CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>ALLAHABAD</u>

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70695 of 2017

(Arising out of Order-In-Original No.04-COMMR-ST-NOIDA-2017-18, dated - 27.07.2017 passed by Commissioner, CGST, Noida)

M/s HCL Infosystems Ltd **.....Appellant**
A-11, Sector-3, Noida, Uttar Pradesh 201301

VERSUS

Principal Commissioner, Central Goods & Service Tax, Noida **....Respondent**
C-56/42, Sector 62, Noida

<u>APPEARANCE:</u>

Shri B. L. Narasimhan, Advocate for the Appellant
Shri N. Mohan Krishna, Authorised Representative &
Shri Santosh Kumar Authorised Representative for the Respondent

CORAM: **HON'BLE MR. P. K. CHOUDHARY, MEMBER (JUDICIAL)**
HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.70263/2026

DATE OF HEARING : 09.07.2026
DATE OF DECISION : 10.08.2026

<u>K. ANPAZHAKAN:</u>

M/s HCL Infosystems Ltd., (hereinafter referred to as the 'Appellant') has filed this appeal assailing the Order-In-Original No.04-COMMR-ST-NOIDA-2017-18, dated -27.07.2017 passed by Ld. Commissioner, CGST, Noida.

2. The facts of the case are that the Appellant are engaged in manufacturing of automated data processing machines and are having corporate office at E-4,5,6, Sector – 11, Noida. The Appellant has two manufacturing units, one at Pondicherry and the other at Uttaranchal.

2.1. During the relevant period (i.e., July '10 to June '15), the Appellant was registered with the Department for rendering of taxable services viz. Consulting Engineer service, Management Consultant service, Online Information Data service, Commercial Training & Coaching service, Erection, Commissioning and Installation service, Business Auxiliary service, Maintenance or Repair service, Transportation of Goods by Road service, Renting of Immovable Property service and Information Technology Software service. The Appellant has been regularly paying service tax for the taxable services provided by It and has been filing its ST-3 returns regularly.

2.2. Verification of the accounts of the Appellant was undertaken under Section 14AA of the Central Excise Act, 1944 by the special auditor from 12.3.2012 to 16.3.2012 for the period April 2011 - February 2012. Objections raised by the special auditor were shared with the Appellant by the Superintendent of Central Excise, Range III-E, Puducherry vide Letter dated 28.6.2012. After the audit, the Department sought further details from the Appellant vide its Letter dated 19.10.2012. In response thereto, the Appellant vide its Letter dated 14.11.2012 provided the requisite details as sought by the Department. Thereafter, the Appellant did not hear from the Department on the said audit and objections raised thereunder until October'15. Later, the impugned SCN dated 23.10.2015 was issued on the basis of the special audit conducted way back in 2012, thereby proposing Service Tax demand of Rs. 22,84,80,700 on the following counts:

Sl. No.	**Issue/Nature of service**	**Period involved**	**Service Tax Demand (in Rs.)**
1.	Reimbursement of operating costs of employees by Group companies, under the service category of 'Business Support Services' (in short **'BSS'**)	July '10 to June '12	21,80,617

2.	Print services, under the service category of BSS	July ’10 to June ‘12	1,74,56,830
3.	Reimbursements received from Intel Corporation under ‘Intel Inside’ programme, under the service category of ‘Advertising Agency service’	July ’10 to June ‘15	35,34,408
4.	Supply of courseware material, under the service category of ‘Commercial Coaching & Training services’	July ’10 to June ‘12	1,26,99,502
5.	CSMC services	July ’10 to June ‘15	19,26,09,342
TOTAL DEMAND			22,84,80,700

2.3. The SCN also proposed to impose penalties under Sections 77 and 78 of the Finance Act. The Appellant vide a detailed reply dated 31.3.2017, explained and submitted in detail as to why the demand proposed in the impugned SCN was unsustainable. The Appellant also submitted Additional Submissions dated 18.4.2017.

2.4. On adjudication, the Ld. Commissioner, CGST Commissionerate, Noida, vide Order-in-Original No. 04/Commissioner/Service Tax/NOIDA/2017-18 dated 27.7.2017 has confirmed the demand of service tax along with interest and imposed equivalent penalty upon the Appellant. Aggrieved against the confirmation of the demand of service tax along with interest and penalty, the Appellant has filed this appeal.

2.5. The submissions made by the Appellant are summarized as under:

3.Demand confirmed for the period post 01.07.2012 is not sustainable since the provisions of the negative list regime have not been invoked in the impugned SCN.

3.1. It is submitted that for the period from July 2012 to June 2015, the impugned SCN as well as the impugned Order have confirmed the demand of Service Tax under the different categories of services covered under Section 65(105) of the Finance Act. The appellant argued that confirmation of tax demand basis a non-existent provision after advent of negative list w.e.f. 1.7.2012 is not sustainable and liable to be set aside in light of the following decisions:

- *Commissioner of Central Tax Goods and Service Tax, Delhi East v. Sanjay Electricals (vice-versa), Final Order No. 50105-50108/2024 dated 18.01.2024*
- *Hindustan Zinc Ltd v. CCE, Udaipur, Final Order dated 19.10.2022 in Appeal No. ST/53536/2015 – CESTAT Delhi*
- *Frisco Foods Private Limited v. Commissioner, Customs, Central Excise and Service Tax, Dehradun, Final Order dated 11.11.2021 in Appeal No. ST/50126/2016 – CESTAT Delhi*

3.2. In view of the aforesaid, it is submitted by them the demand of service tax confirmed for the period from 1.7.2012 to September 2013 invoking a non-existent provision of law is untenable and liable to be set aside; without prejudice to the aforesaid, it is further submitted that even after 1.7.2012 as per the applicable provisions of Section 65B(44) of Finance Act, installation of multi-function printers would still be outside the ambit of 'service' as the said transaction in dispute constitutes 'deemed sale' inasmuch as admittedly, Appellant discharged VAT/CST on receipt of the entire rental on equipments and therefore, there is no service element involved in it at all.

4. Service Tax is not payable on 'reimbursement of operating costs' of employees by Group companies.

4.1. The Appellant submits that in the present case, there are certain employees of the Appellant who also work for the Group companies. It is stated that the Appellant raises debit notes on the Group companies for whom its employees work, and the

Group companies reimburse the 'operation cost' of such employees to the Appellant; that the Ld. Commissioner, vide the impugned Order has confirmed Service Tax demand of Rs. 21,80,617 for the period July '10 to June '12 on such reimbursements under the category of BSS. The Appellant submits that in terms of Section 65(104c) r/w Section 65(105)(zzzq) of the Act, for any activity to be covered under BSS, the following conditions must be satisfied:

- The service recipient must be a business entity and must use the services in relation to business or commerce; and
- The service recipient must have <u>'outsourced'</u> its functions to the service provider

<u>There is no 'outsourcing' of activities in the present case.</u>

4.2. The Appellant also pointed out that in the present case, the Group companies have not 'outsourced' any of their business functions to the Appellant and the same has neither been disputed in the impugned SCN nor in the impugned Order; Rather, the Appellant had excess manpower, which was utilized by performing activities in relation to the business functions of the Group companies. Since there is no 'outsourcing' of activities / business functions involved in the present matter, the Appellant submits that the captioned demand is unsustainable.

<u>Sharing of common expenditure' is not taxable under BSS.</u>

4.3. The Appellant contends that merely recovering expenses / overheads or cost relating to employees performing common activities like HR, Admin., Accounts, Finance etc., cannot be categorised as rendering of 'Business Support Service'; Further, there is neither any allegation in the impugned SCN nor any finding in the impugned Order on this aspect. It is submitted that the activity of mere sharing of expenses between related entities, in the absence of a contractual understanding to provide/receive service, cannot be made taxable under BSS. Reliance in this regard is placed on the following judgments:

- *Gujarat State Fertilizers & Chemicals Ltd. v. CCE, 2016 (45) STR 489 (S.C.)*
- *Rural Electrification Corporation Ltd. v. Commissioner of Service Tax, 2020 (40) GSTL 339 (Tri. – Del.)*
- *Boston Scientific India Pvt. Ltd. v. CCE & GST, Gurugram, Final Order dated 12.11.2025 in Appeal No. ST/60438/2021 – CESTAT Chandigarh*

<u>Without prejudice, Service Tax is not payable on reimbursement of expenses.</u>

4.4. The Appellant submits that the Group companies had merely reimbursed the Appellant for the expenses incurred by the Appellant in relation to the employee costs for the period under dispute. It is submitted herein that no Service Tax is payable on such reimbursement of expenses. Reliance in this regard is placed on the judgment of Hon'ble Delhi High Court in *Intercontinental Consultants & Technocrats (P) Ltd. v. UOI, 2013 (29) STR 9 (Del.)* wherein Rule 5 of the Service Tax Valuation Rules was held to be *ultra-vires* Section 67 of the Finance Act. In view of the above submissions, the appellant argues that the demand confirmed vide the impugned Order on 'reimbursement of employee costs' under the category of BSS, is patently incorrect and thus, legally unsustainable.

<u>5. Service Tax is not payable on the so-called 'Print services' provided by the Appellant.</u>

5.1. The Appellant also entered into agreement for installation of multi-function printers at the premises of its customers for printing and photo-copying of documents of the customers for a specified period, including maintenance and supply of parts thereof. The Appellant charges the customer on the basis of number of prints or copies taken by them at a pre-determined per page price. Pertinently, the Appellant submitted that they were not responsible for providing manpower, paper & power etc. required for the machine and such cost shall be borne by the customer. However, they submit that supply of toner and consumables for the multi-function printer is Appellant's responsibility; the Ld. Commissioner, vide the impugned Order has confirmed Service Tax demand of Rs. 1,74,56,830 for the period July ’10 to June ’12 on the consideration received by the Appellant for the provision of above-mentioned activities, under the category of BSS.

<u>The present transaction is in the nature of a ‘deemed sale’ and thus, no Service Tax is leviable.</u>

5.2. On this issue, it is explained that the Appellant has entered into a contractual arrangement with various entities wherein the multi-function printers installed by the Appellant remain in the possession of the customers for their use throughout the contract period; such a transaction involving transfer of right to use goods would tantamount to ‘deemed sale’ which is beyond the purview of service tax. It is submitted in this context, that Entry 54 of List II of the Seventh Schedule to the Constitution on India empowers State to levy tax on sale and purchase of goods. Further, the meaning of “sale and purchase of goods” as appearing in Entry 54 of List II was extended vide 46th amendment to the Constitution by giving an inclusion definition of the phrase ‘tax on sale or purchase of goods’ under Article 366(29A) of the Constitution of India. In light of the aforesaid 46th Amendment, the Constitution empowered the states to levy VAT/ Sales Tax on transactions in the nature of right to use goods; the term “transfer of right to use goods” even though has not been defined in the Constitution however was interpreted in the judgment of Hon’ble Supreme Court in *BSNL v. Union of India 2006 (2) STR 161 (SC)* wherein five attributes for a transaction to be covered under “transfer of right to use goods” were noted, which are provided below-

a) There must be goods available for delivery;

b) There must be consensus ad idem as to the identity of the goods;

c) The transferee should have a legal right to use the goods-consequently all legal consequences of such use including any permission or licenses required therefor should be available to the transferee;

d) For the period during which the transferee has such legal right, it has to be at the exclusion of the transferor this is the necessary concomitant of the plain language of the statute- -viz. a 'transfer of the right to use' and not merely a license to use the goods;

e) Having transferred the right to use the goods during the period for which it is to be transferred, the owner cannot again transfer the same rights to others.

5.3. In view of the above, it is submitted that the Appellant satisfies all the aforesaid five (5) conditions inasmuch as the goods i.e., printers were delivered and installed at the premises of the customers and the operation of the equipment so deployed was under the complete control and discretion of the customers. Moreover, it is also their contention that once the printers are delivered to the customers and installed at their location, there is no question of the same printers for the same period being used by some other party; that merely because maintenance etc. of the said equipment was to be undertaken by the Appellant, absence of effective control/right to use by the customers cannot be presumed. Reliance in this context is placed on the following judgments:

- *Commissioner of Service Tax Delhi v. Quick Heal Technologies Limited, 2022 (63) G.S.T.L. 385 (SC)*
- *Express Engineers & Spares Pvt. Ltd. v. Commissioner of CGST, Ghaziabad, 2022 (64) G.S.T.L. 112 (Tri. All.)*

- *Quippo Energy Pvt Ltd. v. C.S.T, Final Order No.A/11873-11875/2022 in Service Tax Appeal No. 11566 of 2016, with Service Tax Appeal No. 11162 of 2017, Customs Appeal No. 10643 of 2020*

- *G.S. Lamba & Sons v. State of Andhra Pradesh, 2015 (324) E.L.T. 316 (A.P.)*

- *Rashtriya Chemicals & Fertilisers Ltd. v. Commissioner of Central Excise Service Tax (LTU), Mumbai – Larger Bench, Order No. 4/2024 in Service Tax Appeal No. 86284 of 2015*

5.4. In view of the above submissions, it is their submission that the instant transaction is 'deemed sale' in terms of Article 366(29A) of the Constitution of India and not a service and, therefore, the demand confirmed vide the impugned order is liable to be set aside.

<u>Without prejudice, value of parts sold in the course of provision of service cannot be charged to service tax. Benefit of Notification No. 12/2003-ST dated 20.6.2003 is available to the Appellant.</u>

5.5. The Appellant also submits that Notification No. 12/2003-ST dated 20.6.2003 provides exemption from payment of Service Tax to part of the value equivalent to value of goods and materials sold by the service provider to the service recipient, provided there is documentary proof specifically indicating value of goods; that in the instant case, the Appellant has not only agreed to transfer the possession, but also to transfer the property in spare parts, toner, consumables etc. at the time of putting such goods into the maintenance of multifunction printers. Moreover, it is informed that the Appellant has been regularly discharging VAT on the said spare parts, toner, consumables, etc.,; that the value of goods and materials (spare parts, toner, consumables etc.) supplied by the Appellant is, thus, exempted from payment of Service Tax under Notification

No. 12/2003-ST. Accordingly, the appellant claims that the demand of service tax is unsustainable to this extent.

6. Service Tax is not payable on supply of course material by the Appellant.

6. The Appellant further draws attention to the fact that the Ld. Commissioner, vide the impugned Order has confirmed Service Tax demand of Rs. 1,26,99,502/- for the period July ’10 to June ’12 on the value of course material supplied by the Appellant during the relevant period, on the basis of the patently erroneous assumption that the same was towards the provision of 'Commercial Training or Coaching Service’; on this score it is submitted that the Appellant is not engaged in providing 'Commercial Training or Coaching Service'; Instead, it has engaged independent service providers to impart courses and operate its Career Development Centers. Any student interested in availing services of the CDCs would approach the service provider and enroll with it and pay the fee for such course for receipt of the service; that the transaction is between the student and the service provider and the Appellant is not a party to it. The Appellant submits that it is merely selling the course material to the independent service providers, as is evident from the Agreement dated 1.12.2010 entered with one, Orange Technologies as well as the invoices raised by the Appellant for sale of course materials.

6.1. Without prejudice, they contend that even if it is assumed that the Appellant is engaged in providing 'Commercial Training or Coaching Service', then also the value of goods sold in the course of provision of such provision is liable to be excluded from the value of such services. Reliance in this regard is placed on the following judgments:

- *Cerebral Learning Solutions Pvt Limited v. Commissioner, 2013 (32) STR 379 (Tri-Del). Affirmed by Hon’ble Supreme Court in CCE & ST, Indore v.*

Cerebral Learning Solutions Pvt. Ltd., 2022 (67) GSTL 4 (SC)

- *Lakshya Education Solutions Pvt. Ltd. v. Commissioner (Appeals), Bhopal, Final Order dated 10.11.2022 in Appeal No. ST/50233/2016 – CESTAT New Delhi*
- *Pinnacle v. CCE, Chandigarh, 2011 (24) STR 453 (Tri.-Del.). Affirmed by Hon'ble P&H High Court in CCE v. Pinnacle, 2017 (49) STR 277 (P&H)*

6.2. Accordingly, the Appellant submits that the demand of service tax is unsustainable to this extent and the same is thus, liable to be set aside.

<u>7. Service Tax is not leviable on amounts received from Intel Corporation, USA.</u>

7.1. The Appellant also states that the Ld. Commissioner, vide the impugned Order has confirmed Service Tax demand of Rs. 35,34,408/- for the period July '10 to June '15 on the amounts received from Intel Corporation, USA (in short **'Intel'**) under the 'Intel Inside' programme, on the erroneous assumption that the same qualified as 'Advertising Agency Service'.

<u>Appellant was not engaged in the provision of 'advertising agency services'.</u>

7.2. It has been primarily alleged that the activities undertaken by the Appellant qualify as 'advertising agency services' and thus, by virtue of Section 66F of the Act, the same were liable to be taxed as 'advertising agency services'. The Appellant explained that the term 'Advertising Agency' is not defined under Section 65B of the Act prevailing under the negative list regime; however, as per the definition under Section 65(3) of the Act prevailing under the positive list regime (i.e., up till 30.6.2012), the scope of 'advertising agency' covered the following activities:

- Making of advertisement;
- Preparation of advertisement;
- Display of advertisement; or
- Exhibition of advertisement

7.3. Further, it has also been submitted that the CBIC vide its Circular No. 345/4/97-TRU dated 16.8.1999 (in short **'Circular No. 345/4/97'**) and Trade Notice No. 99/GL-90/CE/PRO/CAL-II/99 dated 16.9.1999 has clarified that if the assessees were also engaged in designing, visualizing and conceptualizing etc. of the advertisements, then only they would be liable to pay service tax; that thus, CBIC has interpreted 'advertising agency service' as something more than mere printing of the advertisement; that in the present case, the Appellant is merely displaying the logo of Intel on the computers manufactured by it. The Appellant further takes the stand that such logos are provided by Intel and the Appellant does not design or make such logos. Therefore, it is submitted that the Appellant is not rendering and is never engaged in conceptualizing, visualizing or designing the advertisement. Thus, it is contended that the activity of mere printing, displaying etc. of the 'Intel' logo would not qualify as 'advertising agency services' and thus, no service tax is leviable on the said transaction.

7.4. Reliance in this context is placed on the following judicial precedents:

- *Zodiac Advertisers v. CCE, Cochin, 2006 (3) STR 538 (Tri. – Bang.) maintained by Hon'ble Supreme Court in Zodiac Advertisers v. CCE, Cochin, 2009 (14) STR 449 (SC)*
- *Advertising Club v. Central Board of Excise & Customs, 2006 (2) STR 457 Mad.*

- *CCE, Hyderabad v. Macro Media Digital Imaging Pvt. Ltd., Final Order dated 14.9.2022 in Appeal No. ST/23542/2014 – CESTAT Hyderabad*
- *William Lea (India) P. Ltd. v. CCE, Chennai – IV, 2019 (25) GSTL 433 (Tri. – Chennai)*
- *Hi-Tech Publicities v. CCE, 2018 (9) GSTL 119 (Tri- Chennai)*
- *CCE, Bhopal v. Shriji Advertising Agency, Final Order dated 18.1.2017 in Appeal No. ST/336/2011 – CESTAT Delhi*
- *Market Chase Advertising v. CCE, 2008 (10) STR 598 (Tri- Chennai)*

7.5. Similarly, the Appellant refers to the decision in the case of *Zee Telefilms Limited v. CCE, 2006 (4) STR 349 (Tri.-Mum.),* wherein the Tribunal held that merely broadcasting or publishing an advertisement without any involvement in its conceptualization or design, does not qualify as a display of advertisement under the definition of 'advertising agency service'.

<u>Without prejudice, the alleged service provided to Intel amounts to 'export of service' and thus, the same is exempt from Service Tax levy.</u>

7.6. That as per Para 4 of the impugned SCN, Intel reimbursed certain portion of cost of advertisement expenditure incurred by the Appellant for carrying the logo 'Intel Inside' in the advertisement campaign carried out by the Appellant. Therefore, the Appellant submits that it not in dispute that the consideration (in convertible foreign exchange as is evident from the Table at Para 4) was received by the Appellant from an entity located abroad. Hence, it is also their contention that such amount was received for the so-called services rendered by the

Appellant, which would fall within the definition of "export of service" as per the *erstwhile* Export of Service Rules, 2005 and therefore, the liability of service tax does not arise on such transaction. Reliance in this context is placed on the judgment of the CESTAT, Delhi in the case of *Paul Merchants Ltd. v. CCE, Chandigarh, 2013 (29) STR 257 (Tri. – Del.),* wherein the Tribunal, Delhi had *inter-alia* held that when the person on whose instructions the services in question have been provided is located abroad, the destination of the service has to be treated abroad.

Submissions for demand confirmed for the period from 1.7.2012 (i.e., post negative list regime).

7.7. W.e.f. 1.7.2012, the *erstwhile* EOS Rules were replaced with the Place of Provision of Services Rules, 2012 (in short **'POPS Rules'**). It is submitted in this connection that in terms of Rule 2(i) read with Rule 3 of the POPS Rules, the place of provision of the services provided by the Appellant were 'outside the taxable territory' and hence, the same were not leviable to Service Tax in terms of Section 66B of the Act. It is also adverted that the impugned SCN did not invoke provisions relating to 'Negative List regime' as amended vide Finance Act, 2012 for demanding service tax for the period from July, 2012 onwards. Therefore, by relying on Section 65B(2) of the Act for confirmation of demand, the appellant makes the argument that the impugned Order has travelled beyond the scope of the impugned SCN. In view of the above, it is submitted by them that the Ld. Commissioner has erred in confirming demand of service tax in complete disregard to the foregoing submissions. Therefore, the demand for service tax is liable to be set aside.

8. The Appellant has correctly discharged Service Tax on 'Comprehensive Service & Maintenance Contracts'.

8.1. The Ld. Commissioner, vide the impugned Order has confirmed Service Tax demand of Rs. 19,26,09,342 for the period July '10 to June '15 on 'CSMC services' on the ground that the Appellant is not entitled for the benefit of abatement under Notification No. 12/2003 – ST dated 20.6.2003 as it has not provided details relating to the value of goods used for providing CSMC services.

<u>The Appellant is entitled to benefit of Notification 12/2003.</u>

8.1. In the present case, the Appellant submits, it is an undisputed fact that the Appellant has provided goods like toner, developer, spares, etc. during provision of maintenance service and consequently, the Appellant has been paying appropriate sales tax on the value of materials and goods involved in the said 'CSMC services' as per the provisions of the respective Sales tax legislations, as is evident from the invoices raised by the Appellant on the customers during the relevant period, coupled with the CA certificate. It is thus, submitted that the Appellant is entitled to the benefit of abetment provided under NN 12/2003 with respect to the goods supplied in the course of provision of 'CSMC services', as it has fulfilled the conditions prescribed in the said Notification as under:

- The Appellant has not availed any Cenvat credit on such spare parts, toner, consumables etc. nor is there any dispute on fulfillment of this condition by the Appellant. In-fact, there is neither any allegation in this regard in the impugned SCN nor any finding in the impugned Order.

- The Appellant has been regularly discharging VAT liability on the spare parts, toner, consumables etc. supplied during the provision of such 'CSMC services'.

8.2. The Appellant thus contends that the value of goods and materials (spare parts, toner, consumables etc.) supplied by the Appellant is ought to be exempt from payment of Service Tax under NN 12/2003 and the demand of Service Tax is liable to be set aside on this ground.

Once VAT has been paid, no Service Tax is leviable on the same transaction.

8.3. It is further submitted that once VAT/Sales Tax has been paid on the said transaction, demand of service tax on the same transaction is untenable. Reliance in this regard is placed on the following judgements:

- *Gainwell Commosales Private Limited (Formerly M/s. TIL Limited) v. Commissioner of Central Excise & Service Tax, Ranchi [Final Order No. 75758-75759/2023 dated 14.06.2023 in Service Tax Appeal No. 76003 of 2016 – CESTAT Kolkata]*

- *Gainwell Commosales Private Limited (Formerly M/s. TIL Limited) v. Commissioner of Central Excise & Service Tax, Ranchi [Final Order No. 76551–76552/2023 dated 23.08.2023 in Service Tax Appeal No. 76174 of 2017 & 75841 of 2022 – CESTAT Kolkata]*

- *Commissioner of C. Ex. & S.T. (LTU), Delhi v. Xerox India Ltd., 2019 (20) G.S.T.L. 96 (Tri. - Chan.)*

- *Voltas Limited v. Commissioner of CGST & CX, Kolkata North Commissionerate, Final Order No. 76643/2023 dated 12.9.2023 in Service Tax Appeal No.182 of 2012-CESTAT Kolkata*

- *Safety Retreading Company (P) Ltd. v. CCE, Salem, 2017 (48) STR 97 (SC)*

- *Wipro GE Medical Systems (P.) Ltd. v. Commissioner of Service Tax, Bangalore, 2009 (14) STR 43 (Tri.-Bang.). Affirmed by Hon'ble Supreme Court in Commissioner v. Wipro GE Medical Systems Pvt. Ltd., 2012 (28) STR J44 (SC)*

- *Imagic Creative Pvt. Ltd. v. Commissioner of Central Taxes, 2008 (9) STR 337 (S.C.)*

- *Commissioner of Service Tax, Mumbai v. UFO Moviez India Ltd., 2022 (61) GSTL 4 (SC)*

<u>Computation of demand in the impugned SCN with regard to the above-mentioned 'CSMC services' is incorrect.</u>

8.4. Without prejudice to the detailed submissions made above, it is further submitted that the captioned demand was wrongly computed in the impugned SCN and the same has been erroneously upheld vide the impugned Order. Hence, in view of the above submissions, the Appellant vehemently contends that the demand for service tax is not sustainable and is thus, liable to be set aside.

9. <u>Extended period of limitation is not invocable; Penalty is not imposable; and Interest is not recoverable.</u>

9.1. Without prejudice to the above, it is submitted that the impugned SCN in the present case was issued on 23.10.2015 for the period from July '10 to June '15 and therefore, the demand raised for the period up till September 2014 is beyond the normal period of limitation and is time-barred. It is also submitted that the entire case of the Department is based on the special audit which was conducted approx. 3.5 years prior to the issuance of the impugned SCN and hence, the relevant documents / information were available with the Department since 2012. Thus, it is their case that the Department had no reason whatsoever for the belated issuance of the impugned SCN after an inordinate gap of almost 3 years for demanding Service Tax from July '10 onwards; that such a lethargic action on the part of the Department is fatal for the impugned order and the same is liable to be set aside on this ground alone. Reliance in this regard is placed on the following judicial precedents:

- *Paharia Construction Co. v. CCE, Final Order dated 8.11.2019 in Appeal No. ST/55818/2014 – CESTAT New Delhi*

- *Gammon India Ltd. v. CCE, Goa, 2002 (146) ELT 173 (Tri. – Mum.). Affirmed by Hon'ble Supreme Court in Commissioner v. Gammon India Ltd., 2002 (146) ELT A313*

- *Boston Scientific India Pvt. Ltd. v. CCE & GST, Gurugram, Final Order dated 12.11.2025 in Appeal No. ST/60438/2021 – CESTAT Chandigarh*

9.2. It is further submitted that the Appellant has not suppressed any facts. It is pleaded that where the assessee believes the correctness of a legal position, and if there is scope for such belief, such as decisions of judicial forums, it cannot be said that there has been a wilful misstatement or suppression of facts, or contravention of the provisions of the Finance Act made thereunder with intent to evade payment of duty. In this regard, the Appellant places reliance on the following case laws in support of its contention that extended period of limitation is not invokable in such a scenario:

- *CCE & Customs v. Reliance Industries Ltd. , 2023 (385) ELT 481 (S.C.)*

- *Mahanagar Telephone Nigam Ltd. v. UOI 2023 (73) GSTL 310 (Del.)*

- *GD Goenka Private Limited v. Commissioner of Central Goods and Services Tax, Delhi South, Final Order No. 51088/ 2023 in Service Tax Appeal No. 51787 of 2022*

- *Hero MotoCorp Limited (Global Parts Centre) v. Commissioner (Appeals), Central Excise and CGST, Jaipur, Final Order No. 55631-55632/ 2024 in Excise Appeal No. 51930 of 2019 and Excise Appeal No. 50688 of 2020*

- *Birla Corporation Limited v. Commissioner of CGST and Central Excise, (2023) 11 Centax 132 (Tri.-Del.). Affirmed by Hon'ble Supreme Court in Commissioner of*

CGST and Central Excise, Jabalpur v. Birla Corporation Ltd., (2023) 11 Centax 133 (S.C.)

9.3. For the above reasons as well as on account of non-sustainability of demand and bona fide belief of the Appellant that it had acted in accordance with the provisions of law, the Appellant contends that the penalty imposed is not sustainable and interest is not recoverable.

10. In view of above detailed submissions, the Ld. Counsel for the Appellant prayed that the impugned Order passed by the Ld. Commissioner is not sustainable in law and is liable to be set aside, and that the appeal filed by the Appellant deserves to be allowed in full, with consequential relief.

11. The Ld. Authorized Representative representing the Revenue in this Appeal made the following submissions justifying the demands confirmed in the impugned order:

(i) 'operating cost from subsidiary companies' received by the Appellant is consideration for provision of BSS as the employees of the Appellant helped the Group companies to run their business efficiently. Hence, the reimbursement of operating costs of employees by Group companies, is liable to service tax under the service category of Business Support Service'.

(ii) The Appellant has provided 'infrastructural support' by providing print services and the same is taxable as BSS. Furthermore, there is no 'deemed sale' of toner, spares etc. as the said goods are consumables and they cease to exist after the completion of services. Thus, the Print services rendered by the Appellant are liable to service tax under the service category of BSS.

(iii) The Appellant has provided 'Commercial Coaching & Training services' by providing courseware material, exclusively prepared for various courses through its training centre. Since the said material was not priced, reliance has been placed on Circular No. 50/8/2003 dated 20.6.2003 to hold that the same cannot be considered as 'standard text-books'. The Appellant has provided Advertisement Agency services to Intel Corporation, USA (hereinafter referred to as **'Intel'**) and receipt of portion of expense under 'Intel Inside Programme' is consideration for the same. Further, the said activity is also covered under the definition of 'service' as provided under the amended Section 65B(44) of the Act, post introduction of negative list. Furthermore, the said activity does not amount to 'export of service' as Intel has presence in various cities in India. Thus, the supply of course material, are liable to service tax under the service category of 'Commercial Coaching & Training services'.

(iv) The Appellant has arbitrarily deducted 80% value of the gross amount as the value of goods such as toner, spares etc. sold during the provision of CSMC services and have paid Service Tax only on 20% value of the total amount and thus, the benefit of Notification No. 12/2003 – ST dated 20.6.2003 is not available to the Appellant, in the absence of failure to furnish sufficient documentary evidence/basis for splitting of the value. Thus, the Comprehensive Service & Maintenance Contract' (**'CSMC services'**) rendered by the Appellant are eligible for the benefit under Notification No. 12/2003 – ST dated

(v) Regarding invocation of extended period of limitation, the Ld. A.R. submits that the Appellant suppressed all material information related to their activities with an intent to evade payment of Service Tax. The transactions only came to the knowledge of the Department at the time of investigation. Hence, extended period of limitation is invocable.

11.1. Thus, the Ld. Authorized Representative of the Revenue justifies the demands confirmed in the impugned order.

12. Heard both sides and perused the records placed before us.

13. Regarding the demand of service tax of Rs.21,80,617/- confirmed in the impugned order on account of reimbursement of operating costs of employees by Group companies, under the service category of 'Business Support Services', we find that certain employees of the Appellant were employed in the Group companies and the Appellant raises debit notes on the Group companies for whom its employees work. Thus, the Group companies reimburse the 'operation cost' of such employees to the Appellant. We find that the Group companies have not 'outsourced' any of their business functions to the Appellant. We find that **Circular No. 334/4/2006-TRU dated 28.2.2006,** has categorically clarified that only 'out sourced services' are brought under the category of 'BSS. Since there is no 'outsourcing' of activities / business functions involved in the present matter, we hold that the captioned demand confirmed under the category of BSS is not sustainable. In support of this view, we rely on the decision of the Hon'ble Supreme Court in the case of *Gujarat State Fertilizers & Chemicals Ltd. v. CCE [2016 (45) STR 489 (S.C.)],* wherein it has been held as under:

> *15.We have considered the aforesaid submissions in the light of the material placed on record. We shall advert to the second aspect namely, as to whether the arrangement between GSFC and GACL amounts to providing any services by GSFC to GACL and 50% incineration expenses incurred would constitute charges for providing such services. There is no dispute about the manner in which HCN is received through pipeline from M/s. Reliance Industries Ltd. by GSFC and GACL and then shared in the ratio of 60 : 40 respectively. GSFC and GACL are public sector undertakings, as already mentioned above. Since HCN is to be received through pipeline, it is abundantly*

clear that in order to save the expenditure, both the parties agreed that there should be a common pipeline. Once HCN is received through the said common pipeline, it comes first to GSFC's premises and from there it is diverted in the ratio of 60 : 40, meaning thereby that GSFC receives 60% of the HCN whereas GACL receives 40% of the supply in accordance with their respective requirement. To enable GACL to receive this HCN through common pipeline, arrangement/agreement was entered into between these two parties. For this purpose, handling facilities were installed in the premises of GSFC. However, fact remains, for which there is no dispute, that for installation of these facilities both the parties had contributed towards the investment. Since the said handling facilities are in the premises of GSFC, incineration also takes place at the said premises. Handling facilities expenditure thereof is shared equally by both the parties. That is clearly provided in the agreement/arrangement that was agreed to between the parties and is reflected in the Minutes dated 6-7-1980. Once these facts are accepted, we find that handling portion and maintenance including incineration facilities is in the nature of joint venture between two of them and the parties have simply agreed to share the expenditure. The payment which is made by GACL to GSFC is the share of GACL which is payable to GSFC. By no stretch of imagination, it can be treated as common 'service' provided by GSFC to GACL for which it is charging GACL.

16.We are, thus, of the opinion that the second ingredient has not been established in the present case and the question of service tax does not arise. In view thereof, it is not necessary to go into the question as to whether receiving of HCN through the said common pipeline in the tank which is setup by the GFSC and GACL amounts to 'storage' or not and we leave the said question open.

13.1. We further observe that no Service Tax is payable on such reimbursement of expenses, as held by the Hon'ble Delhi High Court in the case of *Intercontinental Consultants & Technocrats (P) Ltd. v. Union of India reported in 2013 (29) STR 9 (Del.)* wherein Rule 5 of the Service Tax Valuation Rules was held to be *ultra-vires* Section 67 of the Act. Relevant extracts of the sad judgment are reproduced as under:

> *"11. In the aforesaid backdrop of the basic features of any legislation on tax, we have no hesitation in ruling that Rule 5 (1) which provides for inclusion of the expenditure or costs incurred by the service provider in the course of providing the taxable service in the value for the purpose of charging service tax is ultra vires Section 66 and 67 and travels much beyond the scope of those sections. To that extent it has to be struck down as bad in law. The expenditure or costs incurred by the service provider in the course of providing the taxable service can never be considered as the gross amount charged by the service provider "for such service" provided by him. The illustration 3 given below the Rule amplifies what is meant by sub-rule (1). In the illustration given, the architect who renders the service incurs expenses such as telephone charges, air travel tickets, hotel accommodation, etc. to enable him to effectively perform the services. The illustration, therefore, says that these expenses are to be included in the value of the taxable service. The illustration clearly shows how the boundaries of Section 67 are breached by the Rule. Apart from travelling beyond the scope and mandate of the Section, the Rule may also result in double taxation. If the expenses on air travel tickets are already subject to service tax and is included in the bill, to charge service tax*

> *again on the expense would certainly amount to double taxation. It is true that there can be double taxation, but it is equally true that it should be clearly provided for and intended; at any rate, double taxation cannot be enforced by implication."*

13.2. In view of the above findings, we hold that the demand of service tax of Rs.21,80,617/- confirmed vide the impugned Order on 'reimbursement of employee costs' under the category of 'Business Support Services' is not sustainable and hence we set aside the same.

14. Regarding the Service Tax demand of Rs. 1,74,56,830/- confirmed on the consideration received by the Appellant under the category of BSS, we find that the Appellant has entered into a contractual arrangement with various entities wherein the multi-function printers installed by the Appellant remain in the possession of the customers for their use throughout the contract period. Such a transaction was involving transfer of right to use goods and hence it would amount to 'deemed sale' which is beyond the purview of service tax.

14.1. Further, we find that Notification No. 12/2003-ST dated 20.6.2003 provides exemption from payment of Service Tax to part of the value equivalent to value of goods and materials sold by the service provider to the service recipient, provided there is documentary proof specifically indicating value of goods. In the instant case, it is a fact that the Appellant has not only agreed to transfer the possession, but also to transfer the property in spare parts, toner, consumables etc. at the time of putting such goods into the maintenance of multifunction printers. Moreover, the Appellant has been regularly discharging VAT on the said spare parts, toner, consumables etc. The documents submitted by the Appellant evidence payment of VAT on the material supplied. We observe that the value of goods and materials (spare parts, toner, consumables etc.) supplied by the Appellant is, thus, exempted from payment of Service Tax under Notification No. 12/2003-ST. Thus, we are of the view that the demand of service tax confirmed in the impugned order on this count is not sustainable to this extent.

15. Regarding the Service Tax demand of Rs. 1,26,99,502/- confirmed in the impugned order on the value of course material supplied by the Appellant, we find that the Appellant is not engaged in providing 'Commercial Training or Coaching Service'. Instead, it has engaged independent service providers to impart courses and operate its Career Development Centers (CDCs). Any student interested in availing services of the CDCs would approach the service provider and enroll with it and pay the fee for such course for receipt of the service. The transaction is between the student and the service provider and the Appellant is not a party to it. The Appellant is merely selling the course material to the independent service providers, as is evident from the Agreement dated 1.12.2010 entered with one, Orange Technologies . The invoices raised by the Appellant also supports that the Appellant has only sold the course material. Even if it is assumed that the Appellant is engaged in providing 'Commercial Training or Coaching Service', then also the value of goods sold in the course of provision of such provision is liable to be excluded from the value of such services. This view is supported by the decision of the CESTAT, Principal Bench, New Delhi in the case of *Cerebral Learning Solutions Pvt Limited v. Commissioner [2013 (32) STR 379 (Tri-Del.)],* which stands affirmed by Hon'ble Supreme Court in *CCE & ST, Indore v. Cerebral Learning Solutions Pvt. Ltd. [2022 (67) GSTL 4 (SC)].*

> *"4.The genesis of this avoidable lis could be traced to Circular No. 59/8/2003-S.T., dated 20-6-2003. The relevant legislative provision and the exemption granted vide Notification No. 12/2003-S.T., dated 20-6-2003 admit of no ambiguity. It is the admitted factual scenario that the assessee had provided the taxable service of Commercial Training and Coaching*

qua Section 65(165)(zzc) read with Section 65(26) and (27) of the Act. Section 67 of the Act enjoins that the gross amount charged by the taxable service provider/assessee on the taxable service. Accordingly, the value of the books or course material supplied by the assessees to its students/trainees is required to be included in the value of the taxable service as the gross amount charged by the service provider. The assessee however relied on the Notification dated 20-6-2003, issued by the Central Government in purported exercise of its powers under Section 93(1) of the Act. Under this general exemption notification, the Central Government exempted "so much of the value of all the taxable services, as is equal to the value of goods and material sold by the service provider to the recipient of service, from the Service Tax leviable thereon under Section 66 of the Act" subject to the condition that there is documentary proof specifically indicating the value of the said goods and services and subject to the other eligibility criteria specified in clauses (a) and (b) thereunder. That the assessee had furnished documentary proof indicating a separate value of the course material and text books supplied by it and that the assessee is entitled on this account, exemption under the Notification, is not in dispute. What has triggered Revenue's demand for service tax on the value of the course material and text books, is a Board Circular dated 20-6-2003 which seeks to "clarify" that in case of commercial training and coaching institutes, the exclusion shall apply only to the sale value of standard text books which are priced and that any study material or written text provided by such institute as part of service, which does not satisfy the above criteria will be subjected to Service Tax.

5.Appropos, the Board Circular dated 20-6-2003, Revenue assumes; the adjudicating authority concluded; the appellate Commissioner concerned; and the ld. DR reiterates before us that the exemption granted vide the Notification No. 12/2003-S.T., dated 20-6-2003 is inapplicable where a commercial training and coaching institute sells goods or material as part of its service of Commercial Training and Coaching Service which material does not answer the description of priced standard textbooks.

6.In our considered view, the clarification in the Board Circular dated 20-6-2003 is misconceived, clearly illegal and contrary to the statutory exemption Notification dated 20-6-2003. Where the legislature has spoken or in exercise of its statutory power exemption is granted by the Central Government under Section 93 of the Act, the CBEC has no manner of power, authority or jurisdiction to deflect the course of an enactment or the exemption granted. Grant of exemption from the liability to tax is a power exclusively authorised to the Central Government under Section 93 of the Act. This statutory provision accommodates no participatory role to the Board. In seeking to engraft restrictions on the generality and plenitude of the exemption granted by the Central Government, the CBEC transgressed into the domain of the Central Government under Section 93 of the Act, a course of action clearly prohibited. On the above analysis, that part of the clarification of the CBEC which engrafts a condition that the exemption notification is applicable only where the value of the course material (sold by a commercial or training institute) answers the description of standard text books which are priced, is illegal, unauthorised and of no effect. No notice or cognition can be taken by any authority or such unauthorised exertions by the CBEC.

If this illegal and unauthorised condition, imposed on the generality of exemption granted by the Central Government vide Notification No. 12/2003-S.T., dated 20-6-2003 is ignored, as it must, the assessee/appellant is clearly entitles to the benefit of the exemption.

7.Ld. C.A. for the assessee has relied upon the decision of this Tribunal in Chate Coaching Classes Pvt. Ltd. v. CCE, Aurangabad reported in 2012-TIOL-714-CESTAT-MUM = 2013 (29) S.T.R. 138 (Tri-Mum.) and which in turn rely on the earlier decision of this Tribunal in Pinnacle v. CCE, Chandigarh reported in 2011 (24) S.T.R. 453 (Tri.-Del.) to support its challenge to the concurrent orders of the primary and appellate authorities. These decisions are clearly in favour of the assessee and our analysis of the relevant provisions of the Act and the exemption Notification No. 12/2003-S.T., dated 20-6-2003, is fortified by these decisions.

8.Ld. DR would however persuade us to hold in favour of Revenue by relying upon the decision of this Tribunal in Sayaji Hotels Ltd. v. CCE, Indore reported in 2011 (24) S.T.R. 177 (Tri.-Del.) wherein the core issue was whether the exemption Notification No. 12/2003-S.T., dated 20-6-2003 is applicable to a deemed sale of goods, as in a transaction involving a composite service of mandap keeper/catering service which involves supply of food and beverages as well. This Tribunal in the distinct factual matrix of that case held that the word "sale" in the exemption Notification No. 12/2003-S.T., dated 20-6-2003 is to be limited to a distinct sale of goods, within the meaning of the expression "sale" as defined in Section 2(h) of the Central Excise Act, 1944 and that the benefit of exemption under the said Notification cannot be extended to a transaction which involves a works contract not involving sale of goods *primarily. This decision is of no assistance to Revenue. The transaction in the appeal before us is a clear transaction of sale of study material by the assessee - appellant to its coachees/trainees. Its a distinct transaction for which "as concurrently found by the primary and appellate authority, separate value is receipted, documented and recorded". In any event, the exemption notification engrafts no restrictive condition other than those set out therein which are satisfied in the present case. The restrictive interpretation of the Notification by the Board vide its clarificatory Circular No. 59/8/2003-S.T., dated 20-6-2003, is as earlier stated by us, unlawful and of no legal consequence."*

15.1. Thus, by relying on the decision of the Hon'ble Apex Court cited supra, we hold that no service tax is payable on the value of course material supplied by the Appellant under the category of 'Commercial Training or Coaching Service'. Thus, we set aside the demand confirmed in the impugned order on this count.

16. It is further observed that Service Tax of Rs. 35,34,408/- has been confirmed in the impugned order on the amounts received from M/s. Intel Corporation, USA under the category of 'Advertising Agency Service', on the allegation that the activities undertaken by the Appellant qualify as 'advertising agency services' and thus, by virtue of Section 66F of the Act, the same were liable to be taxed as 'advertising agency services'. In this regard, we find that the term 'Advertising Agency' is not defined under Section 65B of the Act prevailing under the negative list regime. However, as per the definition under Section 65(3) of the Act prevailing under the positive list regime (i.e., up till 30.6.2012), the scope of 'advertising agency' covered the following activities:

- Making of advertisement;
- Preparation of advertisement;

- Display of advertisement; or
- Exhibition of advertisement

16.1. Further, CBIC vide its Circular No. 345/4/97-TRU dated 16.8.1999 (in short **'Circular No. 345/4/97'**) and Trade Notice No. 99/GL-90/CE/PRO/CAL-II/99 dated 16.9.1999 has clarified that if the assessees were also engaged in designing, visualizing and conceptualizing etc. of the advertisements, then only they would be liable to pay service tax. Thus, CBIC has interpreted 'advertising agency service' as something more than mere printing of the advertisement. In the present case, the find that the Appellant is merely displaying the logo of Intel on the computers manufactured by it. Further, such logos are provided by Intel and the Appellant does not design or make such logos. It is evident that the Appellant has not rendered any service in relation to conceptualizing, visualizing or designing the advertisement. Thus, we hold that the activity of mere printing, displaying etc. of the 'Intel' logo would not qualify as 'advertising agency services' and thus, no service tax is leviable on the said transaction. In support of this view, we rely on the following judicial precedents:

- ***Zodiac Advertisers v. CCE, Cochin, 2006 (3) STR 538 (Tri. – Bang.)*** *maintained by Hon'ble Supreme Court in* ***Zodiac Advertisers v. CCE, Cochin, 2009 (14) STR 449 (SC)***
- ***Advertising Club v. Central Board of Excise & Customs, 2006 (2) STR 457 Mad.***
- ***CCE, Hyderabad v. Macro Media Digital Imaging Pvt. Ltd., Final Order dated 14.9.2022 in Appeal No. ST/23542/2014 – CESTAT Hyderabad***
- ***William Lea (India) P. Ltd. v. CCE, Chennai – IV, 2019 (25) GSTL 433 (Tri. – Chennai)***

- ***Hi-Tech Publicities v. CCE, 2018 (9) GSTL 119 (Tri-Chennai)***
- ***CCE, Bhopal v. Shriji Advertising Agency, Final Order dated 18.1.2017 in Appeal No. ST/336/2011 – CESTAT Delhi***
- ***Market Chase Advertising v. CCE, 2008 (10) STR 598 (Tri- Chennai)***

16.2. Thus, by following the judicial pronouncements cited supra, we hold that no service tax is payable by the Appellant on this score and hence, we set aside the demand of service tax confirmed in the impugned order on this count.

17. The next issue to be examined relates to the Service Tax demand of Rs. 19,26,09,342/- which has been confirmed on 'CSMC services' on the ground that the Appellant is not entitled for the benefit of abatement under Notification No. 12/2003 – ST dated 20.6.2003 as the Appellant has not provided details relating to the value of goods used for providing CSMC services. In this regard, we find that it is an undisputed fact that the Appellant has provided goods like toner, developer, spares, etc. during provision of maintenance service. Consequently, the Appellant has been paying appropriate sales tax/VAT on the value of materials and goods involved in the said 'CSMC services' as per the provisions of the respective Sales tax legislations, as is evident from the invoices raised by the Appellant on the customers during the relevant period, coupled with the CA certificate submitted by the Appellant.We further find that the Appellant has not availed any Cenvat credit on such spare parts, toner, consumables etc. nor is there any dispute on fulfillment of this condition by the Appellant. In-fact, there is neither any allegation in this regard in the impugned SCN nor any finding in the impugned Order. We find that the Appellant has been regularly discharging VAT liability on the spare parts, toner, consumables etc. supplied during the provision of such 'CSMC services'. Thus, we find that the Appellant has fulfilled all the

conditions prescribed in the said Notification 12/2003 with respect to the goods supplied in the course of provision of 'CSMC services'. Thus, we hold that the Appellant is entitled to avail the benefit of abatement under Notification No. 12/2003 – ST dated 20.6.2003. In this connection, it would be pertinent to note that once VAT/Sales Tax has been paid on the said transaction, then the demand of service tax on the same transaction is untenable. This view has been held by the Hon'ble Supreme Court in the case of *Safety Retreading Company (P) Ltd. v. CCE, Salem [2017 (48) STR 97 (SC)].* The relevant part of the said decision is reproduced below for ready reference:

> *"10. The exigibility of the component of the gross turnover of the assessee to service tax in respect of which the assessee had paid taxes under the local Act whereunder it was registered as a Works Contractor, would no longer be in doubt in view of the clear provisions of Section 67 of the Finance Act, 1994, as amended, which deals with the valuation of taxable services for charging service tax and specifically excludes the costs of parts or other material, if any, sold (deemed sale) to the customer while providing maintenance or repair service. This, in fact, is what is provided by the Notification dated 20th June, 2003 and CBEC Circular dated 7th April, 2004, extracted above, subject, however, to the condition that adequate and satisfactory proof in this regard is forthcoming from the assessee. On the very face of the language used in Section 67 of the Finance Act, 1994 we cannot subscribe to the view held by the Majority in the Appellate Tribunal that in a contract of the kind under consideration there is no sale or deemed sale of the parts or other materials used in the execution of the contract of repairs and maintenance. The finding of the Appellate Tribunal that it is the entire of the gross value of the service rendered that is liable to service tax, in our considered view, does not lay down the correct*

proposition of law which, according to us, is that an assessee is liable to pay tax only on the service component which under the State Act has been quantified at 30%.

11. An argument has been advanced by Ms. Pinky Anand, learned Additional Solicitor General that there is no evidence forthcoming from the side of the assessee that the value of the goods or the parts used in the contract and sold to the customer amounts to seventy per cent (70%) of the value of the service rendered which is the taxable component under the State Act. The aforesaid argument overlooks certain basic features of the case, namely, the undisputed assessment of the assessee under the local Act; the case projected by the Department itself in the show cause notice; and thirdly the affidavit filed before this Court by one S. Subramanian, Commissioner of Central Excise, Salem.

12. No dispute has been raised with regard to the assessment of the appellant on its turnover under the local/State Act, insofar as payment of Value Added Tax on that component (70%) is concerned. A reading of the show cause notice dated 24th January, 2008 would go to show that the entire thrust of the Department's case is the alleged liability of the appellant-assessee to pay service tax on the gross value. In the aforesaid show cause notice, the details of the value of the goods, raw materials, parts, etc. and the value of the services rendered have been mentioned and service tax has been sought to be levied at the prescribed rate of ten per cent (10%) on the differential amount. It is now stated before us that the aforesaid figures have been furnished by the assessee himself and, therefore, must be understood not to be authentic. This, indeed, is strange. No dispute has been raised with regard to the correctness of the said figures furnished by the assessee in the show cause notice *issued to justify the stand now taken before this Court; at no point of time such a plea had been advanced.*

13.Besides the above, the affidavit of the learned Commissioner, referred to above, proceeds on the basis that the appellant assessee is also liable to pay service tax on the remaining seventy per cent (70%) towards material costs in addition to the 30% of the retreading charges. This is clear from the following averments made in the said affidavit of the learned Commissioner :

"The relevant bills showed that the Appellant had paid service tax only on the labour component after deducting 70% towards material cost on the gross tyre Retreading charges billed and received for the period from 16-6-2005. In short, they have paid service tax only on the 30% of the tyre Retreading charges received from the customers, by conveniently omitting 70% of the consideration received towards Retreading charges to avoid tax burden.

The verification of invoices of the Appellant for the period from Jan.-2007 to March-2007, the officers noticed that the Appellant have shown material cost, patch cost and misc. charges i.e. Labour charges separately in their invoices. However, on the follow-up action the customers of the Appellant revealed that they have neither purchased nor received raw materials intended for Retreading and they had paid only the Retreading charges for carrying out the Retreading activity."

The invoices which the appellant assessee has also brought on record by way of illustration show the break up of the gross value received. There is again no contest to the same. Leaving aside the question that the case now projected, with regard to lack of proof of incurring of expenses on goods and materials which has been transferred to the recipient of the service provided, *appears to be an afterthought, even on examination of the same on merits we have found it to be wholly unsustainable."*

17.1. The same view has also been expressed in the following decisions:

- ***Gainwell Commosales Private Limited (Formerly M/s. TIL Limited) v. Commissioner of Central Excise & Service Tax, Ranchi, Final Order No. 75758-75759/2023 dated 14.6.2023 in Service Tax Appeal No. 76003 of 2016 – CESTAT Kolkata***

- ***Gainwell Commosales Private Limited (Formerly M/s. TIL Limited) v. Commissioner of Central Excise & Service Tax, Ranchi, Final Order No. 76551 – 76552/2023 dated 23.8.2023 in Service Tax Appeal No. 76174 of 2017 & 75841 of 2022 – CESTAT Kolkata***

- ***Commissioner of C. Ex. & S.T. (LTU), Delhi v. Xerox India Ltd., 2019 (20) G.S.T.L. 96 (Tri. - Chan.)***

- ***Voltas Limited v. Commissioner of CGST & CX, Kolkata North Commissionerate, Final Order No. 76643/2023 dated 12.9.2023 in Service Tax Appeal No.182 of 2012-CESTAT Kolkata***

- ***Wipro GE Medical Systems (P.) Ltd. v. Commissioner of Service Tax, Bangalore, 2009 (14) STR 43 (Tri.-Bang.).*** *Affirmed by Hon'ble Supreme Court in* ***Commissioner v. Wipro GE Medical Systems Pvt. Ltd., 2012 (28) STR J44 (SC)***

- ***Imagic Creative Pvt. Ltd. v. Commissioner of Central Taxes, 2008 (9) STR 337 (S.C.)***

- ***Commissioner of Service Tax, Mumbai v. UFO Moviez India Ltd., 2022 (61) GSTL 4 (SC)***

17.2. Thus, by relying on the decisions cited supra, we hold that the Appellant is entitled to avail the benefit of abatement under Notification No. 12/2003 – ST dated 20.6.2003, as they have paid VAT/Sales on the said transaction. Accordingly, we hold that the demand of service tax confirmed in the impugned order is not legally sustainable and resultantly, we set aside the same.

18. The Appellant has contested the demand on the ground of limitation also. We find that the impugned SCN in the present case was issued on 23.10.2015 for the period from July '10 to June '15. Therefore, it is their case that the demand which has been raised for the period up till September 2014 is beyond the normal period of limitation and is time-barred. We find that the entire case of the Department is based on the special audit which was conducted approx. 3.5 years prior to the issuance of the impugned SCN and hence, the relevant documents / information were available with the Department since 2012. Thus, we concur with the submissions of the appellant the Department had no reason whatsoever for the belated issuance of the impugned SCN after an inordinate gap of almost 3 years for demanding Service Tax from July '10 onwards. Such a lethargic action on the part of the Department is fatal for the impugned order and the same is liable to be set aside on this ground alone. Reliance in this regard is placed on the following judicial precedents:

- ***Paharia Construction Co. v. CCE, Final Order dated 8.11.2019 in Appeal No. ST/55818/2014 – CESTAT New Delhi***
- ***Gammon India Ltd. v. CCE, Goa, 2002 (146) ELT 173 (Tri. – Mum.)****. Affirmed by Hon'ble Supreme Court in* ***Commissioner v. Gammon India Ltd., 2002 (146) ELT A313***
- ***Boston Scientific India Pvt. Ltd. v. CCE & GST, Gurugram, Final Order dated 12.11.2025 in Appeal No. ST/60438/2021 – CESTAT Chandigarh***

18.1. Therefore, we have no hesitation to hold that the demand raised and confirmed in this case up to September 2014 is barred by limitation and hence the said demand is liable to be set aside on this ground also.

19. We further take note of the Appellant's submission that the demand confirmed for the period post 01.07.2012 is not sustainable since the provisions of the negative list regime have not been invoked in the impugned SCN. In this regard, we find that the demands in the impugned order have been confirmed for the period from July 2012 to June 2015. The impugned SCN as well as the impugned Order have confirmed the demand of Service Tax under the different categories of services covered under Section 65(105) of the Finance Act. We are of the considered view that the service tax demand raised and confirmed on the basis a non-existent provision is not sustainable after the advent of negative list w.e.f. 1.7.2012 and the said demand is liable to be set aside in light of the following decisions:

- ***Commissioner of Central Tax Goods and Service Tax, Delhi East v. Sanjay Electricals (vice-versa), Final Order No. 50105-50108/2024 dated 18.01.2024***

- ***Hindustan Zinc Ltd v. CCE, Udaipur, Final Order dated 19.10.2022 in Appeal No. ST/53536/2015 – CESTAT Delhi***

- ***Frisco Foods Private Limited v. Commissioner, Customs, Central Excise and Service Tax, Dehradun, Final Order dated 11.11.2021 in Appeal No. ST/50126/2016 – CESTAT Delhi***

19.1. Thus, by following the decisions cited supra, we hold that the demand of service tax confirmed for the period from 1.7.2012 to September 2013, by invoking a non-existent provision of law is untenable and the same liable to be set aside on this ground itself.

20. In view of the above findings, we hold that the demands of service tax confirmed in the impugned order as mentioned in paragraph 2.2 supra is not sustainable and hence we set aside the same. As the demands of Service Tax itself have not sustained, the question of demanding interest or imposing penalty does not arise and thus, the same also stand set aside.

21. In the result, we set aside the impugned order and allow the appeal filed by the appellant with consequential relief, if any, as per law.

(Pronounced in open court on 10.08.2026.)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Nihal