chennai and Madurai, and the Central Excise Commissionerate, Tirunelveli clearly demonstrate that the entire business model and transactions of the appellant were within the knowledge of the Department. The transactions were reflected in statutory records and were available for verification during such audits. In such circumstances, the allegation of suppression or wilful misstatement cannot be sustained.

9.4 It is a settled principle that mere non-payment of tax or adoption of a particular classification does not amount to suppression of facts unless there is deliberate intent to evade payment of tax. In the present case, no such evidence has been brought on record. The Department has not established that the appellant had withheld any material information or made any misstatement with intent to evade tax. On the contrary, the issue being interpretational in nature, invocation of the extended period is not justified.

9.5 The period of demand in the present case is from 16.05.2008 to 31.08.2009, whereas the Show Cause Notice has been issued only on 18.10.2013 invoking the extended period. Since the extended period is not invocable, the demand can be sustained only for the normal period reckoned backwards from the date of issuance of the Show Cause Notice. When so computed, the entire demand falls beyond the normal period and is therefore barred by limitation. Accordingly, the demand is not sustainable either under the extended period or under the normal period.

9.6 In view of the above findings, we hold that the invocation of extended period of limitation is unsustainable and consequently the penalties imposed under Sections 77 and 78 of the Finance Act, 1994 are also not sustainable.

10. In view of the foregoing findings, it is held that the activity of chartering vessels under voyage charter agreements undertaken by the appellant do not fall within the ambit of "Supply of Tangible Goods for Use Service" and is correctly classifiable as transportation of goods and not liable to service tax under the category of "Supply of Tangible Goods for Use Service". The demand of service tax confirmed in the impugned order is unsustainable both on merits and on limitation. It is further held that the extended period of limitation is not invocable in the absence of suppression or wilful misstatement, and consequently the penalties imposed are also liable to be set aside.

11. Accordingly, the impugned Order-in-Original No. 01/ST/COMM/2015 dated 29.05.2015 is set aside and the appeal is allowed with consequential relief, if any, in accordance with law.

(Order pronounced in open court on 25.06.2026)

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

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

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