

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70213 of 2026

(Arising out of Order-in-Appeal No.59-ST/APPL/ALLD/2025 dated 19.03.2025
passed by Commissioner (Appeals) CGST & Central Excise, Allahabad)

M/s My Car Pvt. Ltd.,
(123/810, Factory Area,
Fazal Ganj, Kanpur-208012)

.....Appellant

VERSUS

**Commissioner of Central Excise &
CGST, Kanpur**
(117/7, Sarvodaya Nagar,
Kanpur-208005)

....Respondent

APPEARANCE:

Shri Amit Awasthi, Advocate for the Appellant
Shri Surendra Ram, Authorized Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.- 70492/2026

DATE OF HEARING : 13.08.2026
DATE OF PRONOUNCEMENT : 29.10.2026

SANJIV SRIVASTAVA:

This appeal is directed against the Order-in-Appeal No.59/ST/Apl/Ald/2025 dated 19.03.2025 of the Commissioner (Appeal) Central Goods and Service Tax & Central Excise, Allahabad. By the impugned order following has been held:

"In view of the discussion above I confirm the demand of service tax amounting to Rs. 763984/- alongwith interest u/s 75 and penalty under section 78 of the Act. I further disallow the cenvat credit amounting to Rs. 1300287/- u/r 14 of the Cenvat Credit Rules 2004 r/w section 73 of the Act and imposed penalty u/s 78 of the Act. I however, refrain from imposing any other penalty u/s 77 as mandatory penalty u/s 78 of the Act has already been imposed. The

impugned order is modified to the above extent and the appeal is disposed of accordingly."

2.1 That the appellant having Service Tax Registration No. AADCM4609FST001 is engaged in providing services of (a) Servicing Motor Vehicles, (b) Business Auxiliary Services and (c) Clearing and Forwarding Agency. The appellant was also availing the facility of CENVAT credit under the provisions of CENVAT Credit Rules, 2004.

2.2 The appellant is an authorized dealer of Maruti Udyog Ltd. (in short 'MUL') with the rights to sell vehicles of MUL in Kanpur, Unnao, Kannauj, Fatehpur, Auraiya, Farrukhabad, Hamirpur, Banda and Jalaun etc. and provide after sale services from workshops situated at:

- (a) 84/54-C, Jarib Chowki, Kanpur and
- (b) C:16, Panki, Kanpur etc.,

2.3 During the course of audit conducted by the officers of for period from 2015-16 to 2017-18 (upto June 2017), it was found that the appellant is providing taxable service classifiable under the category "Repairing reconditioning" and "Business Auxiliary Services" as defined under Section-65 (105) (zo) and Section 65 (105) (zzb) of Finance Act, 1994 and discharged their Service Tax liability accordingly.

2.4 Consequent to audit, certain discrepancies were noticed. The said discrepancies were communicated to the appellant requesting them to deposit the short-paid/not paid government dues along with applicable interest and penalty. The appellant vide their letter dated 03.02.2020 submitted their reply along with some supporting documents claiming that,-

- (a) amount was inclusive of debit entry,
- (b) S. Tax paid on legal fee but inadvertently deposited under the head 'Authorized service station and BAS',
- (c) S. Tax on security charges has been paid and
- (d) ineligible credit taken through TRAN-1 has been reversed.

2.5 As such the discrepancies raised in the letter dated 02.09.2019 referred above were re-examined and considering the reply of the appellant, another letter dated 13.02.2020 was sent to the appellant communicating the same. However the appellant did not submit any reply to the letter. Accordingly, the Final Audit Report bearing No.159/ST/MAR/Gr-VII/2016/218-222 dated 13.05.2020 was communicated to the appellant.

2.6 FAR mentioned above that the appellant have received income under various heads of "Trade Incentive & Others" but have not paid any service tax on such amounts received by them. As per balance sheets/charts for the financial year 2015-16, 2016-17 and 2017-18 (upto June 2017) of the appellant for various receipts on which service tax was not been deposited.

2.7 That on enquiry regarding non/short payment of service tax, the appellant informed verbally that the amount (income) received under this head are Logistic/Handling Charges, Moss charges, Booking cancellation charges, purchase of paints etc.. The appellant further informed that they have not undertaken any activity which comes under the definition of service, thus, they have not deposited service tax on such considerations received. However, during the course of investigation it was found that the activities carried out by the appellant for aforesaid receipts falls under the definition of 'service' and service tax was payable on such receipts. In terms of Section 65B (44) "service" means any activity carried out by a person for another for consideration.

2.8 Quantification of the service tax on the amount received during the financial year 2015-16, 2016-17 & 2017-18 (upto June 2017) by the appellant under the head "Trade Incentive & Others" and service tax not paid by the appellant was determined as in table below-

SN	Period	Taxable Value	S. Tax Rate	S. Tax not paid
01	2015-16	8749103	14.5%	1268620
02	2016-17	1272540	15.0%	190881
03	2017-18 (upto 06/2017)	217864	15.0%	32680
	Total	10239507		1492181

2.9 Further during the course of audit of records vis-à-vis balance sheets, calculation chart provided by the appellant and ST-3 returns it was found that the appellant have received taxable amount Rs.26,98,25,361/- during the period 2015-16, 2016-17 and 2017-18 (upto June 2017) and discharged their tax liability through cash and Cenvat credit. It was observed that the appellant have paid service tax through Cenvat credit (Instead of paying the through cash) more than that they have taken as shown in ST-3 of respective periods. The details are as under:-

S N	Period	Taxable Value as per B/Sheet	S Tax paid		Credit shown in ST-3	Diff of Cenvat and ST-3
			Cash	Credit		
01	2015-16	98635886	12558247	1462422	1012527	449895
02	2016-17	133083303	17990326	1864378	1433874	430504
03	2017-18 (upto 06/17)	38106172	5040674	675252	255364	419888
	TOTAL	269825361	35589247	4002052	2701765	1300287

2.10 On being pointed out about the above difference, the appellant informed that they have discharged their said tax liability through Cenvat credit and produced a chart detailing the payment of service tax. The appellant have also provided the ledger account for taken & utilization of Cenvat credit for the respective periods. However the appellant did not provide any invoice on which the said credits were taken.

2.11 A show cause notice dated 08.09.2020 was issued to the appellant calling them to show cause as to why:

- (i) *Service tax (including cess) amounting to Rs. 14,92,181/- [Rupees Fourteen Lacs Ninety Two Thousand One Hundred Eighty One Only] on taxable value of Rs. 1,02,39,507/- received under the head "Trade Incentive & Other" not paid by them during the period from 2015-16 to 2017-18 (upto June, 2017) should not be demanded and recovered from them by invoking extended period under proviso to Section 73 of the Finance Act, 1994;*
- (ii) *Cenvat Credit amounting to Rs. 13,00,287/- [Rupees Thirteen Lacs Two Hundred Eighty Seven Only] wrongly availed and not paid during the period from 2015-16 to*

2017-18 (upto June, 2017) should not be disallowed and demanded/recovered from them under rule 14 of the CENVAT Credit Rules, 2004 read with sections 73 of the Finance Act, 1994.

- (iii) Cenvat Credit wrongly carried forward in the electronic credit ledger under GST through TRAN-1 statement amounting to Rs. 2,59,879/- [Rupees Two Lacs Fifty Nine Thousand Eight Hundred Seventy Nine Only] should not be disallowed and demanded/recovered from them under Rule 73 of the Finance Act, 1944. Since the said amount has already been deposited/reversed by the party vide debit entry No. D10902200152555 dated 15.02.2020, the same should not be confirmed and appropriated against the said amount demanded from them.*
- (iv) Interest at the appropriate rate should not be charged and recovered from them under Section 75 of the Finance Act, 1994 on the aforesaid amounts [sl. No. (i), (ii) and (iii) above];*
- (v) Penalty under Section 78 of Finance Act, 1994 on the aforesaid amounts [sl. No. (i), (ii) and (iii) above) should not be imposed upon them for willful suppression of facts and contravention of provisions made thereunder; and*
- (vi) Penalty should not be imposed upon them under Section 77(2) of the Finance Act, 1994 for the failure to self-assess the correct taxable value for discharging the due service tax.*

2.12 The show cause notice was adjudicated as per order in original dated 20.03.2024 holding as follows:

ORDER

- (i) I confirm the demand of Service Tax amounting to Rs.14,41,906/- [Rupees Fourteen Lacs forty one Thousand Nine Hundred and six Only] on taxable value of Rs. 99,04,337/- received under the head "Trade Incentive & Other" not paid by them during the period from 2015-16 to 2017-18 (upto June, 2017) under the provisions of Section*

73(1) of the Finance Act, 1994 against M/s My Car Pvt. Ltd., 123/810 Factory Area, Fazalganj, Kanpur,

- (ii) *I disallow CENVAT Credit amounting to Rs. 13,00,287/- [Rupees Thirteen Lacs Two Hundred Eighty Seven Only] wrongly availed during the period from 2015-16 to 2017-18 (upto June, 2017) and order to recover the same under Rule 14 of the CENVAT Credit Rules, 2004 read with section 73 of Finance Act, 1994;*
- (i) (iii). *I disallow CENVAT Credit wrongly carried forward in the electronic credit ledger under GST through TRAN-1 statement amounting to Rs. 2,59,879/-. As the party has already deposited/reversed the said amount of Rs. 2,59,879/- vide debit entry No. D10902200152555 Dt. 15.02.2020, the same is hereby appropriated.*
- (ii) (iv). *I confirm demand of Interest at the appropriate rate till the payment of the Service Tax confirmed in para (i) & (ii) above to be demanded and recovered from M/s My Car Pvt. Ltd., 123/810, Factory Area, Fazalganj, Kanpur under the provisions of Section 75 of the Act,*
- (iii) (v). *I impose a penalty of Rs. 27,42,193/- (Rs. 14,41,906 + Rs. 13,00,287) upon M/s My Car Pvt. Ltd., 123/810 Factory Area, Fazalganj, Kanpur under Section 78 of the Finance Act, 1994 for the reasons discussed above. Further, I give an option to the party to pay a 25% penalty of demand confirmed as provided in Section 78 of the Act, if Service Tax and Interest is paid within a period of 30 days of the date of receipt of this order. Further, the benefit of reduced penalty shall be available only if the amount of such reduced penalty is also paid within 30 days;*
- (iv) (vi). *I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand only) on M/s My Car Pvt. Ltd., 123/810 Factory Area, Fazalganj, Kanpur, under Section 77(2) of the Act ibid upon the party for their failure to assess the Service tax properly on the services provided by them;*

2.13 Aggrieved appellant filed the appeal before Commissioner (Appeal) which has been disposed of as per the impugned order referred in Para 1 above.

2.14 Aggrieved appellant has filed this appeal.

3.1 I have heard Shri Amit Awasthi, Advocate for the appellant and Shri Surendra Ram, Authorized Representative for the revenue.

3.2 Arguing for the appellant learned counsel submitted that

➤ Among the various categories, falling under the permissible deduction, nomenclated as Trade incentive & others, the nature of the expense and not leviability to service tax is as follows:

- Misc. Income & Misc. Income Others (reference to sl. No.2 & 3 of Table C of the Order in Appeal).

there is inevitable replacement of the parts, including under warranty along with wear & tear, which always happens along with draining of used oil/hydraulic oil/engine oil, which is to some extent reused, for lubricating the vehicles which is being serviced and the balance is sold to the outside vendors purchasing the said used oil and worn out/dilapidated / unusable parts and components of vehicles, commonly known as "kabar / scrap" and other material as specified above and hence subjected sale pertains to sale of goods on discharge of levy of VAT and the levy of VAT, being mutually exclusive, in view of the landmark decision of Hon'ble Apex Court, there is no occasion to demand the levy of Service Tax in respect of the said miscellaneous income or charges, for the reason the same does not have any element of taxable service and being the sale of goods as a trading activity it falls under the Negative List of Services and hence exempted from the levy.

- Moss Charges: Appellant is maintaining the Mobile Service Van, to attend to the complaints of the customers, who have purchased the Maruti Brand vehicles and are using the same. In terms of the agreement with the MSIL, a Dealer is

bound to provide service, which is his onerous duty towards customer, it is in fact reimbursable expenses and does not tantamount to the definition of service, which is in fact on actual basis reimbursed by the MSIL to the dealers. It is well settled, in the case of UOI v/s Intercontinental Consultants & Technocrats Pvt. Ltd. reported in 2018 (10) GSTL 401 (S.C.), that reimbursable expenses cannot be the subject to the levy of Service Tax.

- Billing cancellation and Booking cancellation charges: The charges are structured in the form of reimbursable expenses. At the outset, the Appellants beg to submit before the Hon'ble Bench that Maruti Brand Vehicles are booked by the Appellants, wherein upfront an amount is taken from the customer, who ensures and freezes on booking of Maruti Brand Vehicle and the cause of action arises when the subjected booking is cancelled, all the bookings underlying the process involving abundance of stationery, paper work, supply of manpower etc. and all these expenses, which take the form of structured reimbursable expenses are charged from the customers, wherein mandatory amount balance amount is deducted while the is reimbursed/repatriated to the prospective customer, who had endeavored for the booking of the vehicle and there is no touch of element of any service and the subjected amount cannot take the shape of consideration for any Taxable Service, for a resounding reason that under the Indian Contract Act booking of a vehicle, stands to be a contractual agreement for sale of vehicle and if that particular customer materializes its initial booking, the same would connote, the raising of Taxable Invoice, wherein all the charges subsuming the booking amount are raised on the structured pricelist of M/s. Maruti Suzuki India Ltd. As such the billing / booking cancellation is neither covered under the residual category of other transaction processing, as is carved out under Section 65(104) (c) of the Finance Act and as such does not involve any invocation of the levy of Service Tax

under the aforesaid category. CBEC circular 178/2014 (emphasis supplied), clarified that a declared service, agree to do so abstain from, or tolerate an act is taxable only where an expressed or implied agreement makes payment consideration for that promise. Purely compensatory payment, cannot be consideration and hence not taxable and are enjoying the benefit of exemption.

- Income Insurance & Endorsement income(Sl. No.10 & 13): These are the part of the commission paid by the insurance company to MSIL, against the insurance policies executed by them with the retail customers. A part of this amount is forwarded by MSIL, to the Appellant. Here no service or any definition of service is attracted, because the agreement is between the insurance company and MSIL and if at all there is any mischief of levy of Service Tax to be demanded, the same could be only from MSIL, because it is a revenue neutral matter and if the said demand is raised from the Appellant then there is a benefit of CENVAT credit would be available to MSIL. In this case the Appellant is acting more as a pure agent, which is defined in Rule 5 of the erstwhile Service Tax Rules and acting as a pure agent there is no mischief of the levy of Service tax even otherwise and the said demand is infructuous.
- Income pick up and drop: Income pick and drop, is expense paid by MSIL, as reimbursable expenses, to the dealer, incurred in maintaining Mobile Service Van, to attend to the complaints of the customers, who have purchased the vehicles and are using the same. In terms of the agreement with MSIL, the dealer is bound to provide the service to the customers on their request on the spot. The subjected matter relating to reimbursable expenses from MSIL, are not in the form of consideration to be invoked under the taxable services rather appropriately, the same are branded as reimbursable expenses and is squarely covered by the Hon'ble Apex Court Judgment in the case of UOI Vs. Intercontinental Consultants and Technocrats Pvt. Ltd.

reported in 2018 (10) GSTL 401 (SC), wherein the law has already been settled that the reimbursable expenses cannot be the subject to levy of Service Tax.

- Logistic and handling charges, there is a lead judgment of Hon'ble CESTAT in the case of Surjeet Auto Pvt. Ltd. Vs. CCE Bhopal, reported in (2024) 24 Centax 115 (Tri. Delhi), wherein the finding to the Hon'ble Tribunal, copy enclosed, are elaborated as under:
- Other Income: Other Income, stands to be in parity with the misc income, for which elaborate arguments have already been made in the preceding para. They rely upon following decisions:
 - Wonder Cars Pvt. Ltd [2016 (42) S.T.R. 1055)(Tri.-Mumbai)]
 - Dunac Automobiles Pvt. Ltd. [(2024) 23 Centax 379 (Tri. Delhi.)]
- Reply Regarding The Demand For Rs. 13,00,287/-As Mentioned Under Difference Of Cenvat And ST-3.
- The demand of Rs. 13,00,287/ appears to have been arrived at primarily by comparing the figures reflected in the Audited Financial Statements/Books of Accounts with the figures declared in the corresponding ST-3 returns. The figures reported in the ST-3 return were based on the books and records available at the relevant time. Subsequently, during the finalisation and Audit of the Annual Accounts, various accounting entries, provisions, reconciliations, adjustments and year-end entries may have been passed. Consequently, the may differ from the figures reported earlier in the statutory Return.

Financial Year [2015-2016]				
		Audited Financial Statement	ST-3	Difference
Taxable Value	A	9,86,35,886	8,50,62,009	1,35,73,877
Service Tax Payable	B	1,40,20,669	1,17,04,539	23,16,130
Tax paid through Cash	C	1,25,58,247	1,06,94,740	18,63,507

Tax paid through CENVAT	D	14,62,422	10,12,527	4,49,895
Total Tax Paid	E=C+D	1,40,20,669	1,17,07,267	23,13,402
Difference in Payable and Paid	F=B-E	0	2,728	-2,728
Financial Year [2016-2017]				
Taxable Value	A	13,30,83,303	12,87,26,667	43,56,636
Service Tax Payable	B	1,98,54,704	1,91,96,616	6,58,088
Tax paid through Cash	C	1,79,90,326	1,77,41,748	2,48,578
Tax paid through CENVAT	D	18,64,378	14,33,874	4,30,504
Total Tax Paid	E=C+D	1,98,54,704	1,91,75,622	6,79,082
Difference in Payable and Paid	F=B-E		-20,994	20,994
Financial Year [Apr-2017 to Jun-2018]				
Taxable Value	A	3,81,06,172	2,24,30,541	1,56,75,631
Service Tax Payable	B	57,15,926	33,64,581	23,51,345
Tax paid through Cash	C	50,40,674	31,09,215	19,31,459
Tax paid through CENVAT	D	6,75,252	2,55,364	4,19,888
Total Tax Paid	E=C+D	57,15,926	33,64,579	23,51,347
Difference in Payable and Paid	F=B-E		-2	2

- The above comparison clearly shows that there are differences that is not limited to CENVAT Credit. There are differences in taxable value, Service Tax payable/paid and CENVAT figures between the books and ST-3. If the difference in taxable value and Service Tax payable/paid is a result of reconciliation and accounting entries, the difference in CENVAT figures must also be examined in the same complete reconciliation. It is not correct to pick up only the CENVAT column and treat that difference of 13,00,287/- as a separate liability.
- Balance Sheets, calculation charts, ST-3 returns, cash ledgers and cash challans had already been verified, and that demand was made after such verification.
- These findings are very important for deciding the present issue. Once the records have been examined, the demand should be based on the actual findings from those records and not merely on a comparison of two figures.

Cyber Group India Pvt. Ltd V Noida-II reported in (2025) 27 Centax 386 Tri Allahabad, (copy enclosed) wherein as per the law, settled by the Hon'ble Tribunal, precedent has been given to the figures declared in the Audited Financial Statement and in the subjected matter, the Hon'ble Tribunal has gone to the extent of holding that mere non-disclosure of Cenvat Credit in the ST-3 Return, cannot be the grounds of rejection of Refund Claim in that particular case carving out that the Learned Appellate Authority vide para 2.7, 2.8 & 2.9 internal page 2 & 3 of the OIA, running page 50 & 51 of the paper book, the Appellate Authority, by means of non-speaking Order had taken note of the fact of all the points along with the tabulated chart relating to the alleged difference of Cenvat and the ST3 Return, ironically has ignored the fact about the disclosure made in the Audited Financial Statement and already copies of Balance Sheet had been submitted along with Cenvat Ledger, ST3 Return, Detailed Ledgers and in fact endeavour was made for the reconciliation but in fact the Order has been passed in an imbecilic manner, wherein the Learned Appellate Authority, who was expected to appreciate the fact that as per the settled law for the purpose of reconciliation, precedence has to be given to the disclosure made in the Audited Financial Statement and not in the ST-3 Return. The Appellants submit that only on the limited issue of re-quantification, there is a palpable error shown to have been committed by the Department itself and stand-alone that cannot be the ground for the confirmation of either the demand or raising of the charge of not only demanding by means of disallowing of Cenvat Credit amounting to Rs. 13,00,287/- and demanding the same under Rule 14 of the CCR and side by side invoking the Bar of Limitation under Section 73 and imposing penalty under Section 78 of the Act.

- Further how can the Authorities below disallow the Cenvat Credit, when the same has not been availed nor declared in the books, how can the Department have the audacity to disallow the credit, which has never seen the light of the day of any availment in the statutory Return. It is pertinent to note that there was no occasion to any revision to the Return and

finally as a trite it has already been argued that the matter is Barred by Limitation, with no vital ingredients to Section 73 of the erstwhile Finance Act being applicable and in the absence of any actus reus or attribution of malafide, on a mere technical issue, Penal provisions as solicited to be invoked, stands to be defenestrated from the proceeding.

- Invocation of extended period of demand raised under Section 73(1) of the Finance Act.
 - Appellate Commissioner has indeed given partly relief and partly being impugned, the Appeal has been preferred by Appellants. Getting seized of the matter and even on the factual matrix and on the question of law, lead judgment cover up the issue in favour of the Appellant, inter alia including the majority of them and the Cenvat Credit amount to Rs.13,00,287/-, involves proper accounting head for the availment qua the submission of the documents, which have already been discussed in the preceding para.
 - issue involves not only being no more res integra, but also covered by Rule of Stare Decisis, the matter involves plain and simple interpretation of facts and law and does not embark upon, producing any corroborative evidence, to enable the Department for charging the levy and demanding the same, invoking the Bar of Limitation, involving past period of the levy of Service Tax. There is no shred of evidence of any intention to evade levy of Service Tax, albeit issue being covered, there is also no charge with evidence of any suppression of facts, willful misstatement, collusion with the element of fraud and thereby the impugned SCN, simply gets consigned to the bin, inter alia the proceeding arising out of the same, only on the statutory Bar of Limitation, when it is mandatory for the Department to satisfy each and every vital ingredient before piercing the veil of secrecy of Section 63 of the erstwhile Finance Act.

- Reliance is placed on the following decisions:
- HCL Infotech Limited [2024 (90) GSTL 233 (All)];

▪ Vadilal Enterprises Ltd. [2025 (32) Centax 90 All];

▪ Ajnara Realtech Limited [(2025) 28 Centax 373 (All.)],

3.3 Authorized Representative for revenue reiterated the findings recorded in the impugned order.

4.1 I have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 Impugned order records the findings as follows:

"5.2 After going carefully through the facts of the case on the basis of documents/records available in the case file, I proceed to decide the case on merit. There are three main contentions in the instant appeal. One is the non-payment of service tax on the receipt under the head 'trade incentives & others' to the tune of Rs. 1492181/-, second is the availment and utilization of ineligible cenvat credit to the tune of Rs. 1300287/- and third is the forwarding of ineligible cenvat credit in the electronic credit ledger under GST through Tran-1 to the tune of Rs. 259879/-. The appellant has willfully reversed the ineligible cenvat credit forwarded in the electronic ledger through Tran-1, hence the matter is settled at the adjudication stage. However the appellant has vociferously contested the leviability of service tax under the head 'trade incentive & other' and the issue of ineligibility of cenvat credit.

5.3 I note that the Adjudicating Authority has mentioned income under 15 various categories falling under trade incentive and others. The same is reproduced as under-

SN	Items	Amt during 2015-16	Amt during 2016-17	Amt during 04/2017 to 06/2017	Total

01	Incentive-Castrol India Ltd.	3107436	0	0	3107436
02	Misc Income	98851	58566	25737	183154
03	Misc Income others	0	3500	0	3500
04	Additional Claim Loyalty	0	375700	0	375700
05	Incentive Purchase Paint & Consumables	1119982	0	0	1119982
06	Moss charges received	4860	4700	6350	15910
07	Income RTO	0	12514	44758	57272
08	Billing Cancellation	133311	0	33000	166311
09	Booking Cancellation Charges	81752	27750	26000	135502
10	Income Insurance	215775	257648	0	473423
11	Insurance Claim Dzire	0	335170	0	335170
12	Income Pick & Drop	33817	60850	0	94667
13	Endorsement Income	126176	136142	82019	344337
14	Logistic/Handling Charges	3823980	0	0	3823980
15	Other Income	3163	0	0	3163
	TOTAL	8749103	1272540	217864	10239507

5.4 The appellant in his Grounds of Appeal has contended that income from incentives, additional claim loyalty, incentive purchase paint & consumables are trade incentive and discount which is not taxable under service tax. Further with regard to income from Moss charges it has been stated that they are reimbursed from the company (Maruti Suzuki India Ltd. in short 'MSIL'), hence they do not form the part of service. Likewise Income RTO is the fallout of facilitating RTO registration hence the same does not fall under the purview of service tax. With regard to Billing Cancellation and Booking Cancellation Charges the appellant has submitted that they are compensatory in nature which is not taxable. For the receipt under the head Income Insurance and Endorsement Income it has been submitted that this is a part of commission paid by the insurance companies to

MSIL against insurance policies executed by them with the retail customers of which a part is forwarded by MSIL to the appellant, hence the same is not taxable under service tax. The appellant has further submitted that for providing pick and drop services the company reimburses the expenses incurred for the activity. The same is also outside the purview of service tax as there is no service tax on reimbursement.

5.5 After going through the records and the relevant case laws I agree with the contention of the appellant that the service tax is not applicable on the income falling under category Incentive Castrol India Ltd., Additional Claim Loyalty, Incentive Purchase Paint & Consumables, Income RTO, Insurance Claim Dzire. I am of the opinion that the income from incentives, additional claim loyalty are a part and parcel of trade discount which is not taxable under service tax. The case of Dunac Automobiles Pvt. Ltd. v/s Commissioner of CGST & Central Excise [(2024) 23 Centax 379 (Tri.-Del) [02-08-2024] is squarely applicable in the instant case, wherein the Hon'ble Tribunal has held that amounts received were trade discounts as part of sales activity between dealer and manufacturer on principal-to-principal basis, not consideration for any taxable service'. Besides I also agree with the submission of the appellant that the income RTO is the facilitation for vehicle registration in RTO. The case titled 'Wonder Cars Pvt Ltd v/s Commissionerate of Central Excise Pune I reported in 2016 (42) STR 1055 (Tri Mumbai) has settled the issue in favour of the assessee. Further, the appellant has submitted that one car viz Maruti Dzire was stolen enroute in the district of Banda. Since the vehicle was insured hence the appellant received the insurance claim. I find that the same insurance claim of loss of vehicle is not subject to taxation under service tax.

5.6 I find that besides above, the income received under various heads viz Misc Income, Misc Income others, Moss charges received, Billing Cancellation, Booking Cancellation Charges, Income Insurance, Income Pick & Drop, Endorsement Income, Logistic /Handling Charges, Other Income are fully taxable as being leaving aside the nomenclature of receipt the spirit of all these services fall under the category Business Auxiliary Services (in short BAS). Since the services falling under BAS are fully taxable without any exemption or abatement or part payment under reverse charge hence the appellant is liable to pay service tax at flat rate. Accordingly, the appellant is liable to discharge full service tax on the income received under these heads.

5.7 Now coming to the issue of ineligible availment and utilization of cenvat credit, I note that the FAR reads as the appellant has availed excess cenvat credit that as shown in the respective ST-3 Returns. The appellant provided the ledger account for taken and utilization of cenvat credit however the source document viz the invoices on which the cenvat credit was taken was not provided. The appellant could not produce the same neither at the adjudication stage nor before me. In view absence of requisite document no benefit could be extended to the appellant. As such the appellant is liable to reverse the ineligible cenvat credit. The computation of service tax is given in the below mentioned table-

SN	Items	Amt during 2015-16	Amt during 2016-17	Amt during 04/2017 to 06/2017
1	Misc Income	98851	58566	25737
2	Misc Income others	0	3500	0
3	Moss charges received	4860	4700	6350
4	Billing Cancellation	133311	0	33000
5	Booking Cancellation Charges	81752	27750	26000
6	Income Insurance	215775	257648	0
7	Income Pick & Drop	33817	60850	0

8	<i>Endorsement Income</i>	<i>126176</i>	<i>136142</i>	<i>82019</i>
9	<i>Logistic/Handling Charges</i>	<i>3823980</i>	<i>0</i>	<i>0</i>
10	<i>Other Income</i>	<i>3163</i>	<i>0</i>	<i>0</i>
	<i>TOTAL</i>	<i>4521685</i>	<i>549156</i>	<i>173106</i>
	<i>Service tax rate</i>	<i>14.5%</i>	<i>15.0%</i>	<i>15.0%</i>
	<i>Service tax short paid</i>	<i>655644</i>	<i>82373</i>	<i>25966</i>

4.3 In the matter the impugned order has confirmed made against the ten items of income detailed in table in 5.7 of the impugned order. Appellant have in appeal challenged the demand made in respect of each of items. I take up for consideration each of item in paragraphs below.

4.4 Misc Income (S No 1), Misc Income Others (S No 2) and Other Income (S No 10).

Appellant had made specific submissions in relation to these incomes stating that there operation involve the change of defective, used and worn out parts of the motor vehicles serviced/ repaired. The replaced parts result in inventory of old and used part with them which they classify as Kabad and dispose of them Kabad in market. Income received against the sale of this Kabad, against which they have paid VAT service tax could not be levied. Although this submission was made before the Commissioner (Appeal) [Para 3 (1) (5) of the impugned order], impugned order do not record any finding on this submission but proceeds to hold that these income is towards provision of service which have nature of Business Auxiliary Service. The approach adopted by the impugned order cannot be justified. The income earned by the sale of goods – Kabad is subject to levy of VAT and cannot be subjected to service tax and such trading/ activity of sale of goods fall within the negative list of the services. Thus I do not find any merits in impugned order holding that these incomes are in respect of provision of taxable services under the category of Business Auxiliary Services.

4.5 Moss Charges (S No 3) and Income Pick & Drop (S No. 7):

Appellant has challenged the demand made on this income by stating that this income is in nature of reimbursable expense incurred by them towards maintenance of vehicle for providing outdoor service facilities to the clients of their principals – Maruti Suzuki India Limited (MSIL). Appellant has placed reliance on the decision of Hon'ble Supreme Court in the case of Intercontinental Consultants and Technocrats Pvt. Ltd. [2018 (10) GSTL 401 (SC)]. I find that the period in the present case is for the period 2015-16, 2016-17 and 2017-18 (upto June 2017). Hon'ble Supreme Court has itself in the same decision taken note of the amendment made in the year 2015 and has observed as follows:

"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. On this aspect of the matter, we may usefully refer to the Constitution Bench judgment in the case of Commissioner of Income Tax (Central)-I, New Delhi v. Vatika Township Private Limited [(2015) 1 SCC 1] wherein it was observed as under :

"27. A legislation, be it a statutory Act or a statutory rule or a statutory notification, may physically consists of words printed on papers. However, conceptually it is a great deal more than an ordinary prose. There is a special peculiarity in the mode of verbal communication by a legislation. A legislation is not just a series of statements, such as one finds in a work of fiction/non-fiction or even in a judgment of a court of law. There is a technique required to draft a legislation as well as to understand a legislation. Former technique is known as legislative drafting and latter one is to be found in the various principles of "interpretation of statutes". Vis-a-vis ordinary prose, a legislation differs in its provenance, layout and features as also in the implication as to its meaning that arise by presumptions as to the intent of the maker thereof.

*28. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as *lex prospicit non respicit* : law looks forward not backward. As was observed in *Phillips v. Eyre* [(1870) LR 6 QB 1] , a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the*

first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.

29. The obvious basis of the principle against retrospectivity is the principle of "fairness", which must be the basis of every legal rule as was observed in L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co. Ltd. Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later."

Thus in view of the amendments made in the in Section 67 with effect from 14th May 2015 by the Finance Act, 2015 the reimbursable expenses have been included in the definition of consideration received against the service. Thus the argument advanced by the appellant in this regard is to be rejected. Further appellant do not qualify as pure agent for the reason that the pure agent has been defined to be the intermediary in the tri-party agreement wherein intermediary receives the amount for provision of service by the service provider to service recipient and passes the same to the service provider without any alteration or modification. In the present case appellant has received this income as per their submission from Maruti Udyog Limited for provision of vehicle etc. to provide outdoor services to vehicle owners. The income has been received in terms of bi-party

agreement and hence is income received against provision of taxable service. Thus the arguments advanced by the appellant in this respect needs to be rejected.

4.6 Billing Cancellation (S No.4) and Booking Cancellation Charges (S No.5):

Impugned order classifies these income without assigning any reason under the category of taxable services and determines their nature to be of Business Auxiliary Services. Appellant has contested this findings stating that this income is on account of the cancelled booking and bills. Appellant contend that the appellant incur certain expenses on account of booking of the vehicle and preparation of the bills. On cancellation they recover the same from the persons who had booked the vehicles etc. They placed reliance on the board circular No 178/2014.

However by the Circular No 178/10/2022-GST dated 03.08.2022 Board has clarified as follows:

In certain cases/instances, questions have been raised regarding taxability of an activity or transaction as the supply of service of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act. Applicability of GST on payments in the nature of liquidated damage, compensation, penalty, cancellation charges, late payment surcharge etc. arising out of breach of contract or otherwise and scope of the entry at para 5(e) of Schedule II of Central Goods and Services Tax Act, 2017 (hereinafter referred to as, "CGST Act") in this context has been examined in the following paragraphs.

2."Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act" has been specifically declared to be a supply of service in para 5 (e) of Schedule II of CGST Act if the same constitutes a "supply" within the meaning of the Act. The said expression has following three limbs :-

*(a) **Agreeing to the obligation to refrain from an act-***

Example of activities that would be covered by this part of the expression would include non-compete agreements, where one party agrees not to compete with the other party in a product, service or geographical area against a consideration paid by the other party.

Another example of such activities would be a builder refraining from constructing more than a certain number of floors, even though permitted to do so by the municipal authorities, against a compensation paid by the neighbouring housing project, which wants to protect its sunlight, or an industrial unit refraining from manufacturing activity during certain hours against an agreed compensation paid by a neighbouring school, which wants to avoid noise during those hours.

(b) Agreeing to the obligation to tolerate an act or a situation-

This would include activities such a shopkeeper allowing a hawker to operate from the common pavement in front of his shop against a monthly payment by the hawker, or an RWA tolerating the use of loud speakers for early morning prayers by a school located in the colony subject to the school paying an agreed sum to the RWA as compensation.

(c) Agreeing to the obligation to do an act-

This would include the case where an industrial unit agrees to install equipment for zero emission/discharge at the behest of the RWA of a neighbouring residential complex against a consideration paid by such RWA, even though the emission/discharge from the industrial unit was within permissible limits and there was no legal obligation upon the individual unit to do so.

The description 3. "agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act" was intended to cover services such as described

above. However, over the years doubts have persisted regarding various transactions being classified under the said description.

Some of the important examples of such cases are Service Tax/GST 3.1 demands on -

- (i) Liquidated damages paid for breach of contract;
- (ii) Compensation given to previous allottees of coal blocks for cancellation of their licenses pursuant to Supreme Court Order;
- (iii) Cheque dishonour fine/penalty charged by a power distribution company from the customers;
- (iv) Penalty paid by a mining company to State Government for unaccounted stock of river bed material;
- (v) Bond amount recovered from an employee leaving the employment before the agreed period;
- (vi) Late payment charges collected by any service provider for late payment of bills;
- (vii) Fixed charges collected by a power generating company from State Electricity Boards (SEBs) or by SEBs/DISCOMs from individual customer for supply of electricity;
- (viii) Cancellation charges recovered by railways for cancellation of tickets, etc.

In some of these cases, tax authorities have initiated investigation and in some advance ruling authorities have upheld taxability.

In Service Tax law, 'Service' was defined as any activity carried out by a person for another for consideration. As discussed in service tax education guide, the concept 'activity for a consideration' involves an element of contractual relationship wherein the person doing an activity does so at the desire of the person for whom the activity is done in exchange for a consideration. An activity done

without such a relationship i.e., without the express or implied contractual reciprocity of a consideration would not be an 'activity for consideration'. The element of contractual relationship, where one supplies goods or services at the desire or another, is an essential element of supply.

The description of the declared service in quest 5.ion, namely, agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act in para 5(e) of Schedule II of CGST Act is strikingly similar to the definition of contract in the Contract Act, 1872. The Contract Act defines 'Contract' as a set of promises, forming consideration for each other. 'Promise' has been defined as willingness of the 'promisor' to do or to abstain from doing anything. 'Consideration' has been defined in the Contract Act as what the 'promisee' does or abstains from doing for the promises made to him.

This goes to show that the service of agreeing to the obligation 6. to refrain from an act or to tolerate an act or a situation, or to do an act is nothing but a contractual agreement. A contract to do something or to abstain from doing something cannot be said to have taken place unless there are two parties, one of which expressly or impliedly agrees to do or abstain from doing something and the other agrees to pay consideration to the first party for doing or abstaining from such an act. There must be a necessary and sufficient nexus between the supply (i.e. agreement to do or to abstain from doing something) and the consideration.

Cancellation charges

11. A supply contracted for, such as booking of hotel accommodation, an entertainment event or a journey, may be cancelled by a customer or may not proceed as intended due to his failure to show up for availing the same at the designated place and time. The supplier may allow cancelation of supply by the customer within a certain specified time period on payment of cancellation fee as per

commercial terms of the contract. In case the customer does not show up for availing the service, the supplier may retain or forfeit part of the consideration or security deposit or earnest money paid by the customer for the intended supply.

11.1 It is a common business practice for suppliers of services such as hotel accommodation, tour and travel, transportation etc. to provide the facility of cancellation of the intended supplies within a certain time period on payment of cancellation fee. Cancellation fee can be considered as the charges for the costs involved in making arrangements for the intended supply and the costs involved in cancellation of the supply, such as in cancellation of reserved tickets by the Indian Railways.

11.2 Services such as transportation travel and tour constitute a bundle of services. The transportation service, for instance, starts with booking of the ticket for travel and lasts at least till exit of the passenger from the destination terminal. All services such as making available an online portal or convenient booking counters with basic facilities at the transportation terminal or in the city, to reserve the seats and issue tickets for reserved seats much in advance of the travel, giving preferred seats with or without extra cost, lounge and waiting room facilities at airports, railway stations and bus terminals, provision of basic necessities such as soap and other toiletries in the wash rooms, clean drinking water in the waiting area etc. form part and parcel of the transportation service; they constitute the various elements of passenger transportation service, a composite supply.. The facilitation service of allowing cancellation against payment of cancellation charges is also a natural part of this bundle. It is invariably supplied by all suppliers of passenger transportation service as naturally bundled and in conjunction with the principal supply of transportation in the ordinary course of business.

11.3 Therefore, facilitation supply of allowing cancellation of an intended supply against payment of cancellation fee or retention or forfeiture of a part or whole of the consideration or security deposit in such cases should be assessed as the principal supply. For example, cancellation charges of railway tickets for a class would attract GST at the same rate as applicable to the class of travel (i.e., 5% GST on first class or air-conditioned coach ticket and nil for other classes such as second sleeper class). Same is the case for air travel.

11.4 Accordingly, the amount forfeited in the case of non-refundable ticket for air travel or security deposit or earnest money forfeited in case of the customer failing to avail the travel, tour operator or hotel accommodation service or such other intended supplies should be assessed at the same rate as applicable to the service contract, say air transport or tour operator service, or other such services.

The above Circular which has been issued under GST, has been adopted by the Board for service tax vide Circular No 214/1/2023-ST dated 28.02.2023. By this circular following was clarified:

"Subject: Levability of Service Tax on the declared service "Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act" under clause (e) of section 66E of the Finance Act, 1994 - reg.

An issue has arisen on the levy of service tax on liquidated damages arising out of breach of contract, forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period and similar other issues arising out of clause (e) of section 66E of the Finance Act, 1994. Reference has also been invited to Circular No. 178/10/2022-GST dated 3rd August, 2022 regarding applicability of GST on liquidated damages, compensation and penalty arising out of breach of contract or other

provisions of law, and its applicability to service tax related issues.

2. *It may be seen that "Agreeing to the obligation to refrain from an act, or to tolerate an actor a situation, or to do an act" is a Declared Service as per clause (e) of section 66E of the Finance Act, 1994. A service conceived in an agreement where one person agrees to an obligation to refrain from an act or to tolerate an act or to do an act, would be a 'declared service' under section 66E(e) read with section 65B(44) and would be leviable to service tax.*

3. *The description of the declared service in question, namely, agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act is similar in GST. "Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act" has been specifically declared to be a supply of service in para 5 (e) of Schedule II of the CGST Act, 2017.*

4. *As can be seen, the said expression has three limbs: - i) Agreeing to the obligation to refrain from an act, ii) Agreeing to the obligation to tolerate an act or a situation, iii) Agreeing to the obligation to do an act. Service of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act is nothing but a contractual agreement. A contract to do something or to abstain from doing something cannot be said to have taken place unless there are two parties, one of which expressly or impliedly agrees to do or abstain from doing something and the other agrees to pay consideration to the first party for doing or abstaining from such an act. Such contractual arrangement must be an independent arrangement in own right. There must be a necessary and sufficient nexus between the supply (i.e. agreement to do or to abstain from doing something) and the consideration.*

5. *The issue also came up in the CESTAT in Appeal No. ST/ 50080 of 2019 in the case of M/s Dy. GM (Finance) Bharat Heavy Electricals Ltd in which the hon'ble Tribunal relied on the judgement of divisional bench in case of M/s South Eastern Coal Fields Ltd Vs. CCE Raipur{2021(55) G.S.T.L 549(Tri-Del)}. Board has decided not to file appeal against the CESTAT order ST/A/50879/2022-CU[DB] dated 20.09.2022 in this case and also against OrderA/85713/2022 dated 12.8.2022 in case of M/s Western Coalfields Ltd. Further, Board has decided not to pursue the Civil Appeals filed before the Apex Court in M/s South Eastern Coalfields Ltd. supra (CA No. 2372/2021), M/s Paradip Port Trust (Dy. No. 24419/2022 dated 08-08-2022), and M/s Neyveli Lignite Corporation Ltd (CA No. 0051-0053/2022) on this ground.*

In view of the specific clarifications issued by the Board on the subject I do not find any merits in the submissions made by the appellant by relying on the Circular No 178/2014-ST. Even said circular is not on the subject in dispute. The said circular dated 11.07.2014 is on the "*Subject: Manner of distribution of common input service credit under rule 7(d) of the Cenvat Credit Rules, 2004—regarding*"

4.7 Income Insurance (S No. 6) and Endorsement Income (S No.8)

Impugned order without assigning any reason has held that the income reflected against these heads also fall under the category of Business Auxiliary Services. Appellant has contended that these incomes are the part of commission paid by the insurance company to MSIL, against the insurance policies executed by them with the retail customers. A part of this commission is forwarded by MSIL to the Appellant. These amounts are not received against provision of any services and hence cannot be subjected to levy of service tax. Further the entire levy of tax on this income will be revenue neutral as the amount paid by them towards service tax

will be available to MSIL as CENVAT credit. Section 65 B (44) defines the service as follows:

"(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

- (a) an activity which constitutes merely,—*
 - (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or*
 - (ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or*
 - (iii) a transaction in money or actionable claim;*
- (b) a provision of service by an employee to the employer in the course of or in relation to his employment;*
- (c) fees taken in any Court or tribunal established under any law for the time being in;*

As per the submissions of the appellant it is evident that they have undertaken the activity of execution of insurance policies with their retail customers on the behalf of insurance service provider/ MSIL. For this activity they have received certain consideration which they have reflected in their book of accounts under head of "Insurance Income". This income as per the appellant is part of the commission paid by the insurance company as commission to MSIL. The amount received by the appellant is the consideration received by the appellant for the activities undertaken by them. Even if we consider that appellant acted as sub-broker, then also the liability to pay service tax on this consideration cannot be wiped in view of the decision of larger bench of CESTAT in case of Melange Developers Pvt. Ltd. [2020 (33) G.S.T.L. 116 (Tri. - LB)]. Following this decision Mumbai Bench has in acse of Om Sai Fabricators [(2023) 6 Centax 208 (Tri.-Bom)] has observed as follows:

"4.3 On merits we find that issue has been decided by larger bench of tribunal in the case of Melange Developers Private Limited [2020 (33) G.S.T.L. 116 (Tri. - LB) wherein larger bench has held as follows:

"12. It is true that prior to 2007, various Service Tax, Trade Notices/ Instructions/ Circulars/ Communications had been issued exempting certain category of persons from payment of Service Tax. A sub-contracting Customs House Agent was exempted from payment of Service Tax on the bills raised on the main Customs House Agent. When an architect or interior decorator sub-contracted part/whole of its work to another architect or interior decorator, then no Service Tax was required to be paid by the sub-contractor, provided the principal architect or interior decorator had paid the Service Tax. However, all these Trade Notices/Instructions/Circulars/Communications were superseded by the Master Circular dated 23 August, 2007 issued by the Government of India, Ministry of Finance. The Circular noticed that when Service Tax was introduced in the year 1994 there were only three taxable services, but later 100 services had been specified as taxable services and that since the introduction of Service Tax, number of clarifications had been issued, but it had become necessary to take a comprehensive review of all the clarifications keeping in view the changes that had been made in the statutory provisions, judicial pronouncements and other relevant factors. The relevant portion of the Master Circular, insofar as it relates to sub-contractors, is reproduced below:

999.03/ 23-8- 2007	A taxable service provider outsources a part of the work by engaging another service provider, generally known as sub-	A sub-contractor is essentially a taxable service provider. The fact that services provided by such sub-contractors are used by
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	<i>contractor. Service tax is paid by the service provider for the total work. In such cases, whether service tax is liable to be paid by the service provider known as subcontractor who undertakes only part of the whole work.</i>	<i>the main service provider for completion of his work does not in any way alter the fact of provision of taxable service by the sub-contractor.</i> <i>Services provided by sub-contractors are in the nature of input services. Service tax is, therefore, leviable on any taxable services provided, whether or not the services are provided by a person in his capacity as a subcontractor and whether or not such services are used as input services. The fact that a given taxable service is intended for use as an input service by another service provider does not alter the taxability of the service provided.</i>
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13. The Master Circular clarifies that the services provided by sub-contractors are in the nature of input services and since a sub-contractor is a essentially taxable service provider, Service Tax would be leviable on the taxable services provided. It has also been clarified that even if a taxable service is intended for use as an input service by another service provider, it would still continue to be a taxable service.

14. It can be used that if a main contractor has paid Service Tax on the entire amount of the main contract out of which a portion has been given to a sub-contractor, then if a subcontractor is required to pay Service Tax, it may amount to 'Double Taxation', but this issue has to be examined in the light of the credit mechanism earlier introduced through Service Tax Credit Rules, 2002 granting benefit of tax paid on input services if the input services and the output services fell under the same taxable services and the subsequent amendment made on 14 May, 2003 granting benefit of tax paid on input services even if

the input service and the output service belonged to different taxable categories. The aforesaid Service Tax Credit Rules were later superseded on 10 September, 2004 by Cenvat Credit Rules, 2004. Rule 3 of these Rules provides that a manufacturer or producer of final product or a provider of output service shall be allowed to take credit (known as 'Cenvat Credit') of various duties under the Excise Act, including the Service Tax leviable under sections 66, 66A and 66B of the Act. Rule 3(4) further provides that Cenvat credit may be utilized for payment of Service Tax on any output service. It is for this reason that the Master Circular dated 23 August, 2007 was issued superseding all the earlier Circulars, Clarifications and Communications.

15. It is not in dispute that a sub-contractor renders a taxable service to a main contractor. Section 68 of the Act provides that every person, which would include a sub-contractor, providing taxable service to any person shall pay Service Tax at the rate specified. Therefore, in the absence of any exemption granted, a sub-contractor has to discharge the tax liability. The service recipient i.e. the main contractor can, however, avail the benefit of the provisions of the Cenvat Rules. When such a mechanism has been provided under the Act and the Rules framed thereunder, there is no reason as to why a sub-contractor should not pay Service Tax merely because the main contractor has discharged the tax liability. As noticed above, there can be no possibility of double taxation because the Cenvat Rules allow a provider of output service to take credit of the Service Tax paid at the preceding stage.

16. It is in this light that the main contention of Learned Counsel for the Respondent that if a sub-

contractor is required to pay Service Tax when the main contractor has actually discharged Service Tax liability, it would amount to 'Double Taxation', has to be examined. For this contention, reliance has been placed by the Learned Counsel for the Respondent on the following decisions of this Tribunal :

- (i) Urvi Construction v. Commissioner of Service Tax, Ahmedabad, reported in 2010 (17) S.T.R. 302 (Tri. - Ahmd.);*
- (ii) BCC Developers and Promoters Pvt. Ltd. v. Commissioner of Central Excise, Jaipur, reported in 2017 (52) S.T.R. 22 (Tri. -Del.);*
- (iii) M/s. Dhaneshra Engineering Works v. Commissioner of Central Excise, Allahabad, reported in 2018 (2) TMI 788 -CESTAT - Allahabad;*
- (iv) Power Mech Projects Ltd. v. Commissioner of Customs, Guntur, reported in 2017 (48) S.T.R. 165 (Tri.- Hyd.); and*
- (v) M/s. Edac Engg. Ltd. v. CST, Chennai, reported in 2017 (6) TMI 685 CESTAT Chennai.*

17. In Urvi Construction a Learned Member of the Tribunal observed :

"2. . Further the learned advocate also submits that in the Master Circular issued by the Board vide Circular No. 96/7/2007-S.T., dated 23-8-2007, a stand has been taken that there is no exemption to a sub-contractor from payment of service tax merely because the contractor pays the tax. However, he submits that for the period circular issued late by the Board in 1997 was applicable and according to this Circular where the services have been provided by the sub-contractors such sub-contractors are not liable

to pay service tax and service tax liability is on the main contractor. Taking note of the fact of the contention that main contractor has paid the service tax and charging service tax on the sub-contractor again would amount to taxing the same service twice and also taking note of the circular cited by the learned advocate and the decisions of the Tribunal cited, I find that if the appellant is required to pay the service tax it would amount to taxing the same service twice and the circular and the Tribunal's decision are squarely applicable to the facts of this case and accordingly appeal is allowed with consequential relief to the appellant."

18. In BCC Developers and Promoters Pvt. Ltd. it was observed :

"6.1 We agree with the submission of the Ld. Counsel that no double taxation is permissible under the law. The Constitution (Article 265) provides to take the exact amount of tax i.e. neither more nor less. In the instant case, if the principal has already paid the Service Tax, then the same cannot be demanded from the appellant. As per the clarification of the Board's Circular dated 23-8-2007 as well as dated 7-10-1998, if the principal had not paid the Service Tax then the same can be charged. If the Service Tax has already been paid by the principal, then the same cannot be demanded again."

19. M/s. Dhaneshra Engineering Works followed the aforesaid decision in BCC Developers and Promoters Pvt. Ltd.

20. In *M/s. Edac Engg. Ltd.*, the Division Bench, after placing reliance upon the decision of the Tribunal in *Urvi Construction*, observed :

"6.2 We are therefore of the considered opinion that these case laws are distinguishable from the decision taken by this very Bench in the case of the present appellants *Edac Engineering Ltd.* in Final order dated 19-12-2016. We also find that the very same Board's Circular No. 97/8/2007-S.T., dated 23-8-2007, relied upon by the *Ld. AR* has been taken note of by the Tribunal in *Urvi Construction (supra)*. This being so, we have no hesitation in ruling that when Service Tax has been paid by the main contractor, charging the subcontractor again will amount to taxing the same service twice. In the circumstances, the issue at hand also requires to be remanded to the adjudicating authority to verify whether the service rendered by the appellant has suffered tax in the hands of the principal contracts. If that aspect is able to be proved by the appellants, no tax liability will accrue to them. Towards this end, the adjudicating authority will give suitable opportunity to the appellants to present their case. Appellants are also produce all evidence and documents to establish their claim that the tax liability required to be discharged by them has already been paid up by the main contractor. If that is provided, there will obviously be no demand for interest unless such demands have been made belatedly. Once this aspect is also able to be proved by the appellant, imposition of penalty will also not arise."

21. *The aforesaid decisions do not take into consideration the impact of the Cenvat Rules. It would, therefore, not be correct to conclude that double taxation would result if a sub-contractor is required to discharge the Service Tax liability even if the main contractor has discharged the tax liability.*

22. *The decisions of the Tribunal holding that double taxation will not result if a sub-contractor discharges the tax liability because of the Cenvat Rules, now need to be referred to.*

23. *In Max Tech Oil & Gas Services Pvt. Ltd. v. Commissioner of Service Tax, Delhi, reported in 2017 (52) S.T.R. 508 (Tri. - Del.), the Division Bench has held :*

"6. Regarding the contention of the appellant that they have acted only as a sub-contractor and demanding service tax from them will amount to double taxation as the main contractor also is rendering similar service to ONGC, we find no legal basis for the contention of the appellant. The service tax leviable at the hands of each service provider is decided by nature of activities undertaken by them. If the same is covered by scope of the taxable entry under Finance Act, 1994 tax liability arises. The said service becomes part of final service rendered by main contractor is of no consequence to determine the tax liability of each and every service provider. If at all, the service tax paid by a sub-contractor which becomes part of service further provided by the main contractor, the scheme of credit as envisaged by the Cenvat Credit Rules, 2004 will come into play subject to fulfilment of conditions therein. It is nobody's case that the sub

contractors per se are not liable to service tax even if they rendered taxable service "
[Emphasis Supplied]

24. The same view was taken by the Division Bench of the Tribunal in *CCE & S.T., Raipur v. M/s. J.K. Transport*, reported in 2017 (9) TMI 993 - CESTAT New Delhi. The relevant paragraph is reproduced below :

"5. We find that the CBEC vide Circular dated 23-8-2007 has clarified that the services provided by the sub-contractor is a taxable service, even if the same is used for completion of the work by the main service provider. Thus, for providing the taxable service, the sub-contractor is liable for payment of service tax on provision of such service....."

25. Similar views were taken by the Tribunal in (i) *Max Logistics Ltd. v. Commissioner of Central Excise, Raipur*, reported in 2017 (47) S.T.R. 41 (Tri. - Del.); (ii) *Hargovind Electric Decorators v. Commissioner of Central Excise, Jaipur-I*, reported in 2016 (43) S.T.R. 619 (Tri. - Del.); and (iii) *Sew Construction Ltd. v. Commissioner of Central Excise, Raipur*, reported in 2011 (22) S.T.R. 666 (Tri. - Del.).

26. At this stage, it would also be useful to refer to a Larger Bench decision of the Tribunal in *Vijay Sharma & Company v. CCE, Chandigarh*, reported in 2010 (20) S.T.R. 309 (Tri. - LB). The issue that arose before the Larger Bench was as to whether service provided by a sub-broker are covered under the ambit of Service Tax and taxable or not. After noticing that a subcontractor is liable to pay Service Tax, the Larger Bench examined as to whether this would result in double taxation if the main contractor has also paid Service Tax and observed that if service tax is paid by

a sub-broker in respect of same taxable service provided by the stock broker, the stock broker is entitled to the credit of the tax so paid in view of the provisions of the Cenvat Credit Rules. The relevant paragraph 9 is reproduced below :

"9. It is true that there is no provision under Finance Act, 1994 for double taxation. The scheme of service tax law suggest that it is a single point tax law without being a multiple taxation legislation. In absence of any statutory provision to the contrary, providing of service being event of levy, self same service provided shall not be doubly taxable. If Service tax is paid by a sub-broker in respect of same taxable service provided by the stock-broker, the stock broker is entitled to the credit of the tax so paid on such service if entire chain of identity of sub-broker and stock broker is established and transactions are provided to be one and the same. In other words, if the main stock broker is subjected to levy of service tax on the self same taxable service provided by sub-broker to the stock broker and the sub-broker has paid service tax on such service, the stock broker shall be entitled to the credit of service tax. Such a proposition finds support from the basic rule of Cenvat credit and service of a sub-broker may be input service provided for a stock-broker if there is integrity between the services. Therefore, tax paid by a sub-broker may not be denied to be set off against ultimate service tax liability of the stock broker if the stock broker is made liable to service tax for the self same transaction. Such set off depends on the facts and circumstances of each case and subject to verification of evidence as well as rules made

under the law w.e.f. 10-9-2004. No set off is permissible prior to this date when sub-broker was not within the fold of law during that period."

27. The Commissioner did express in the impugned order that under the Cenvat Scheme every stage of provision of service is required to be taxed and if a sub-contractor discharges the Service Tax liability, it will not result in double taxable even if the main contractor discharges the Service Tax liability because the credit of the earlier tax paid is available at a subsequent stage, but it is because of the decision of the Tribunal in Urvi Construction, that the Commissioner held that double taxation would result if a sub-contractor is also required to discharge Service Tax liability when the main contractor has discharged the entire liability.

28. Learned Counsel for the Respondent has, however, relied upon the decision of the Supreme Court in Larsen and Toubro Ltd. v. Additional Deputy Commissioner of Commercial Taxes and Anr., reported in 2016-TIOL-155-SC-VAT. In this case, the contracts which were secured by the Appellant therein were works contract and a part thereof was assigned to the subcontractor who had submitted returns and paid taxes for the execution of the works contract. During the course of the assessment, the Appellant submitted that the sub-contractors had already been taxed and, therefore, the Appellant cannot be taxed again under section 6B of the Karnataka Sales Tax Act. The submission, therefore, was that the value of the work entrusted to the sub-contractors could not be taken into account while computing the total turnover of the Appellant for the purpose of taxation under the Karnataka Sales Tax Act. It is in view of the

provisions of the Karnataka Sales Tax Act that the Supreme Court observed that the value of the work entrusted to the sub-contractors or payments made to them shall not be taken into consideration while computing total turnover for the purposes of Section 6B of the Karnataka Sales Tax Act. This decision of the Supreme Court will not come to the aid of the Respondent in this case in view of the specific provisions of Section 66 and 68 of the Act as also the Cenvat Rules discussed in the foregoing paragraphs of this order. It also needs to be noted that there is no provision for input tax credit on deemed sales in levy of VAT.

29. The submission of the Learned Counsel for the Respondent regarding 'revenue neutrality' cannot also be accepted in view of the specific provisions of Section 66 and 68 of the Act. A subcontractor has to discharge the Service Tax liability when he renders taxable service. The contractor can, as noticed above, take credit in the manner provided for in the Cenvat Credit Rules of 2004.

30. Thus, for all the reasons stated above, it is not possible to accept the contention of the Learned Counsel for the Respondent that a sub-contractor is not required to discharge Service Tax liability if the main contractor has discharged liability on the work assigned to the sub-contractor. All decisions, including those referred to in this order, taking a contrary view stand overruled.

31. The reference is, accordingly, answered in the following terms :

"A sub-contractor would be liable to pay Service Tax even if the main contractor has discharged Service Tax liability on the activity undertaken

by the sub-contractor in pursuance of the contract."

4.8 To argue on the limitation appellant have pressed the ground of bonafide belief and for that reason they rely upon the certificate issued to them by M/s Gammon. They also submit that there were conflicting views in the matter. However on query from the bench the counsel for appellant was unable to point out to a single decision available during the relevant period giving a contrary view. Further the submission to the effect that there were conflicting circulars is also not borne out by any evidence. Larger bench has in case of Melange Developer Pvt Ltd. clearly in para 12 noted that all Trade Notices/Instructions/Circulars/Communications were superseded by the Master Circular dated 23 August, 2007, and this circular had clarified the liability of sub contractor to pay the service tax. It is settled law that bona fide belief is not the blind belief and needs to be established. Hon'ble Bombay High Court has in case of Responsive Industries Ltd. [2019 (26) G.S.T.L. 457 (Bom.)] held as follows:

"9. The contention that there was a bona fide belief that the Appellant are not liable to pay the service tax on outward transportation of goods and the GTA is not supported by any reasonable explanation. The bona fide belief that one is not liable to pay the tax has to be based on some facts on record which led to the belief. It is not the Appellant's case that the belief based on a ruling of the some authority that it not liable to pay service tax on outward transportation. A mere statement to the effect that the Appellant was under a bona fide belief of non liability of paying tax cannot be accepted in the face of clear provision of law. Thus, it is not possible to accept the contention that the Appellant had bona fide belief of for non-payment of tax, so as to invoke Section 80 of the Act."

4.12 The Appellant concealed the correct taxable amount with the service tax department, until the Departmental officers initiated an inquiry in this regard. These facts were suppressed with intent to evade the payment of service tax due on various taxable services provided by them thereby facilitating the evasion of service tax payable on the said services so rendered by them. Thus in the extended period, as provided for under the proviso to sub-section (1) of section 73 ibid for recovery of such service tax not paid and/or short paid by Appellant has been correctly invoked by the revenue authorities.

The decision of the Mumbai Bench has been affirmed by the Hon'ble Supreme Court as reported at [(2023) 6 Centax 210 (S.C.)]". Thus I do not find any merits in the submissions made by the appellant in respect of incomes under this head and uphold the demand of service tax made.

4.8 Logistic/ Handling Charges (S No.9)

In respect of the incomes reported under this head appellant have contended that the issue has been settled in the favour of the assessee by various decisions of CESTAT. In case of Surjeet Auto Pvt. Ltd. [2024 (24) CENTAX 115 (T)] following was held:

"9. Post 01.07.2012, in order to qualify as a 'service', the activity has to satisfy three limbs of the definition of service viz., there has to be a service provided by a provider to a recipient, there has to be a monetary consideration and the service has to be provided in the taxable territory of India. Logistics/Handling charges are collected while selling of cars to the customers and not otherwise. Therefore, even if one has to consider the logistics/handling charges to be a consideration for a service, it is imperative to note that this handling activity is coupled with sale of car and would be called as bundled service as defined under section 66F of Finance Act, 1994. In this context as well, we observe that receipt of logistics/handling charges is naturally bundled with sale of cars since majority of similar service providers

in the industry would receive the said amounts. Accordingly, provision of above activities and sale of vehicles has to be treated as provision of single service which gives such bundle its essential character. And in the present case, the activity of selling of cars is essential and undertaking of above activities is incidental to the sale. Therefore, above activities has to be bundled with sale of cars and it should be treated as sale of cars only. That being a case, service tax is not leviable on logistics/handling charges, since sale of cars is covered under the exclusion part of service definition given under section 65B (44) of Finance Act, 1994 i.e. transfer of title in goods. Consequently, they will obviously form part of the value of the goods when they are subsequently sold and consequently sales tax/VAT would apply and not service tax.

10. In this context we note that CBEC vide its Circular No. 699/15/2003-CX., dated 5-3-2003 clarified that "it is envisaged appears that any activity of sales dealer at the pre-sale stage or at the time of sale will not come under the purview of service tax." We are of the opinion that this circular has clearly clarified that such pre-sale charges are not leviable to service tax, and the logistics/handling activities are all pre-sale activities and hence are not leviable to service tax.

11. In this context, we also observe that the Tribunal in Indian Oil Corporation Ltd v. CCE [2015 (38) S.T.R. 501 (Tri. - Bom)] held that "whatever expenses have been incurred before transfer of the goods, form part of the sale price of goods". Similar view was held by the coordinate bench of this Tribunal in M/S Premier Car Sales Ltd., v. Commissioner (Audit), CGST & Central Excise, Lucknow [2024 (6) TMI 1 - CESTAT ALLAHABAD = (2024) 18 Centax 480 (Tri. - All.)] has held as follows:-

"15. Appellants had been recovering logistic charges from the buyers of the car. It is the case of the

Department that the Appellants had not deposited service tax on such logistic charges. The learned Commissioner has held that the Appellants have charged the logistics charges over and above the ex-showroom price of car. If logistic charges were part of the transaction value, then it could have been included in the sale value and mentioned in the sale invoice but Appellants had separately charged logistic charges and issued separate invoice in this regard. It has therefore been held that it is a pure service taxable under the provisions of Finance Act, 1994 and these logistics charges are not the part of transaction/sale value, rather logistics charges are the amount charged from the customers in view of services related to logistics charges. Appellants have submitted that they have collected logistics charges as part of transaction value at the time of sale of vehicle. These charges are part of sale invoice and VAT is collected on the same. They also submitted that there can be no service till the goods are sold to another person.

16. We have perused the copy of invoice for sale of car as well as invoice for logistic charges. Both these invoices have been raised simultaneously at the time of sale of vehicle. We also note that the VAT Tribunal vide order dt. 25-01-2014, in their own case for A/Y 2009-10, had held that the logistic charges recovered at the time of sale of car is liable to be included in the sale price of vehicle. It therefore held that VAT was payable on logistic charges. It is the settled principal of law that service tax and VAT are mutually exclusive and a transaction can either be taxed under service tax or under VAT. Once VAT has been paid, service tax cannot be demanded.

17. The Hon'ble Delhi High Court in the case of *Tim Delhi Airport Advertising Pvt. Ltd. v. Special Commr - II* [2016 (44) S.T.R 399 (Del.)] held that levy of service tax and VAT are mutually exclusive. The intention of the party to the transaction would be material. If a transaction has been held to be one of providing services, then the same was not chargeable to VAT.

.....

.....

20. In view of above, we hold that service tax could not have been demanded on logistic charges; particularly when Appellants have paid VAT on the same, Department has not been able to specify the nature of service provided and the order of Commissioner (Appeals) in another case has been accepted by the Department."

12. We also note that the impugned order has observed that the said charges did not form a part of sale value of the vehicle and were collected separately. However, in this context, we note that the said charges are incurred in respect of all cars which are to be sold by the dealer. The expenses incurred in this regard are passed by the original authority to the customer and collected as part of the sale value of the car. The bifurcation of the expenses and its separate accounting in the books of accounts does not amount to provision of service."

Since I find that the issue is squarely covered in favour of the appellant by this decision, I do not find any merits in the impugned order upholding the demand in respect of these incomes.

4.9 Thus in view of the discussions as above, the table in Para 5.7 of the impugned order is modified as follow:

SN	Items	Amt during 2015-16	Amt during 2016-17	Amt during 04/2017 to 06/2017

1	Moss charges received	4860	4700	6350
2	Billing Cancellation	133311	0	33000
3	Booking Cancellation Charges	81752	27750	26000
4	Income Insurance	215775	257648	0
5	Income Pick & Drop	33817	60850	0
6	Endorsement Income	126176	136142	82019
	TOTAL	595691	487090	147369
	Service tax rate	14.5%	15.0%	15.0%
	Service tax short paid	86,375	73,064	22,105

4.10 **Payment of the Service Tax from CENVAT Credit:**

The next demand which has been confirmed by the impugned order is in respect of the amounts of service tax paid by the appellant from the CENVAT Credit account as per their audited books of account. The demand has been made by comparison of figures indicated in the Audited Financial Statement with the figures of CENVAT Credit reflected in the ST-3 return. Appellant have sought to explain the difference by providing the exact figure of tax payable for the disputed period and the tax paid through cash and CENVAT as reflected in the Audited Financial Statements. I find that the difference is there in the figures reported in these Financial Statements and ST-3 returns. The difference is not only in respect of the figures of CENVAT Credit but also in the figures of the Tax Payable and Tax Paid thorough cash. As per the submissions of the appellant the difference is reflected in the table below:

	2015-16		2016-17		04/17 to 06/17	
	Audited Financial Statemen t	ST-3	Audited Financial Statement	ST-3	Audited Financial Statemen t	ST-3
Taxable Value	98635886	85062009	133083303	128726667	38106172	22430541
Service Tax Payable	14020669	11704539	19854704	19196616	5715926	3364581
Tax paid through Cash	12558247	10694740	17990326	17741748	5040674	3109215
Tax paid through CENVAT	1462422	1012527	1864378	1433874	675252	255364

Total Tax Paid	14020669	11707267	19854704	19175622	5715926	3364579
Difference in Payable and Paid	0	2728	0	-20994	0	2

From the perusal of the above it is quite evident that appellant has as per their audited financial statements shown a higher tax liability and payment of tax then that reflected in the ST-3 return. Demand has been made only by comparing the figures of the CENVAT Credit utilization reflected in the Audited Financial Statements and ST-3 returns. No enquiry or investigation has been made in respect of the other differences observed. Is it true that revenue officers have shut their eyes to the difference in figures of the tax liability reflected in the Audited financial Statements and ST-3 return. Why no demand has been made for the difference in tax liability itself. It would be that the figures reported in the Audited Financial Statements were the true reflection of the operations of the appellant. If that is so than if the appellant has paid the tax higher than reflected in the ST-returns the same should have been also reflected in the comparison charts. The demand made without proper verification and complete comparison of the Audited Financial Statements and ST-3 returns is obnoxious and bad in law. If the Financial Statements reflected higher credit utilization, then they also reflected higher tax liability and higher payment of tax in cash. Impugned order has simply stated that appellant have failed to produce the relevant CENVAT Credit documents. Even otherwise I agree with the contention of the appellant that impugned order seeks to deny that credit which was never taken by them by making relevant declaration on the ST-3 return. In the case of Cyber Group India Pvt Ltd. [2025 (27) Centax 386 9T-All]] following has been held:

"17. As regards finding in the adjudication order regarding taking credit within a period of one year, I find that the said finding has been recorded only on the ground that the amount of credit was not disclosed by the Appellant in ST-3 return for the period April'2015 to Sep'2015. The

adjudicating authority appears to have misguided himself by taking a view that credit is taken by declaring the amount of credit in ST-3 return. On the contrary, credit is always taken in account books and/or other statutory records. The disclosure of opening/closing balance of credit and utilised amount of credit in ST-3 may be a condition required to be complied by a taxpayer, but the same by itself is not a condition to claim credit."

4.11 Appellant has challenged the invocation of extended period of limitation for making the demand. However the emphasis of their submission is only in respect of the demand made in respect of CENVAT Credit. As the I have set aside this demand in totality on the facts and merit I do not find relevant to discuss this issue in respect of CENVAT credit. In respect of the services on which I have upheld the liability to pay service tax (para 4.9) I find that issue is purely the issue of interpretation of the provisions of the statute. It has been constantly held that extended period of limitation could not have been invoked for making the demand. Reliance is placed on the decision of Hon'ble Supreme Court in the case of International Merchandising Company, LLC [2022 (67) G.S.T.L. 129 (S.C.)]. Following this judgement Hon'ble Jharkhand High Court has in the case of Central Coalfields Ltd [(2024) 14 Centax 307 (Jhar.)] held as follows:

"21. *The show cause issued by the Respondent in the instant case is dated 15th March 2019 taking recourse of 1st proviso to Section 11A(1) of the Central Excise Act, 1944. The reply to Show Cause notice was submitted on 29th April 2019 and the Adjudication Order has been passed on 29th February 2020.*

Since, the present case is an interpretational issue and petitioner was paying GST Compensation Cess with a bona-fide belief that Clean Energy Cess was not payable. Further, the petitioner has been filing regular returns under GST law for all the supplies of coal made after introduction of GST. Petitioner was not filing returns under Clean Energy Cess

Rules with a bona fide belief that Clean Energy Cess was not payable. Further, these facts were in the knowledge of the respondents; however, despite said facts being in the knowledge of the respondents, show cause notice was issued almost after two years from the date Clean Energy Cess was repealed. Thus, as aforesaid, since the instant case involves an interpretational issue, therefore in such circumstances, no penalty under section 11AC can be levied as demand of Cess under the extended period of limitation is unsustainable.

Further, as the allegation of suppression and wilful intent to evade tax is baseless and incorrect, penalty under Section 11AC(1)(c) of the Central Excise Act, 1944 cannot be imposed. Reference in this regard may be made to the judgment rendered in the case of International Merchandising Company, LLC (Earlier known as International Merchandising Corporation) v. CST, New Delhi reported in 2022 (12) TMI 556 SC/[2022] 145 taxmann.com 247 (SC) wherein the Hon'ble Apex Court has held in 24 & 25 as under:-

"24. We are of the considered view that the Tribunal having come to the conclusion that the issue turned upon an interpretation of the provisions of Section 65(68) and Section 65(86b) of the Finance Act 1994, there was no warrant to allow the invocation of the extended period of limitation and to direct the determination of the penalty following the re-quantification of the demand. The extended period of limitation would clearly not stand attracted in respect of the first show cause notice dated 20 October 2009. The show cause notice shall hence have to be confined to the normal period of limitation excluding the extended period.

25. As far as the penalty is concerned, we are of the considered view that there was no warrant for the

imposition of the penalty as the dispute in the present case essentially turned on the interpretation of the statutory provisions and their inter play with the circular issued by the CBEC. Finally, we also order and direct that the view of the Tribunal on the applicability of the provisions of Section 65(86b) of the Finance Act 1994 as amended has been reversed by this Court. On remand in pursuance of the impugned order of the Tribunal, the adjudicating officer shall abide by the above directions.”

22. *In view of the aforesaid discussions, Issue no. (ii) and Issue No. (iii) (part) is decided in favour of Assessee, inasmuch as, no penalty under section 11AC can be levied as demand of Cess and further extended period of limitation cannot be invoked. However, the Assessee is liable to pay Cess for the normal period including interest over the same.”*

4.12 As the demand could not have been made by invoking the extended period of limitation penalties imposed under Section 78 are also set aside.

4.13 I do not find merits in the impugned order.

5.1 Appeal is allowed.

(Order pronounced in open court on - **29.10.2026**)

**Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)**

LKS