

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD**

REGIONAL BENCH – COURT NO. 03

Service Tax Appeal No. 12325 of 2019

[Arising out of OIO-BVR-EXCUS-000-COMM-10-2019-20 dated 31/05/2019 passed by Commissioner of Central Excise, Customs and Service Tax-BHAVNAGAR]

C.C.E. & S.T.-BHAVNAGAR

.....Appellant

Plot No.6776/B-1...Siddhi Sadan, Narayan Upadhyay Marg,
Beside Gandhi Clinic, Near Parimial Chowk,
Bhavnagar, Gujarat - 364001

VERSUS

ALPHA TRANS PACIFIC LOGISTICS PVT LTD

.....Respondent

38- Manmandir Residency-2, Chhatadiya Road, Rajula
Amreli, Gujarat

WITH

Service Tax Appeal No. 12328 of 2019

[Arising out of OIO-BVR-EXCUS-000-COMM-10-2019-20 dated 31/05/2019 passed by Commissioner of Central Excise, Customs and Service Tax-BHAVNAGAR]

C.C.E. & S.T.-BHAVNAGAR

.....Appellant

Plot No.6776/B-1...Siddhi Sadan, Narayan Upadhyay Marg,
Beside Gandhi Clinic, Near Parimial Chowk,
Bhavnagar, Gujarat - 364001

VERSUS

Shri Maheshbhai J Der

.....Respondent

Alpa Trans Pacific Logistics Pvt Ltd.,
Amreli, Gujarat

AND

Service Tax Appeal No. 12329 of 2019

[Arising out of OIO-BVR-EXCUS-000-COMM-10-2019-20 dated 31/05/2019 passed by Commissioner of Central Excise, Customs and Service Tax-BHAVNAGAR]

C.C.E. & S.T.-BHAVNAGAR

.....Appellant

Plot No.6776/B-1...Siddhi Sadan, Narayan Upadhyay Marg,
Beside Gandhi Clinic, Near Parimial Chowk,
Bhavnagar, Gujarat - 364001

VERSUS

Shri Pranav H Hindocha

.....Respondent

Alpa Trans Pacific Logistics Pvt Ltd.,
Amreli, Gujarat

APPEARANCE:

Shri Ghanshyam Soni, Joint Commissioner (AR) the Appellant
Shri P.D. Rachchh, Advocate for for the Respondent

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

FINAL ORDER NO. A / 10089-10091 / 2022

DATE OF HEARING: 12.10.2021

DATE OF DECISION: 10.02.2022

RAMESH NAIR

These appeals have been filed by the Revenue against Order-in-Original No. BVR-EXCUS-000-COMM-10-2019-20 dated 31.05.2019 passed by the Commissioner, Central Excise & GST, Bhavnagar. The brief facts of the case as per the Show Cause Notice are that the respondent were issued show cause notice alleging that they were providing service of delivery of cargo from the place of consignor in Gujarat to the place of Consignee (Customer) in South India under a composite scheme and charging for the same from its customers but, is not discharging service tax liability properly. The services being provided by Respondent include arranging for vehicles/containers, loading of goods at the place of Consignor in Gujarat by them, transportation of containerized cargo to Ports, Unloading of containerized cargo at Ports, handling of containerized cargo at Ports including payment of various port charges, loading of containerized cargo in costal vessel by Shipping Companies on behalf of them, transportation of sea route, unloading & handling of containerized cargo at ports by Shipping Companies on behalf of them, delivery of empty containers to Shipping Companies after the goods are unloaded at the place of Consignee which may not be classified under GTA. The said services suitably classified as Cargo Handling Service prior to the period 01.07.2012 and handling of cargo other than GTA after the period 01.07.2012. The impugned show cause notice proposed the service tax demand of Rs. 5,83,58,364/- along with

interest and penalty. It was also proposed imposition of penalty upon the Directors Shri Pranav V. Hindocha and Shri Mahesh J. Der, under the provisions of Section 77(1)(C) and 78 of the Finance Act 1994.

1.1 The adjudicating authority dropped the demands vide OIO No. BVR-EXCUS-000-COMM-10-2019-20 dated 31.05.2019 on the ground that at no point of time during the transportation of the goods respondent was in any way involved in undertaking the loading, unloading, packing of cargo. The Circular No. 334/1/2008-TRU dated 29.02.2008 clearly mentioned that mere transportation is not the essential character of cargo handling service. In the present case Respondent is only providing transportation of goods by road and Shipping line is transporting the goods by sea, all the remaining service, they procured from the actual service provider i.e Shipping line etc., made payment to such third party on behalf of customers and claim reimbursement of exactly the same amount paid on their behalf to the shipping lines, therefore the present case does not fall under the category of Cargo Handling Service. He also waived the penalty related to the Directors.

02. The Revenue challenged the impugned Order-In-Original in the present appeals on the grounds that while interpreting the definition of Cargo Handling Service, adjudicating authority has erred by not giving cognizance to the meaning of the word 'includes'. It has been ignored that specific exclusion such as handling of export cargo or passenger baggage or mere transportation of goods have been mentioned in the inclusive definition and therefore no other exclusions could have been allowed by the Adjudicating authority in the presumption which are not evident on the records. The Adjudicating Authority has erred in holding that the assessee was providing GTA Services. Qualifying the category of service under GTA conditions i.e Transport of Goods by Road in a goods Carriage and issue of consignment notes having all the details required. The Respondent not only had transported the goods by road but also through other means i.e waterway. They have not issued consignment notes having all the requisite details as envisaged in Rule 4B of Service tax Rules, 1994. While referring to the circular No. 334/1/2008-TRU dated 29.02.2008, the observation of the adjudicating authority that since the assessee is only providing transportation of goods by road and shipping line is transporting the goods

by sea with the help of shipping line, the case does not fall under the category of cargo handling service is not correct. CBEC Circular dated 29.02.2008 clarifies that cargo handling service does not cover mere transpiration of goods. Mere Transportation of goods by road is covered under 'Goods Transport Agency Service'. Service provider who provide composite service like packing, loading, unloading with transportation of goods are classified under Cargo Handling Service or Goods Transport Agency Services depending their essential or predominant character of the service provided. The Adjudicating authority failed to appreciate that the matter does not only pertain to the Goods Transported by Road, but several activities have been carried out by them. The Adjudicating authority has further erred in holding that the assessee was acting as a pure Agent in this case without any value addition and had fulfilled all the condition laid down under Rule 5 (2) of Service tax (Determination of Value) Rules, 2006 on the ground that actual receiver of Service by the shipping lines is the Consignor or Consignee and the assessee acted as pure agent and therefore, it becomes a revenue neutral case wherein the service tax has been charged by the shipping line and the same has been paid. The assessee was not acting as 'Pure Agent' of their customers as there was not contractual agreement between the assessee and their service recipients. The Revenue also rely upon the Judgments of UNION OF INDIA & ORS VS. COASTAL CONTAINER TRANSPORTERS ASSOCIATION & ORS. 2019(22) GSTL 481(SC). Section 66F (3) of the Finance Act 1994 provide the scope for determination of taxability of a bundled Services. From this, it can be inferred that if during the course of providing a service i.e transportation of goods from consignor to Consignee, assessee procure the service on behalf of their customers to transport the goods by sea and thereafter again take the charge of the same container at discharge port and hand it over to the consignor or consignee or in certain cases of the same container at discharge port and hand it over to the consignor or consignee or in certain cases makes further arrangement of transport of goods by road till the place of consignee, the assessee as a service provider combine elements of different service while providing main service. Adjudicating authority has also erred in holding that the charges levelled against the Directors are also not proved as nowhere in the impugned OIO, adjudicating authority has made any examination and discussion on the charges levelled against the co-noticees and the role played by them in the evasion of service tax by their firm by mis-classifying the service provided by them.

03. Shri Ghanshyam Soni, Learned Joint Commissioner (AR) appearing for the revenue appellant reiterates the grounds of appeal and also relied upon the judgments in case of SOUTH EASTERN COAL FILED LTD VS CCE RAIPUR 2016(41)STR636 (TRI-DEL), GST,RAIGAD VS JWC LOGISTICS PVT. 2019(22)GSTL237(TRI- MUM), EAST INDIA MINERALS LTD. VS GST, BHUBANSESHWAR-II 2021(44) GSTL 90 (TRI-KOL).

04. Shri P.D. Rachchh Ld. Counsel appearing for Respondents submits that services provided by respondent viz, Transportations of goods in container by Road and arranging service of handling of cargo at load port and discharge port as well as sea transportation of the same containerized cargo by any means cannot be classified under the 'Cargo Handling Service'. On plain reading of definition of Cargo Handling Service" it clearly transpires that so as to classify the service under 'Cargo Handling Service' there must be provision of services of loading, unloading and it includes handling of cargo for freight in special containers or for non containerized freight, for all mode of transport. It means services of loading, unloading and handling of cargo whether in container or otherwise may merit classification under the said category irrespective of fact of mode of transportation, but by any means transportation of goods in container whether road and / or sea cannot be classified under the cargo handling service. It is clearly evident from the invoices that respondent had charged for road transportation and reimbursed the actual amount for sea transportation paid to shipping line on behalf of recipients of service either consignor or consignee. Thus not provided any service of Cargo Handling Service as defined under the Finance Act, 1944. For the purpose of classifying the activities under "Cargo Handling" one must provide service of loading, unloading, packing or unpacking of cargo, cargo handling service provided for freight in special container or for on containerized freight, service provided by a container freight terminal or any other freight terminal, for all modes of transport, cargo handling service incidental to freight, service of packing together with transportation of cargo or goods, with or without one or more of other services likes loading, unloading, unpacking. Respondent had not provided any service of handling of cargo but had provided service of "Transportation of containerized Cargo" only. In other words they provided service of transportation of goods without handling of cargo. Appellant has tried to read the inclusive portion of definition particularly clause 23(a) by tried to

read certain word used therein isolation viz 'includes'. 'freight in special containers', 'for all modes of transport' and 'incidental freight'. Clause 23(a) has to be read in whole and it starts from the wording 'cargo handling services' before the said words, it means all such activity can be classified under cargo handling services when there is actual handling of cargo coupled with such situations like in special container, for all modes of transportation and incidental to freight. The Appellant fails to apply the provisions of Section 65A – Classification of taxable services. It is presumed that services provided by the respondent were composite services consisting of combination of different service which cannot be classified as per clause (a) of 65A(2), then also essential character of service was transportation of goods only and not handling of cargo. It is not the case of the department that services provided by respondent cannot be classified as specific service as provided under Section 65A(2)(a). Therefore, different services provided by it cannot be classified as cargo handling service. CBEC vide Circular No. 104/7/2008-S.T. dated 06.08.2008 in similar situation clarified. CBEC vide Circular No. 51/13/2002 dated 07.01.2013 had also clarified on the doubts regarding classification of certain services which appears to fall under two or more categories simultaneously. Appellant failed to take note of clarification issued by CBIC at para 4 of the Circular No. B11/1/2002-TRU dated 01.08.2002. Value of "Transportation of goods by road and Sea were shown separately in the invoices, therefore by any means service of transportation of goods/cargo cannot be classified under 'Cargo Handling Service' and no service tax can be demanded on that components of road transportation and sea transportation. Once, that components is allowed to deduct demand will become zero. He relies upon the case of UNITED SHIPPERS LTD VS. CCE THANE -II – 2015 (37) S.T.R. 1043(TRI. -MUMBAI).

05. Respondent also submit that though the concept of levy of service tax based on classification of service under Section 65A is dis-away with effect from 01.07.2012, principles of interpretation of specified description of service or bundled service were incorporated under Section 66F of the Finance Act, 1944 w.e.f. from 01.07.2012 He also invites attention towards clarification issued by CBIC vide Circular No. 165/16/2012-ST dated 20.12.2012. Thus, for the purpose of registration and payment of service tax same classification were continued, therefore, it cannot be said that there is not category of classification is available and there cannot be two different criteria for classification of service, Registration and payment of Service tax

and levy of Service tax. There was no change in the definition of "Goods Transport Agency" as well as levy & payment of service tax on GTA prior to 01.07.2012 and w.e.f 01.07.2012. The Respondent had not only raised consignment Note/Truck Loading Slips/ Lorry Receipts bearing Serial Number, date, consignor's name, consignee's name, from to, back to, container number, seal number, name of transport, truck number, weight etc but also raised invoice for road transport freight, LR number etc with almost all similar information as provided under Rule 4A and 4B of Service tax Rules, 1994. He also submits that merely by not mentioning one or other information required under the said Rules in the consignment note & Lorry receipts, it amounts to technical & procedural lapse if any on its parts but when consignment note by whatever name called were issued, by any means it cannot be said that services provided by it was not GTA.

5.1 Respondent further submits that in most of the cases contract was oral and as per the provisions of Section 10 of the Indian Contract Act, 1872, contract can be written as well as oral also. In the present case consignment note, invoice raised on the clients and payment received from the client based on such documents, it clearly proves that there was contractually agreement between respondent and clients and for the very reason clients had reimbursed the amount paid on behalf of them. The Respondent relies upon the decisions of *Pharmalinks Agency (I) Pvt. Ltd. Vs. CCE Pune-III - 2015 (37) STR 305* (Tri. Mumbai), *Commissioner of S.T. Chennai Vs Sangamitra Service agency - 2014 (33) S.T.R. 137* (Mad.), *Sai Shipping Services Vs CCE Jaipur -2011 (22) S.T.R. 153* (Tri-Del). There was no provisions of levy of service tax on reimbursable expenses. It is also submitted that there is no suppression of facts, therefore extended period cannot be invoked.

06. We have carefully considered the submissions made by both the sides and perused the records. In these appeals the issue for our consideration are as under:-

(i) Whether services provided by the respondent may be classifiable under "Cargo Handling Services under Section 65(105)(zr) read with Section 65(23) of the Finance Act, 1994 prior to 01.07.2012 and after 01.07.2012 under "Handling of Cargo" or under "Goods Transport Agency" under Section 65(105) (zzp) read with Section 65(50b) of the Finance Act, 1994 prior to

01.07.2012 and after 01.07.2012 under Section 65B(26) of the Finance Act, 1994?

(ii) Whether cost of road transportation as well as sea transportation shown separately in the invoices can be included in the value of "Cargo Handling Services" if any provided by the respondent in view of the clarification issued by the CBEC vide Circular No. B.11/1/2002-TRU dated 01.08.2002 and settled position of law by Hon'ble Tribunal in the case of United Shippers Ltd. Vs. Commissioner of Central Excise, Thane-II 2015 (37) STR 1043 (Tri. Mumbai) ?

(iii) Whether arrangement of services of Coastal Sea Transportation of Containerized Cargo and/or Handling of Cargo at load port and discharge port on payment of such amount on behalf of recipient of service on actual reimbursement basis can be considered as cost incurred by the respondent in the capacity of "Pure Agent" within the meaning of Explanation 1. To sub-rule (2) of Rule 5 of Service Tax (Determination of Value) Rules, 2006?

(iv) Whether such cost or expenditure viz. payment towards transportation and handling charges incurred (after 2012-13 to 2014-15) can be included in the value as provided under Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 for the purpose of charging service tax while providing taxable service of Goods Transport Agency and covered by the decision of Hon'ble High Court of Delhi and Hon'ble Apex Court in the case of Intercontinental Consultants & Technocrats Pvt. Ltd. as reported in 2013(29) STR 9 (Del) and 2018 (10) GSTL 401 (SC)?

(v) Whether extended period as provided under Section 73 of the Finance Act, 1994 can be invoked just merely respondent fail to pay tax and/or issue involved is interpretation of statute?

6.1 We find that the adjudicating authority dropped the proceeding of the Show Cause Notice after considering the legal position and facts such as contracts between the respondent and the service recipient. The learned adjudicating authority dropped the proceeding also on the ground that as regard service other than transportation, the respondent is a pure agent to incur expenditure of cost in the course of providing taxable service on behalf of the customer as the recipient of service separately indicated in the invoice

issued by it as the service provided to the customer as service recipient. With this finding, the learned Commissioner held that other than GTA all other services are on reimbursable basis and the same shall not be included in the gross value of GTA services and shall not construe the "Cargo Handling Service". Since the revenue has challenged the impugned order, we need to re-examine the whole issue. We find that the basic issue is whether this service of the respondent falls under Cargo Handling Service or otherwise, we reproduce the definition of Cargo Handling Service as under:

Section 65(105)(zr) – "taxable service" means any service provided or to be provided, to any person, by a cargo handling agency in relation to cargo handling services;

"(23) Cargo Handling service means loading, unloading, packing or unpacking of cargo and includes,-

(a) Cargo handling service provided for freight in special containers or for non containerized freight, service provided by a container freight terminal or any other freight terminal, for all modes of transport, and cargo handling service incidental to freight, and

(b) Service of packing together with transportation of cargo or goods, with or without one or more of other services like loading, unloading, unpacking but does not include, handling of export cargo or passenger baggage or mere transportation of goods."

On plain reading of the aforesaid definition, it is clear that to classify the service under "Cargo Handling Service" there must be provision of services of loading, unloading and it includes handling of cargo for freight in special containers or for non containerized freight, for all mode of transport. It means service of loading, unloading and handling of cargo whether in container or otherwise may merit classification under the said category irrespective of fact of mode of transportation but by any means transportation of goods in container whether by road and/or sea cannot be classified under the Cargo Handling Service. It is a fact on record that respondent had provided services of transportation of goods by road in a container in the capacity of 'Goods Transport Agency' and arrange services of handling of cargo at load port and dispatch port as well as sea transportation on reimbursement of amount on actual basis from recipient of services.

6.2 On this issue, the board had issued a clarification No.B.11/1/2002-TRU dated 01.08.2002, the relevant para of the said clarification are reproduced below:-

"2. As per clause (21), the term "cargo handling service" means loading, unloading, packing or unpacking of cargo and includes cargo handling services provided for freight in special containers or for non-containerised freight, services provided by a container freight terminal or any other freight terminal, for all modes of transport, and any other service incidental to freight, but does not include handling of export cargo or passenger baggage or mere transportation of cargo. The taxable service, as per sub-clause (zr) of clause (90), is any service provided, to any person, by a cargo handling agency in relation to cargo handling services.

3. The services which are liable to tax under this category are the services provided by cargo handling agencies who undertake the activity of packing, unpacking, loading and unloading of goods meant to be transported by any means of transportation namely truck, rail, ship or aircraft. Well known examples of cargo handling service are services provided in relation to cargo handling by the Container Corporation of India, Airport Authority of India, Inland Container Depot, Container Freight Stations. This is only an illustrative list. There are several other firms that are engaged in the business of cargo handling services."

From the above clarification, it is clear that services under the category of Cargo Handling Services are those services provided by the Cargo Handling Agencies who undertake the packing, unpacking, loading and unloading of the goods meant to be transported by any means of transportation. In the instant case, it transpires from the invoice that respondent has not provided any service in the form of handling of cargo to transport goods by road and also outsourced the services of transportation of goods by sea in a vessel.

6.3 Even for the sake of argument if it is considered that respondent has provided composite services then also as per Section 65A(2)(b) of the Finance Act, 1994, the services has to be classified based on a service which gives them their essential character. In the present case, the essential character of services was transportation of goods by road and sea therefore, on this undisputed fact even if, it is considered as composite service it cannot fall under the category of 'Cargo Handling Service'. In this regard we have gone through the provision of classification of taxable service as provided under Section 65A, we find that as per sub-section (1) of Section

65A- classification of taxable services shall be determined according to the terms of the sub-clause (105) of Section 65. As per sub-section (2) of Section 65A- when for any reason, a taxable service is, prima facie, classifiable under two or more sub-clauses of clause (105) of Section 65, classification shall be effected as follows:-

- (a) the sub-clause which provides the most specific description shall be preferred to sub-clauses providing a more general description;*
- (b) composite services consisting of a combination of different services which cannot be classified in the manner specified in clause (a), shall be classified as if they consisted of a service which gives them their essential character, insofar as this criterion is applicable;*
- (c) when a service cannot be classified in the manner prescribed in clause (a) or clause (b), it shall be classified under the sub-clause which occurs first among the sub-clauses which equally merit consideration.*

In the present case, the Goods Transport Agency and/or services in relation to transport of coastal goods are more specific service therefore, import classifiable under clause (zzp) of Section 65(105)- Goods Transport Agency read with Section 65(50b) of the Finance Act, 1994 and clause (zzzzl) & (zr) of Section 65 (105) "Transportation of Coastal Cargo" and "Cargo Handling Service" is general one. Therefore, services provided by respondent are rightly merit classified under GTA. We further find that even if it is presumed that services provided by the respondent are composite services consisting of combination of different service which cannot be classified as per clause (a) of Section 65A(2) then also essential character of service was transportation of goods and not as handling of cargo. It is not the case of the department that services provided by respondent cannot be classified at specific services as provided under Section 65A(2)(a) therefore, different service provided by the respondent cannot be classified as 'Cargo Handling Service'.

6.4 The respondent also referred to CBEC Circular No. 104/7/2008-S.T. dated 06.08.2008, the relevant paras are reproduced below:

"3. Issue : GTA provides service to a person in relation to transportation of goods by road in a goods carriage. The service provided is a single composite service which may include various intermediary and ancillary services such as loading/unloading,

packing/unpacking, transshipment, temporary warehousing. For the service provided, GTA issues a consignment note and the invoice issued by the GTA for providing the said service includes the value of intermediary and ancillary services. In such a case, whether the intermediary or ancillary activities is to be treated as part of GTA service and the abatement should be extended to the charges for such intermediary or ancillary service?

Clarification: GTA provides a service in relation to transportation of goods by road which is a single composite service. GTA also issues consignment note. The composite service may include various intermediate and ancillary services provided in relation to the principal service of the road transport of goods. Such intermediate and ancillary service may include services like loading/unloading, packing/unpacking, transshipment, temporary warehousing etc., which are provided in the course of transportation by road. These services are not provided as, independent activities but are the means for successful provision of the principal service, namely, the transportation of goods by road. The contention that a single composite service should not be broken into its components and classified as separate services is a well-accepted principle of classification. As clarified earlier vide F.No. 334/4/2006-TRU, dated 28-2-2006 (para 3.2 and 3.3) [2006 (4) S.T.R. C30] and F. No. 334/1/2008-TRU, dated 29-2 2008 (para 3.2 and 3.3) (2008 (9) S.T.R. C61), a composite service, even if it consists of more than one service, should be treated as a single service based on the main or principal service and accordingly classified. While taking a view, both the form and substance of the transaction are to be taken into account. The guiding principle is to identify the essential features of the transaction. The method of invoicing does not alter the single composite nature of the service and classification in such cases are based on essential character by applying the principle of classification enumerated in section 65A. Thus, if any ancillary/intermediate service is provided in relation to transportation of goods, and the charges, if any, for such services are included in the invoice issued by the GTA, and not by any other person, such service would form part of GTA service and, therefore, the abatement of 75% would be available on it.

4. Issue 2: GTA providing service in relation to transportation of goods by road in a goods carriage also undertakes packing as an integral part of the service provided. It may be clarified whether in such cases service provided is to be classified under GTA service.

Clarification: Cargo handling service (Section 65(105)(zr)] means loading, unloading, packing or unpacking of cargo and includes the service of packing together with transportation of cargo with or without loading, unloading and unpacking, Transportation is not the essential character of cargo handling service but only incidental to the cargo handling service. Where service is provided by a person who is registered as GTA service provider and issues consignment note for transportation of goods by road in a goods carriage and the

amount charged for the service provided is inclusive of packing, then the service shall be treated as GTA service and not cargo handling service."

They also relied upon Circular No.51/13/2002 dated 7.01.2003 which clarifies as under:-

"2. The matter has been examined in the Board. It is hereby clarified that any service (transaction) can be taxed only once, even if it appears to fall under two or more categories. Therefore, before levying service tax it is essential to determine under which category a particular service falls. It should be kept in mind that service tax is a tax on the service provided and is recovered from the service provider (in some cases even from the service recipient). The position is akin to Central Excise duty which is charged on manufactured goods. Just as Central Excise duty cannot be charged twice on the same goods under two separate chapters/headings/sub-headings of the Central Excise Tariff, so also Service tax cannot be charged twice on the same service (transactions). However, one service provider may provide more than one taxable service. In such cases, the service provider need only take one registration, but it shall be endorsed for all the taxable services and tax liability will have to be discharged for each of the taxable services separately.

3. However, in the absence of any interpretative rules, it may become difficult at times to decide the classification of a particular service. The guiding principle should be that a service should be categorised under that category which is more specific. As for example, a hotel may rent out a conference room for an official conference where lunch is also served. A dispute could arise in this case as to whether this particular service would fall under the category of 'mandap keeper' and exempt from tax vide Notification No. 12/2001-Service Tax dated 20-12-2001, or it will fall under the category of 'convention services' and charged to service tax. Between the two competing categories, in this case, the more specific one would be that of a 'convention service' since a 'mandap keeper' includes official, social as well as business functions whereas a 'convention service' covers conventions only which is like an official function. Hence in this case the service would not be exempt from service tax.

4. Similarly, in each case where such problems arise the proper Central Excise officer has to decide on merits as to which is the more specific category and charge tax accordingly."

In view of the above clarification, in the instant case even if, entire transaction is to be considered as a composite service then also the form and substance of the transaction is in the nature of transportation of goods by road and sea and not handling of cargo by any means therefore, activities carried out by the respondent cannot be considered as Cargo Handling Service.

6.5 We find that the revenue has failed to take note of clarification issued by CBIC Circular No.B.11/1/2002-TRU dated 01.08.2002 which reads as under:-

*4. A point has been raised as to what would be the value of service tax in a case **where transport and cargo handling service is provided in a composite manner.** The measure of tax is the gross amount charged by the cargo handling agency from the customer. Therefore, if lumpsum amount is charged for both transportation and cargo handling, the tax will be payable on the entire amount. **On the other hand, if the bill indicates the amount charged for cargo handling and transportation separately on actuals basis (verifiable by documentary evidence), then the tax would be leviable only on the cargo handling charges.***

*5. Cargo handling services are provided in the port also. Whether such service will be covered in the category of port services or cargo handling service. **In this context it may be mentioned that port services cover any service provided in relation to goods or vessels by a port or a person authorized by the port. This includes the cargo handling service provided within the port premises. Therefore to this extent there may be an overlap in cargo handling service and the port service. However since port services covers all the service in relation to goods and vessels and therefore more specific to port, the service provided in a port in relation to handling of goods would be appropriately covered under port service and no separate levy will be attracted under the category of cargo handling agency service. Similar would be the case in respect of service provided for storage of goods in the port premises.***

6.6 As per the submission made by the respondent which is fact on record that value of transportation of goods by road and sea were shown separately in the invoice therefore, for this reason the service of transportation of goods/cargo cannot be classified under 'Cargo Handling Service' and no service tax can be demanded on that component of road transportation and sea transportation. Therefore, in the first two years, if the component of both i.e. GTA and Sea Transportation is deducted then there will be no demand. Even for the last three years of period of dispute, discharge port handling charges were also shown separately in the invoices which were nothing but reimbursement of actual amount paid to the shipping line on behalf of the recipient of service as evident in the invoices itself. Somewhat similar issue has been considered by this Tribunal in the case of UNITED SHIPPERS LTD. vs COMMISSIONER OF CENTRAL EXCISE, THANE-II- 2015 (37) STR 1043 (Tri.-Mumbai) and by following various decisions, it was held that when the cost of transportation is shown separately in the invoice, no service tax can be demanded on such component of value. The said decision of the tribunal was upheld by the Hon'ble Apex Court and department's Civil

Appeal was dismissed as reported in COMMISSIONER Vs. UNITED SHIPPERS LTD.- 2015 (39) S.T.R. J369 (SC). The tribunal while holding the same has placed reliance upon decision of tribunal as well as CBIC Circular (supra).

6.7 In view of the above decision, which has attained finality as upheld by the Hon'ble Supreme Court the same being binding upon all the ratio of the decisions and clarification is squarely applicable in the present case. As regard the period after 01.07.2012, though, practice of levy of service tax based on classification of service was departed and service was defined under Section 65B(44) of the Finance Act, 1994. The levy of service tax was under Section 65B of the Finance Act, 1994 on the value of all services other than specified in the negative list. The negative list is given under Section 66D of the Finance Act, 1994. The base of interpretation of specified description of service or bundled service were incorporated under Section 66F of the Finance Act, 1994 with effect from 01.07.2012 *ibid* whereas, service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description therefore, the service provided by the respondent i.e. 'Goods Transport Agency' and/or service in relation to transport of coastal goods were more specific service and service tax was rightly paid under said category even after 01.07.2012 and category of 'Cargo Handling Service' was general one therefore, the services provided by the respondent were rightly merit classified under GTA and cannot be classified under 'Cargo Handling Service'. In this regard the respondent invited our attention to CBIC Circular No.165/16/2012-ST dated 20.11.2012 wherein, it was clarified that-

"Negative List based comprehensive approach to taxation of services came into effect from the first day of July, 2012. Accounting code for the purpose of payment of service tax under the Negative List approach ["All Taxable Services" - 00441089] was prescribed vide Circular 161/12/2012 dated 6th July, 2012.

*2. Subsequent to the issuance of the Circular, suggestions were received from the field formations that the service specific old accounting codes should be restored, for the purpose of statistical analysis; **also it was suggested that list of descriptions of services should be provided to the taxpayers for obtaining registration. These suggestions were examined and a decision has been taken to restore the service specific accounting codes. Accordingly, a list of 120 descriptions of services for the purpose of registration and accounting codes corresponding to each description of service for payment of tax is provided in the annexure to this Circular.***

3.....

4. Registrations obtained under the positive list approach continue to be valid. **New taxpayers can selecting the relevant description/s from among the list of obtain registrations by 120 descriptions of services given in the Annexure. Where registrations have been obtained under the description 'All Taxable Services', the taxpayer should file amendment application online in ACES and opt for relevant description/s from the list of 120 descriptions of services given in the Annexure.** If any applications for amendment of ST-1 are pending with field formations, seeking the description 'all taxable services', such amendment may not be necessary and the officers in the field formations may provide necessary guidance to the taxpayers in this regard. Directorate General of Systems will be making necessary arrangements for display of the list of 120 descriptions of services and their corresponding Accounting Codes in Form ST-1 and Form ST-2 as may be necessary."

As per the above clarification for the purpose of registration and payment of service tax same classification which were prevalent from 01.07.2012 were continued from 01.07.2012 therefore, it cannot be said that there is no category of classification available and there cannot be two different criteria for classification of service, registration and payment of service tax and levy of service tax. Even ratio of clarifications issued by the CBIC and settled position of law in Para (supra) for the period prior to 01.07.2012 is equally applicable after 01.07.2012 for the purpose of classification of activities, etc. Even from 01.07.2012 as per Section 66F(3) subject to provisions of Sub-section (2), the taxability of bundled service shall be determined in the following manner namely,-

- (a) if various elements of such service are naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which gives such bundle its essential character;
- (b) if various elements of such service are not naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which results in highest liability of service tax.

6.8 We find that though in the show cause notice, it is not provided that the services were naturally bundled but in the revenue's appeal it was considered the service as bundled service. Though services of transport of goods by road by GTA and services of loading and unloading/handling of cargo at Load port and discharge port as well as sea transportation by any means cannot be considered naturally bundled in the ordinary course of business. However, even if it is assumed that services provided by it were naturally bundled in the course of ordinary business then also essential

character of service is transportation of goods and not handling of cargo irrespective of facts that in all the cases services of transportation of goods were not provided up to the place of consignee but provided only up to the dispatch port only therefore, services provided by the respondent cannot be classified under taxable service and delivery of cargo from the place of consignor to the place of consignee after 01.07.2012.

6.9 The respondent also pointed out that there is no proposal of classification of services under 'Cargo Handling Service' in the show cause notice thereby not to the proper notice, we find that it is a fact in the show cause notice there is no specific proposal of classification of services under Cargo Handling Services. However, since we decided the matter on merit itself that the service in question does not fall under Cargo Handling Service, we do not incline to discuss and to give separate finding on this issue raised by the respondent.

6.10 It is admitted fact on record by way of various statements of the Directors of the Company which is supported by documentary evidences that the respondent was engaged in provisions of service of Goods Transport Agency Service and goods were transported with the help of truck owned by others as well as its own trucks. They also engaged in provision of service of transportation of goods by road in their own trucks. It is also a fact that they had provided service of transportation of goods in container by road only without handling of goods/cargo to the consignee or consignor as the case may be. The consignee/consignor were many times selecting the shipping lines from particular ports in Gujarat and shipping lines provided, services of sea transportation, handling of cargos at load port as well as discharge port. In the initial two years of period under dispute, the respondent provided services of transportation of goods by road/GTA from consignor's premises to load port and from dispatch port to consignee's port in certain cases only. Thus, the role of the respondent was limited to transportation of goods by road/GTA from consignor's premises to load port only, goods were unloaded at the consignee's premises by the consignee only therefore, in this fact the respondent had provided service of transport agency only prior to 01.07.2012 and also after 01.07.20102.

6.11 We find that there is no change in the definition of Goods Transport Service as well as levy and payment of service tax on service of GTA prior to

01.07.2012 and with effect from 01.07.2012 which is also discussed in the show cause notice.

"Prior to 01.07.2012

"Goods Transport Agency was defined at Section 65(50b) of the Finance Act, 1994 as under

"Goods transport agency" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called.

As per Section 65(105)(zzp) of the Finance Act, 1994 taxable service defined as under

"taxable service means any service provided or to be provided to any person, by a goods transport agency, in relation to transport of goods by road in a goods carriage.

With effect from 01.07.2012

"Goods Transport Agency" was defined at Section 65B(26) of the Finance Act, 1994 as under -

"Goods transport agency" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called."

In both the period, the condition of issue of consignment note is existing. Rule 4A and 4B of Service Tax Rules, 1994 provided for issue of consignment note as under:

"RULE 4A. Taxable service to be provided or credit to be distributed on invoice, bill or challan. (1) Every person providing taxable service shall , not later than [thirty days] date of [completion of such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier. issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorized by him [in respect of such taxable service] [provided or agreed to be provided and such invoice, bill or, as the case may be, challan shall be serially numbered and shall contain the following, namely :

(i) the name, address and the registration number of such person;

(ii) the name and address of the person receiving taxable service;

(iii) description and value of taxable service provided or agreed to be provided; and]

(iv) the service tax payable thereon:

Provided* further that in case the provider of taxable service is a goods transport agency, providing service [to any person], in relation to transport of goods by road in a goods carriage, **an invoice, a bill or, as the case may be, a challan shall include any document, by*

whatever name called, which shall contain the details of the consignment note number and date, gross weight of the consignment and also contain other information as required under this sub-rule:

RULE 4B. Issue of consignment note. ---Any goods transport agency which provides service in relation to transport of goods by road in a goods carriage shall issue a consignment note [to the recipient of Service]:

Provided where any taxable service in relation to transport of goods by road in a goods carriage is wholly exempted under section 93 of the Act, the goods transport agency shall not be required to issue the consignment note.

Explanation. - For the purposes of this rule and the second proviso to rule 4A, "consignment note" means a document, issued by a goods transport agency against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, and contains the names of the consignor and consignee, registration number of the goods carriage in which the goods are transported, details of the goods transported, details of the place of origin and destination, person liable for paying service tax whether consignor, consignee or the goods transport agency."

In the present case, respondent had not only raised consignment note, truck loading slip/Lorry Receipt bearing serial number, date, consignor's name, consignee's name, from to, back to, container number, name of transporter, truck number, weight, etc but also raised invoice for road transport freight, LR Number, etc with almost of similar information as provided under Rule 4(A) and 4(B) of Service Tax Rules, 1994.

6.12 We find that the revenue in its appeal alleged that since the LR Number was not mentioned, the respondent has not fulfilled the condition of Rule 4(A) and 4B of Service Tax Rules, 1994 therefore, the service provided by the respondent cannot fall under GTA. We find that as per undisputed facts discussed above, all the information required for consignment note as per the said rules were mentioned in the invoices and consignment note cum Lorry Receipt thus, it is clear that the allegation of non-issuance of consignment note hence it is not GTA is totally baseless and without verifying the documents namely consignment note/Truck Loading Slips and road transport freight invoices, LR Number in fact was mentioned in such invoices for the last three years and such invoice also bears number therefore, the allegation is baseless and not sustainable. We also agree with the submissions of the respondent that merely by not mentioning one or other information as required under the said rules in the consignment note and lorry receipt, it only amounts to technical and procedural lapse, if any on

their part but consignment note by whatever name called were issued. It cannot be said that services provided by them was not GTA.

6.13 As per our above discussions, we opine that the respondent has provided the service of 'Goods Transport Agency' Service during the period under dispute and also issued consignment note and not provided any sort of service as alleged of 'Cargo Handling Service', etc. The service is not chargeable to service tax under 'Cargo Handling Service'. Without prejudice to the above, we also find that the show cause notice as well as impugned appeal admits that the respondent had provided services of sea transportation as well as handling of cargo at load port and dispatch port in the capacity of pure agent but had doubted about fulfillments of conditions as stipulated in Rule 5(2) of Service Tax (Determination of Value) Rules, 2006. Especially, on existence of written contractual agreement, we find that as discussed in above paras the respondent had acted as pure agent of the consignor or consignee as the case may be and fulfilled all the conditions of the said rules. Only because of same containers were transported by sea in the vessel by other service provider and payment of sea transportation received by them against the invoice raised by them for reimbursement of actual basis, it cannot be said that it had not provided service of transport of goods by road. It is also not disputed that the respondent were registered as service provider under the category of Goods Transport Agency and paying service tax wherever payable by them under the Finance Act, 1994. In the registration, there is no mention of either cargo handling service or they had not provided any service of cargo handling nor transportation of goods by sea, etc.

6.14 We find that the respondent for providing services of Goods Transport Agency had raised invoice of the amount showing for road transportation and other on actual basis as reimbursement and also paid service tax wherever payable by them as GTA on the road transportation while providing services of transportation of goods by road. The respondent had also acted as pure agent of their service receiver for procuring service of sea transportation and handling of cargo at both the ports, etc, they had received invoices from the shipping lines for transportation of container from one port of India to another port of India and/or Cargo Handling for client which includes container number, sea freight charges, service tax, etc. based on the said invoice they had also mentioned such details in invoice raised by them on receiver. The bill of coastal for corresponding

container/vessel through which the container was to be transported was showing name of consignor and consignee therefore, whatever amount shown in the invoice is nothing but component of total paid on behalf of the receiver of service to be recovered from receiver of service only.

6.15 Based on the above factual position, we need to analyze the provision of Section 67 of the Finance Act, 1994. As per Sub-section (1) of Section 67 where, service tax is charged on services with reference to its value, in a case where the provision of service is for consideration in money with the gross amount charged by the service provider for such service provided or to be provided. As per sub-section (4) of Section 67, subject to the provision of Sub-section (1)(2) and (3), the value shall be determined in such a manner as may be prescribed and consideration is defined under explanation (a) to Section 67 which reads as under:

"Consideration includes any amount that is payable for the taxable service provided or to be provided."

In this regard, we read the provision of Service Tax (Determination of Value) Rules, 2006 especially Rule 5 and it is found that as per the sub-Rule (1) wherein, expenditure of cost are incurred by the service provider in the course of providing taxable service on such expenditure of cost shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging service tax on the said service and as per the provision of sub Rule (2), subject to the provision of Sub-rule (1) the expenditure of cost incurred by the service provider as a pure agent of the recipient of service shall be excluded from the value of taxable service. If all the following conditions are satisfied namely,-

- (i) The service provider acts as a pure agent of the recipient of service when he makes payment to third party for services procured.
- (ii) the recipient of service receives and uses the services so procured by the service provider in his capacity as pure agent of the recipient of service;
- (iii) the recipient of service is liable to make payment to the third party;

- (iv) the recipient of service authorises the service provider to make payment on his behalf;
- (v) the recipient of service knows that the service for which payment has been made by the service provider shall be provided by the third party;
- (vi) the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;
- (vii) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and
- (viii) the services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the service he provides on his own account.

Explanation 1.- For the purposes of sub-rule (2), "pure agent" means a person who-

- (a) enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;*
- (b) neither intends to hold nor holds any title to the services so procured or provided as pure agent of the recipient of service;*
- (c) does not use such goods or services so procured ;and*
- (d) receives only the actual amount incurred to procure such services,*

Explanation 2.- For the removal of doubts it is clarified that the value of the taxable service is the total amount of consideration consisting of all components of the taxable service and it is immaterial that the details of individual components of the total consideration is indicated separately in the invoice.

In the present case, it is not a matter of dispute that the Service Tax was paid on the consideration received for the provision of Goods Transport Agency Service (GTA) without seeking exclusion of any amount (wherever payable by them as GTA) and not paid Service Tax of the amount received towards Sea Transport and other expenses at port for services provided by third party i.e. Shipping Line and reimbursement from the receiver of service i.e. Consignor and Consignee on actual basis. We find that this act was done

in the capacity of pure agent of recipient of service namely Consignor/Consignee and fulfilled the meaning given under explanation namely:-

- (a) *Entered into an oral (in most of the cases except few) contractual agreement with the recipient of service viz. consignor/consignee to act as his pure agent to incur expenditure or costs in the course of providing taxable service (in the instant case providing goods transport agency service);*
- (b) *Neither intended to hold nor holds any title to the service so procured as pure agent of the recipient of service viz. consignor or consignee as the case may be;*
- (c) *Does not use such services so procured; and*
- (d) *Receives only the actual amount incurred to procure such services; and also fulfills all the conditions viz.*

(i) Being service provider it had acted as a pure agent of the recipient of service and made payment to third party for the services procured;

(ii)Consignor or Consignee had received and used the services of sea transportation etc. from shipping line so procured by it in its capacity as pure agent of them,

(iii)Consignor or Consignee as the case may be was liable to make payment to the third party i.e. shipping line;

(iv) Consignor or Consignee had authorized it to make payment on their behalf to shipping line;

(v) Consignor or consignees were knowing that the services for which payment has been made by the service provider shall be provided by the third party shipping line;

vi)The payment made by it on behalf of consignor or consignee was separately indicated in the invoices issued by them to consignor or consignee;

(vii)It had recovered from consignor or consignee only such amount as has been paid by it to the shipping line; and

(viii)The services procured by it from the third party as a pure agent of consignor or consignee were in addition to the services viz. goods transport agency provided by it on its own account.

From the above, it is clear that the respondent had acted as a pure agent. As per the aforesaid meaning and fulfilling all the aforesaid conditions. The respondent also submitted that as per admitted fact in most of the cases the contracts were oral and as per provision of Section 10 of the Indian Contract Act, 1872 the contract can be written as well as oral also. In the instant case consignment note/invoice raised on the clients and payments received from the client. Based on such documents it clearly proves that there was contractual agreement between the respondent and their clients and for this very reason clients had reimbursed the amount paid on behalf of the service recipient. We agree with these submissions of the respondent that all these actions are considered existence of contractual agreement within the meaning of the Indian Contract Act, 1872. The quotation of the composite amount was sent in certain cases just because of client/ receiver of service was aware about the arrangement of service of sea transportation and handling of cargo of load port and discharge port in the capacity of pure agent and reimbursement on actual basis.

6.16 In various judgments this issue has been decided that amount reimbursed in the capacity of pure agent no service tax can be demanded. Some of those judgments are referred below:-

- **PHARMALINKS AGENCY (I) PVT LTD – 2015 (STR) 305 (TRI-MUMBAI)**

"5.1 *As regards the demand of Service Tax on freight charges, we notice that the service recipient had entered into a separate agreement with the transporter for transporting of goods from Pune to various destinations and in terms of the agreement it was the service recipient's obligation to discharge the freight expenses. The appellant only paid these expenses and got them reimbursed from M/s. Abbot India Ltd. Thus, they were acting as a pure agent as the transportation was undertaken not as part of C&F agency functions but independently of the said function and, therefore, the question of including the expenditure incurred on freight in the consideration received is clearly unsustainable in law."*

- **SANGAMITRA SERVICES AGENCY- 2014 (33) STR 137 (MAD.)**

"7. We do not agree with the said contention. In the absence of any material to show the understanding between the Principal and the Client that the Commission payable by the principal was all inclusive, it is difficult to hold that the gross amount of remuneration/commission would nevertheless include expenditure incurred by the assessee providing the services; that all incidental charges for running of the business would also form part of the remuneration or Commission (by whatever name called). The phrase "by whatever name called" must necessarily have some link or reference or nature to the receipt of remuneration or commission. Thus, if a receipt is for reimbursing the expenditure incurred for the purpose, the mere act of reimbursement, per se, would not justify the contention of the Revenue that the same, having the character of the remuneration or commission, deserves to be included in the sum amount of remuneration/commission.

8. As per Rule 6(8) of Service Tax Rules, 1994, the gross amount referred to therein would apply to receipts of such sum, which would bear the character of remuneration or commission, in that, the said sum is brought under the head "receipts"."

- **SAI SHIPPING SERVICES – 2011 (22) STR 153 (Tri. Del.)**

"8. After appreciating the submissions made by both sides, we reproduce paras 2.4 and 2.5 from the Board Circular No. B/43/1/97-TRU dated 6-6-1997 :-

"It is clarified that in relation to Custom House Agent, the service tax is to be computed only on the gross service charges, by whatever head/nomenclature, billed by the Custom House Agent to the client. It is informed that the practice obtaining is to show the charges for services as 'agency commission', charges, agency and attendance charges, agency charges and some similar descriptions. The service tax will be computed only with reference to such charges. In other words, payments made by CHA on behalf of the client, such as statutory levies (cess, customs duties, port dues, etc.) and various other reimbursable expenses incurred are not to be included for computing the service tax.

2.5 In many cases, the Customs House Agent undertakes 'turnkey' imports and exports where a lumpsum amount is charged from the client for undertaking various service. In these cases, the lumpsum amount covers not only the 'agency commission' fee but also other expenses and no separate break-up is given in respect of these expenses. It has been decided that in such cases, the value of the taxable service shall be 15% of the lumpsum amount charged TO THE CLIENT. The Customs House Agents are required to show the service charges at 15% of such lumpsum amount of the bills and service tax of 5% will be chargeable on the above 15%."

9. *In view of the admission by the appellants that they are not able to produce the documentary evidence support the various reimbursable expenses, we find that para 2.5 of the said circular would be applicable to them. The break up of the total charges taken by the appellants from their client having not been substantiated, the total gross value in the invoices is to be adopted as lumpsum amount and the taxable services are required to be taken as 15% of the lumpsum amount. If that be so, service tax required to be paid by the assessee would be less than the total amount actually paid by the appellant, as per the claim made by the appellant. However, we find that there is nothing on record to substantiate the above claim, in which case we direct the authorities to calculate the tax in terms of para 2.5 of the Board Circular.*

10. *As regards the penalty, as we have already held that the failure on the part of the appellant to substantiate the reimbursable expenses claimed on account of loss of documents, cannot be held to be reflected on any mala fide on their part and if the 15% of the exempted amount charged, resulting in less duty payment on them, there is no warrant in imposing penalty under Sections 76 and 78 of the Finance Act. As such, the impugned orders imposing penalties on them and enhancing the penalty upon them are set aside. Both the appeals are disposed of in the above terms."*

6.17 We find that as per the undisputed fact, the service of handling containers at load ports, transportation of containers by vessel from one port of India to another port of India and handling of containers at discharge ports was done by shipping line only. The payment of sea freight handling charges as discussed in paras (Supra) on behalf of the clients to the shipping line and reimbursement on actual basis is not under dispute. The respondent has not made any provision of service of transportation of goods by sea and handling of cargo at load port and discharge port. It is also a fact that no consideration for such service to whatever amount received by them was reimbursement of the actual amount paid to shipping line on behalf of the recipient of service. For the purpose of levy of service tax there must be a provision of service for consideration, once there is no provision of service and receipt of consideration there cannot be any levy of service tax for making a payment on behalf of the client and raising invoices. Respondent has simply arranged payment on behalf of service recipient i.e. Consignor or consignee to the shipping line and taken reimbursement on actual basis from the receiver of service hence, the same cannot be considered as provision of service on consideration basis.

6.18 As we opined in the above para that the respondent had provided service of Goods Transport Agency, the said service even continued to be

defined as Goods Transport Agency Service (GTA) from 01.07.2012 also under Section 65B (26) of the Finance Act, 1994. As per Section 67 of the Finance Act, 1944 which provides that subject to provision of Chapter V of the Finance Act, 1994 where the Service Tax is charged on any service with reference to its value then such value shall:-

- i) *In case where a provision of service is for consideration in money be the gross amount charged by service provider for such service provided or to be provided by him.*
- ii)
- iii)

6.19 In the instant case the respondent had provided taxable service of GTA to their service recipient i.e. Consignee or consignor as the case may be and for the purpose of levy of service tax gross amount charged for such service from service receiver have to be taken into consideration for the purpose of value and not any other amount i.e. certain expenditure or cost as provided under Rule 5 of Service Tax (Determination of Value) Rules, 2006. The Hon'ble Supreme Court upholding the judgment in the case of INTERCONTINENTAL CONSULTANTS AND TECHNOCRATS PVT LTD- reported at UOI Vs. INTERCONTINENTAL CONSULTANTS AND TECHNOCRATS PVT LTD 2018 (10) GSTL 401 (S.C.) held that the provision of Rule 5 of Service Tax (Determination of Value) Rules, 2006 ultra vires and struck down. As per in law, in view of the said judgments the demand for the period prior to 14.05.2015 on the entire amount considering as consideration is not maintainable. Since the demand in the instant case for the period up to 31.03.2015 therefore, the department's appeal is not maintainable. We find that the revenue in the appeal grossly erred in understanding the ratio laid down by the Hon'ble High Court of Delhi and upheld by the Hon'ble Apex Court in the case of INTERCONTINENTAL CONSULTANTS AND TECHNOCRATS PVT LTD (Supra). As discussed above the respondent has made such expenditure in the capacity of pure agent therefore, as per Rule 5(2) no Service Tax is payable.

6.20 There is also the issue that whether the transportation of goods involved in respect of agricultural produce and whether the same is exempted, levy of Service Tax. The respondent also made a submission on the issue of limitation submitting that there is no suppression of fact hence, the demand beyond normal period is otherwise time barred. Since we are

deciding the matter on merit, we are not going into the other issue including limitation.

6.21 There are revenue's appeals against the two Directors of the Company also proposing imposition of penalty. In this regard we find that since the demand itself is not sustainable there is no question of personal penalty. Moreover, considering the submission made by the respondent that the maximum penalty prescribed under Section 78A is Rs.1 Lacs. As per the instruction F. No. 390/Misc/116/2017-JC dated 22.08.2019, the revenue is not supposed to file appeal if the amount is not exceeding Rs. 50 Lacs and therefore, considering the amount of personal penalty in the present case which can be maximum of Rs. 1 Lacs, the revenue's appeals are not maintainable even on monitory limit also.

07. As per above discussion and findings, we are of the view that there is no infirmity in the impugned order therefore, the same is sustainable.

08. Accordingly, the impugned order is upheld. All the appeals filed by the revenue are dismissed.

(Pronounced in the open Court on 10.02.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Mehul