

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH-COURT NO. 3

Service Tax Appeal No. 12920 of 2013 – DB

(Arising out of OIO-STC/17-19/COMMR/AHD/2013 dated 31/03/2013 passed by Commissioner of Service Tax-SERVICE TAX - AHMEDABAD)

Star Freight Pvt Ltd

Ambica Chambers, Behind Old High Court,
Navrangpura,
Ahmedabad, Gujarat

.....Appellant

VERSUS

C.S.T.-Service Tax - Ahmedabad

7 Th Floor, Central Excise Bhawan, Nr. Polytechnic
Central Excise Bhavan, Ambawadi,
Ahmedabad, Gujarat- 380015

.....Respondent

WITH

Service Tax Appeal No. 13217 of 2013 - DB

(Arising out of OIO-STC/17-19/COMMR/AHD/2013 dated 31/03/2013 passed Commissioner of Service Tax-SERVICE TAX - AHMEDABAD)

C.CGST & CEx-Gandhinagar

Commissioner, Central GST & Central Excise,
Custom House, Navrangpura
Ahmedabad, Gujarat- 380009

.....Appellant

VERSUS

Star Freight Pvt Ltd

Ambica Chambers, Behind Old High Court,
Navrangpura,
Ahmedabad, Gujarat

.....Respondent

APPEARANCE:

Shri Nilesh V Suchak, Chartered Accountant for the Appellant - Assessee

Shri G. Kirupanandan, Assistant Commissioner (AR) for the Respondent-Revenue

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR**

Final Order No. 11701-11702/2023

DATE OF HEARING: 29.05.2023

DATE OF DECISION: 17.08.2023

RAMESH NAIR

Both sides are in appeal against the impugned Order –In-Original No.
STC/17-19/COMMR/AHD/2013 dated 31.03.2013. As both the appeals are

arising out of a common order, therefore both the appeals are taken up for disposal by a common order.

1.2 The brief facts of the case are that M/s. Star Freight Pvt. Ltd., the service provider is an IATA Agent and International Freight Forwarders working on commission/ brokerage basis. On scrutiny of documents recovered during the course of a search conducted at the premises of Mr. Jasvant B Shah, CHA, it was noticed by the department that service providers were collecting certain charges on which they were not paying service tax. On the basis of scrutiny of documents and investigation, the service provider have provided the ledger heads/activities which have not been considered as taxable services by them. Statements of Mr. Samir J Shah, Director was also recorded. It appeared that said service provider while performing the various activities supported the business of exporters, importers, CHAs etc. and had also earned commission or brokerage for booking space in aircrafts and shipping lines for their customers. It thus appeared that the said service provider had provided "Business Auxiliary Service" as defined in Section 65(19) of the Finance Act, 1994 and had provided 'support services of business or commerce' as defined in section 65(104c) of the Finance Act, 1994, which were taxable under the respective sub-sections of Section 65 of Finance Act, 1994. Regarding the valuation of taxable services, the provisions of Service Tax (Determination of Value) Rules, 2006 (Valuation Rules) were invoked by the department and all the expenditure or costs treated as consideration for the taxable service provided was included in the value for the purpose of charging service tax. As a result, Service provider was issued show cause notice dated 21.04.2011 proposing service tax demand of Rs. 4,55,46,095/- for the period October 2005 to 2009-10. Two more notices dated 21.10.2011 and 22.10.2012 were also issued to the service provider, one for the period 2010-11 demanding

service tax of Rs. 1,19,23,240/- and another for the period 2011-12 demanding service tax of Rs. 1,12,45,570/-. All the three show cause notices were adjudicated by the Learned Commissioner vide impugned order whereby she dropped the demand of service tax of Rs. 6,52,58,141/-, however, upheld the service tax demand of Rs. 34,56,764. Hence, both Revenue and the assessee are in appeal.

2. Learned Chartered Accountant Shri Nilesh Suchak for the appellant M/s Star Freight Pvt. Ltd. submits that the demand of Service tax of Rs. 34,56,764/- under the category of "Business Auxiliary Service" (BAS) and "Support Service of Business or Commerce" (BSS) confirmed on incentive charges, Ocean Freight, Air Freight, amount paid to Shipping Line, Customs Clearance Charges, Fumigation charges, Insurance Charges, Palletization Charges, Statutory Charges, Transportation, documentation charges , administrative charges. The impugned order has considered the profit of non-taxable activity as value of service based on whims and fancy without stating under which provisions of Finance Act, 1994 such profit can be taxed.

2.1 He further submits that incentive charges were received by the appellant for achieving business target and for profit share from overseas agent for handling of shipment. This activity is not taxable under business auxiliary Services He placed reliance on the following judgments:

- Ruth Shipping Agencies Pvt. Ltd. Vs. CCE -2010(19) STR (39)
- P. Gautam Vs. CST -2011(24)STR 447 (Tri. -Ahmd.)
- Euro RSCG Advertising Ltd. Vs. Commissioner – 2007(7)STR 277 (Tribunal)
- Kerala Publicity Bureau Vs Commissioner – 2008(9)STR 101(Tribunal)

2.2 He also submits that impugned order has confirmed the demand of Service tax without specifying the sub-clause of Section 65(19) under which these incentive are taxable. Even the SCN did not mention any specific sub-clause and hence the demand of services tax is not sustainable on the basis of such vague SCN. He placed reliance on following decisions:

- United Telecom Ltd. Vs. CCE – 2011(21)STR 234 (Tri. Bang,)
- Seagull Freight Systems – 2012(27)STR 530 (Comm, Apps)

2.3 He also submits that on other charges demand are confirmed under the category of BSS on the profit element of these activities which are not taxable under the category of BSS. A careful study of above stated activities reveals that recovering charges such as ocean freight or air freight or amount paid to shipping line or for customs clearing charges or fumigation or for insurance or palletization or statutory charges or transportation or documentation charges or administration charges is not an activity covered under in section 65 (104c) of the Finance Act, 1994 that defines 'support service of business or commerce'. Hence it is quite evident that no service tax is payable by the appellant on activities that are not taxable service in terms of provisions of Section 65(105) (zzzq) of the Finance Act, 1994 as presumed in the impugned order. The Ld. Commissioner found that the expression "service provided in relation to business or commerce" is all encompassing and includes every service provided in relations to business or commerce. However if this view of the Learned Commissioner is accepted there would not be any need for most of other categories of services which are all in relation to business. However from the definition of BSS it is clear that only services in relation to business or commerce is covered in any 11 activities are specified in Section 65(104c) of the Finance Act, 1994, the same would be covered within the scope of 'Support Services of Business or

Commerce' (BSS) and not all the services in relation to business or commerce.

2.4 He further submits that the SCN or impugned order has not specified any specific clause of BSS under which appellant's activity fall. Hence demand is not sustainable. He placed reliance on the following judgments:

- United Telecom Ltd. Vs. CCE – 2011(21)STR 234 (Tri. Bang.)
- Balaji Enterprises Vs. CCE -2020(33)GSTL 97 (Tri. Del.)

2.5 He also submits that service tax is not payable on 'ocean freight' or 'air freight'. Profit or loss incurred in respect of activities which are not related to taxable activities should not be the concern of the department for the purpose of collecting service tax. He placed reliance on following judgments:

- (i) Bax Global India Ltd. Vs. Commissioner – 2008(9)STR 412 (Tri. Bang.)
- (ii) Lee & Muir Head Pvt. Ltd. Vs. CST – 2009(14)STR 348 (Tri. Bang)
- (iii) Gudwin Logistics Vs. CCE Vadodara -2010(18)STR 348 (Tri. Ahmd)
- (iv) Phoenix International Freight Services Pvt. Ltd. Vs. CST - 2017(47)STR 129 (Tri. –Mum)
- (v) Marinetrans India Pvt. Ltd. Vs. CST -2020(33)GSTL 241 (Tri. Hyd.)
- (vi) CST Vs. Karam Freight Movers -2017(4) GSTL 215 (Tri. Del.)
- (vii) Direct Logistics India Pvt. Ltd. Vs. CST -2021(55)GSTL 344 (Tri. Bang.)
- (viii) Tiger Logistics (India) Pvt. Ltd. Vs CST – 2022 (63)GSTL 337 (Tri. Del)
- (ix) Sea Master Shipping and Logistics Vs. CST -2019(25)GSTL 458 (Tri. Hyd.)

- (x) Greenwich Meridian Logistics (I) Pvt. Ltd. Vs. CST -2016(43)STR 215 (Tri.- Mumbai)

2.6 As regard the charges paid by clients related to Customs Clearance activities, he submits that these services are provided by the CHA or others and they have already charged applicable service tax, where applicable, while providing such services and demand of service tax from the appellant is not sustainable when appellant have not provided these services and have only claimed reimbursement of such charges. Even if margin is added to recover incidental expenses, such reimbursements are not taxable in appellant's hands as the activity is taxable specifically under the category of Customs House Agent and not under BSS. Similarly amount paid to insurance company, amount paid to fumigation agency, amount paid to palletisation company, statutory dues, transportation charges, documentation to facilitate shipping company, administrative expenses all their services are not provided by the appellant but by other respective agencies and service providers and they also discharged the service tax wherever applicable. Appellant have not provided these services and have only claimed reimbursements of such charges. The onus to prove with sufficient evidence that the receipts were against the taxable services lies on the department which was not discharged at all by the department.

2.7 He also submits that the demand of service tax confirmed on reimbursable expenses recovered by the appellant is not legal as these charges are not for any service provided by the Appellant. He placed reliance on the following decisions:

- Bhuvaneshwari Agencies (P) Ltd. Vs. CCE – 2007(8)STR 167(Tri.- Bang.)

- United India Shipping Services Vs. CGST & CE decided on 12.06.2023 by CESTAT, Chennai
- Liladhar Pasoo Forwarders Pvt. Ltd. Vs. CST decided on 12.06.2013 by CESTAT, Ahmedabad.
- UOI Vs. Mohit Minerals Pvt. Ltd. – 2022(61)GSTL 257 (SC)
- CST Vs. Sequel Logistics Pvt. Ltd. decided on 14.09.2022 by CESTAT, Ahmedabad.

2.8 He also submits that demands confirmed by Ld. Commissioner are barred by limitation. There is not an iota of evidence of any suppression or intent to evade payment of tax on appellant's part. Further, the issue of taxability of reimbursement of expenses has travelled upto Hon'ble Supreme Court and before many lower appellate forums. This shows that the issue involved is of pure interpretation of legal provisions and therefore it cannot be said that appellant has any mala fide intention. Further Appellant also provided all the details/ documents/ records related to their activity before department. In these circumstances, charges of suppression or willful misstatement does not survive against appellant and thus extended period of limitation is not invokable in the present matter.

2.9 As regard the revenue's appeal he submits that perusal of grounds of appeal filed by the department shows that it mainly relied on Rule 5(1) and Rule 5(2) of the Service tax (Determination of value), Rules, 2006 about inclusion in or exclusion from value of certain expenditure or costs. The said issued already decided by the Hon'ble Supreme Court in case of UOI Vs. Intercontinental Consultant and Technocrats Pvt. Ltd. -2018(10)GSTL 401 (SC). Therefore demand dropped by the Ld. Commissioner is legally correct.

3. Shri G. Kirupanandan, Learned Assistant Commissioner, Authorized Representative for the Revenue reiterates the findings of impugned orders in respect of party's appeal and grounds of appeal in the Revenue appeal. He submits that service provider has provided taxable services under the category of 'Business Support Services. Accordingly, it is clear that as per the provisions of Rule 5 (1) of Service Tax Valuation Rules, all such expenditure or costs incurred by the service provider shall be included in the value for the purpose of charging service tax for the said Services. The adjudicating authority, has not taken into cognizance the provisions of Rules 5(1) and 5(2) of the valuation Rules and without getting into the merits as to whether the service provider falls within the ambit of a 'pure agent' has given her findings.

4. Heard both sides, perused the records of the case and carefully considered the submissions made by both the sides.

4.1 We first deal with the appeal filed by the Revenue. We find that revenue in their appeal disputed the dropping of service tax demand on the ground that as per the provisions of Rule 5(1) of the valuation Rules, all expenditure or costs incurred by the service provider shall be treated as consideration for the taxable service provided and shall be included in the value for the purpose of charging service tax for the said services. Service provider has not acted as a 'pure agent for the service recipient within the meaning provided in Explanation 1 to Rule 5(2) of Valuation Rules. Service provider further not fulfilled the conditions detailed in Rule 5 (2) of the valuation Rules. It is beyond doubt that in order to exclude expenditures or costs incurred by the service provider, they should have acted as a pure agent and the condition detailed in Rule 5 (2) of the valuation Rules were required to be followed in principle. The benefits are considerable and

substantial and therefore, condition have to necessarily be fulfilled in order to exclude the costs and expenditure, which is not the case here. Therefore, there is no question of excluding any amount from the total taxable value received by the Service provider from the service recipient on any count. The adjudicating authority has not taken into cognizance the provisions of Rules 5(1) and 5(2) of the Service Tax valuation Rules.

4.2 We find that as per the provisions of Rule 5 of the Service Tax (Determination of Value) Rules, 2006, the reimbursable expenses also need to be included in the value of taxable services rendered. However, this rule has been held to be *ultra vires* to section 67 by the Hon'ble Supreme Court in the case of *Intercontinental Consultants & Technocrats Pvt. Ltd.* as reported in [2018 \(10\) G.S.T.L. 401](#) (S.C.). Therefore, considering this settled position, we don't find any merits in revenue's appeal.

4.3 Now we take up assessee's appeal. We find that Ld. Commissioner has confirmed the Service tax demand of Rs. 2,38,293/- under "Business Auxiliary Service" on head of 'incentive charges'. The said incentive charges were received by the appellant for achieving business targets and for profit share from overseas agent for handling of shipment. The question that arises is whether the incentive amount received by the appellant is liable to be taxed under the category 'Business Auxiliary Services'. For better understanding, the relevant portions of the definition of 'Business Auxiliary Service' is reproduced hereunder:

"(19) "business auxiliary service" means any service in relation to, -

- (i) promotion or marketing or sale of goods produced or provided by or belonging to the client; or
- (ii) promotion or marketing of service provided by the client; or
- (iii) any customer care service provided on behalf of the client; or
- (iv) procurement of goods or services, which are inputs for the client; or

Explanation. - For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "inputs" means all goods or services intended for use by the client;

- (v) production or processing of goods for, or on behalf of, the client;*
- (vi) provision of service on behalf of the client; or*
- (vii) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision, and includes services as a commission agent, but does not include any activity that amounts to manufacture of excisable goods."*

4.4 The submission of Appellant is that it was necessary for the Department to specify the activity and the nature of service that was to be taxed and for this it was necessary for the Department to point out the specific clause out of above seven clauses mentioned in Section 65(19) of the Act but that was not mentioned in the show cause notice and impugned order. We find the force in this contention and observed that in the matter of *Commissioner of Customs & Central Excise, Goa v. Swapnil Asnodkar* [2018 (10) G.S.T.L. 479 (Tri. - Mumbai)] , a Division Bench of the Tribunal observed as follows :

"4. We have carefully considered the submission made by both sides. We find that though in the SCN the Respondent was made liable to pay Service Tax but as rightly held by the adjudicating authority, no specific clause of Section 65(19) defining Business Auxiliary service has been shown to be applicable to levy Service Tax. It is not appearing from the show cause notice as to what goods or services the Respondent has promoted or helped to promote. The Appellate Commissioner also on the same ground has held that the demand being vague is not enforceable against the Respondent. We do not find any reason to infer any different view than expressed by the lower authorities as without specifying the activity and the nature of service of the Respondent he cannot be taxed. Further out of the seven clauses under Section 65(19) no clause has been pointed out under which the Respondent is liable for Service Tax."

Similarly, in *United Telecoms Ltd. v. Commissioner of Service Tax, Hyderabad* [[2011 \(22\) S.T.R. 571](#) (Tri. - Bang.)], another Division Bench of the Tribunal observed as follows :-

“6. We find that no demand can be confirmed against any person towards Service Tax liability unless he/it is put on notice as to its exact liability under the statute. In the show-cause notice basic to the proceedings, the impugned activities were proposed to be classified under BAS and BSS. This proposal was confirmed by the Original Authority. We find that this order is not in accordance with the law. The impugned order held that UTL provided services on behalf of the client i.e. Director, e-Seva and sustained the demand. We find that under BAS, there are seven sub-clauses. Demand under sub-clause (vii) could be on activities relatable to either one of the preceding six sub-clauses. Therefore, if a notice issued proposing demand under BAS, the noticee will not be aware as to the precise ground on which tax is proposed to be demanded from him unless the sub-clause is specified. In the instant case, Service Tax was proposed to be demanded for an activity under BAS and BSS. Under BSS also several activities are listed as exigible under that head. In the absence of proposal in the show-cause notice as to the liability of the assessee under the precise provision in the Act, we find the demand to be not sustainable.”

4.5 By following the aforesaid decisions we hold that it is imperative for the Department to specify which specific service contained in the seven clauses of Section 65(19) of the Act is being provided and in the absence of any specific service pointed out in show cause notice and order, the demand cannot be confirmed.

4.6 In this context the argument made by Learned CA for the Appellant deserves to be accepted. In the instant case Appellant was not promoting or marketing any kind of goods produced or provided by or belonging to the client ; appellant was not promoting any sort of services provided by any person; appellant was not providing any customer care services on behalf of the client; appellant was not procuring any sort of goods or services which are inputs for the client to attract the provisions of Section 65(19)(v); appellant are not either producer or processor on behalf of the client. Further

appellant was not making any provision of services on behalf of the client in order to attract Section 65(19)(vi). Thus, in the absence of any services provided by the Appellant, Service Tax could not have been levied on the amount of incentive/profit share received by the Appellant.

4.7 We also find the Ld. Commissioner has confirmed the service tax demand of Rs. 32,18,471/- under "Support Services of Business or Commerce" on differential amount of costs/ expenditure amounts recovered by the appellant from their clients under 14 main heads i.e Ocean Freight Charges, Air Freight Charges, Charges paid to Shipping Line, Charges paid to Custom Clearance related activity, Paid to Fumigation Agency, Paid to insurance company, paid to Palletization Company, paid Statutory Charges, Transportation charges, paid for administrative expenses, paid for documentation undertaken to facilitate Shipping company activity etc. It is pertinent to reproduce the relevant definition of Business Support Services as provided in Section 65(104c) which is reproduced herein below:

"support services of business or commerce" means services provided in relation to business or commerce and includes evaluation of prospective customer, telemarketing, processing of purchase orders and fulfilment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, [operational or administrative assistance in any manner], formulation of customer service and pricing policies, infrastructural support services and other transaction processing.

Explanation - For the purposes of this clause, the expression "infrastructural support services" includes providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security;]

4.8 We find that Business Support Service include a wide array of activities and the SCN and impugned order does not classify the disputed activity of appellant under which category of business support service the transactions

of appellant are covered. It can be seen from the above definition that 'Business Support Service' covers certain specific activities in its inclusive definition. Only if such specific activities are carried out by a Service provider, it would be classifiable under 'Business Support Service'. From a perusal of the activity undertaken by the appellant, it is seen that the appellant had only paid the amount / charges on behalf of their clients to respective service providers and their clients reimbursed the charges to the appellant. The said transactions of appellant do not fall under 'Support Service of Business or commerce'.

4.9 We also find that the demand confirmed by the Ld. Commissioner on difference between the amounts received from the client as reimbursable expenses and the amount spent/ incurred is not sustainable. Once the Ld. Commissioner hold that the reimbursable part of expenses is not taxable, then there is no legal basis to confirm the service tax on differential amount under 'Support Service of Business or Commerce'. Further, there is no evidences on records to establish that the said difference amount are pertaining to the service provided by the appellant. We also find that in the case of *Bax Global India Ltd. v. Commissioner of Service Tax* - [2008 \(9\) S.T.R. 412](#) to canvas the point that if any profit has been made in respect of other activity they cannot be subject to levy of service tax as per the decision of the Apex Court in *Baroda Electric Meters Ltd. v. Commissioner of Central Excise* - [1997 \(94\) E.L.T. 13](#) (S.C.). Therefore the service tax demand confirmed by the Ld. Commissioner on difference amount is not sustainable and we set aside the same.

4.10 We also find that major demand are pertaining to the Ocean freight charges and Air Freight Charges. The issue on taxability of service tax on Freight charges and the liability of tax on profit/mark up, which is no more *res integra* as the same has been decided in catena of decisions. In the case

of M/s Tiger Logistics (India) Ltd. Vs. Commissioner of Service Tax-II, Delhi
2022 (63) G.S.T.L. 337 (Tri. - Del.) *supra* the tribunal held as under :

“9. As far as the differential in ocean freight is concerned, the appellant buys space on ships from the Shipping Line and the Shipping Line issues a Master Bill of Lading in favour of the appellant. In turn, it sells the space to its customers and issues a House Bill of Lading to each of them. The first leg is the contract between the Shipping line and the appellant. The second leg is the contract between the appellant and its customers. Evidently, anyone who trades in any merchandise or service buys low and sells high and the margin is his profit. To earn this profit, he also takes the risk of being unable to sell. In the appellant’s case, if the space on the ships which it bought cannot be sold to its customers fully, or due to market conditions, or is compelled to sell at lower than purchase price, the appellant incurs loss. In a contrary situation, it gains profits. This activity is a business in itself on account of the appellant and cannot be called a service at all. Neither can the profit earned from such business be termed consideration for service. Respectfully following Satkar Logistics, Nilja Shipping Pvt. Ltd., Surya Shipping and ITC Freight Services, we hold that the appellant is not liable to pay service tax.

Similarly, in the case of *Seamax Logistics Ltd. v. Commissioner of Central Excise and Service Tax, Tirunelveli*, reported in 2018 (7) TMI 262-CESTAT Chennai has held that no service tax is chargeable on the difference between the ocean freight collected from the clients and the ocean freight paid to the shipping lines.

4.11 In the present case broadly the issue involved is taxability of Ocean Freight and reimbursement expenses. On this issue much water has flown as after various conflicting decision the Hon’ble Supreme Court in the case of *Intercontinental (Supra)* decided the matter in respect of the reimbursable expenses and also on the Ocean Freight the Hon’ble Gujarat High Court in *SAL Steel Ltd* has held that it is not taxable. Therefore, the issue involved herein is purely of interpretation of law about valuation and taxability of the service. It is also fact that the appellant have been submitting all the

documents details to the department. In this fact no malafied intention can be alleged against the appellant. In the present case the demand for the period from October 2005 to 2009-10 was issued by show cause notice dated 21.04.2011, other two show cause notices were issued on 21.10.2011 and 22.12.2012 for the period 2010-11 and 2011-12 respectively. Our above view is supported by the following Judgments:

- In the case of Adani Enterprise Ltd Vs. CST the Hon'ble Supreme Court has passed the following decision:

"19. As regard the limitation issue argued by the Learned Counsel, we find that in the facts of the present that firstly the issue involved is of pure interpretation of legal provisions therefore, it cannot be said that the Appellant had any mala fide intentions and have suppressed any fact with intention to evade payment of service tax. It is also on record that the Appellant have represented the matter before Audit team and also before department during the investigation of case. This clearly shows that there is no suppression or wilful misstatement on the part of the Appellant. The Appellant in the present matter also provided all the details/documents/records related to the disputed activity before department. In this circumstances charge of suppression or wilful misstatement do not survive against the Appellant. Thus extended period of limitation is also not invocable in the present matter and no penalty is payable."

- In the case of UOI Vs. Intercontinental Consultants and Technocrats Pvt. Ltd. the Hon'ble Supreme Court has passed the following decision:

"29. In the present case, the aforesaid view gets strengthened from the manner in which the Legislature itself acted. Realising that Section 67, dealing with valuation of taxable services, does not include reimbursable expenses for providing such service, the Legislature amended by Finance Act, 2015 with effect from May 14, 2015, whereby Clause (a) which deals with 'consideration' is suitably amended to

include reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service. Thus, only with effect from May 14, 2015, by virtue of provisions of Section 67 itself, such reimbursable expenditure or cost would also form part of valuation of taxable services for charging service tax. Though, it was not argued by the Learned Counsel for the Department that Section 67 is a declaratory provision, nor could it be argued so, as we find that this is a substantive change brought about with the amendment to Section 67 and, therefore, has to be prospective in nature.”

As discussed above and on the judgments (Supra) since there is no suppression of fact or mala fide intention to evade payment of service tax, demand for the extended period shall not be sustainable also on the ground of limitation. Therefore we set aside the demand not only on merit but also on limitation for the period which is beyond normal period of limitation.

4.12 In view of the above, the impugned order confirming service tax demand cannot be sustained and need to be set aside and we do so.

5. In the result, Appeal filed by the assessee is allowed with consequential relief, as per law and Revenue's Appeal is dismissed.

(Pronounced in the open court on 17.08.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)