CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

CROSS Appeal No. ST/10466/2021
in
SERVICE TAX APPEAL No. 10701 OF 2021

[Arising out of OIA-AHM-EXCUS-001-APP-78-79-2020-21 dated 26.03.2021 passed by Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD-I(Appeal)]

C.S.T.-Service Tax - Ahmedabad **.....Appellant**
7 th Floor, Central Excise Bhawan, Nr. Polytechnic
CENTRAL EXCISE BHAVAN, AMBAWADI,
AHMEDABAD, GUJARAT-380015

VERSUS

SEQUEL LOGISTICS PVT. LTD. **.....Respondent**
29/B SHRIMALI SOCIETY OPP PASSPORT SEVA KENDRA
NAVRANGPURA, NEAR MITHAKALI SIX ROADS
AHMEDABAD-GUJARAT

AND

SERVICE TAX APPEAL NO. 10349 OF 2021

[Arising out of OIA-AHM-EXCUS-001-APP-78-79-2020-21 dated 26.03.2021 passed by Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD-I(Appeal)]

SEQUEL LOGISTICS PVT. LTD. **.....Appellant**
29/B SHRIMALI SOCIETY OPP PASSPORT SEVA KENDRA
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VERSUS

C.S.T.-Service Tax - Ahmedabad **.....Respondent**
7 th Floor, Central Excise Bhawan, Nr. Polytechnic
CENTRAL EXCISE BHAVAN, AMBAWADI,
AHMEDABAD, GUJARAT-380015

APPEARANCE:
Ms. Nisha Ojha, Advocate for the Appellant
Mr. Dinesh M. Prithiani, Assistant Commissioner (Authorized Representative) for the Respondent

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

Final Order No. A/ 11129-11130 /2022

DATE OF HEARING: 04.07.2022
DATE OF DECISION: 14.09.2022

RAJU

This appeal has been filed by M/s. Sequel logistics Private Limited against order in appeal denying the benefit of exclusion of amount received after 14.05.2015 towards electricity charges from the assessable value of

the service provider. Revenue has also filed an appeal against exclusion of the electricity charges from the assessable value for the period prior to 14.05.2015 and the exclusion of octroi charges from the assessable value for the entire disputed period from the assessable value. M/s Sequel Logistics Private Limited have also filed cross objection.

2. Learned Counsel for the Sequel Logistics Private Limited (SLP) pointed out that the dispute pertains to denial of exclusion from assessable value as reimbursable expenditure of electricity cost, for the period after 14.05.2015. She pointed out that in terms of the agreement between the SLP and Titan Industries Limited (TIL) dated 31.05.2012, the SLP were engaged in providing certain services to TIL in the premises located at 21 & 22 Sipcot Industrial Complex Phase-I, Hosur-635126. In terms of the contract, certain amounts were paid by TIL to the SLP on the basis of actuals subject to certain limits. These amounts included man power cost, additional man power cost, management fee, performance pay, reimbursement and holiday working. Apart from that certain amortization charges were also paid by TIL. The SLP sought to exclude from the assessable value the electricity charges received by them from M/s TIL and claimed the same as reimbursements. The Commissioner (Appeals) has denied the benefit partially on the ground that the law regarding reimbursements was amended w.e.f. 14.05.2015. The Commissioner (Appeals) has allowed the benefit for the period prior to 14.05.2015. Learned Counsel vehemently argued that the electricity charges were paid by the appellant in the capacity as pure agent and therefore, the same are excludable from the value even after 14.05.2015.

3. Learned Authorized Representative relies on the impugned order in respect of electricity charges for the period after 14.05.2015. For the period prior to 14.05.2015, the learned Counsel relied on the grounds of appeal. In respect of electricity charges for the period prior to 14.05.2015,

learned Authorized Representative argued that the term 'Gross Amount' charged has been defined in explanation (c) of Section 67 as under:

> "gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and [book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise"

It has been argued that the concept of classification has been done away with w.e.f. 01.07.2012 on account of omission of Section 65 of Finance Act, 1994. It has argued that the scope of work order issued by TIL to SLP includes plethora of activities like receipt of accounting, packing and custody of imported watches and glasses, accessories, packing material, maintaining accounts in SAP, stocking in the warehouse, issuance of samples, storing and accounting etc. It has been argued that the service given by SLP is a composite service and electricity is an essential ingredient of such service. It has been argued that though the work order specifically vivisects the consideration into a fixed part and a reimbursable part does not make the expenditure on account of electricity as a reimbursable expenditure. It has been argued that all the expenditures are necessary ingredients needed for the provision of service and none of them can be treated as reimbursable expenditure, specially in case of composite service like that provided by SLP to TIL. It has been argued that the activity of SLP required them to clear the goods from various check-points or octroi and therefore, the octroi charges cannot be treated as reimbursable expenditure and since they were part of the gross amount charged by SLP therefore, the same cannot be excluded from the assessable value.

3.1 It was further argued by learned Authorized Representative that contract between SLP and TIL does not clearly specify regarding reimbursement of octroi charges in the work order. It has been argued that it was open to TIL to refuse to pay to SLP for the octroi expenditure done by SLP. It has been further argued that a certain amount has been

charged over and above the octroi charges as service fee for the purpose of payment of octroi. While SLP have paid service tax on the said amount collected over and above the said octroi charges, the said action of collecting an amount of over and above the octroi charges, makes the said octroi charges includible in the assessable value in terms of Rule 5(2)(vii) of Service Tax (Determination of Value) Rules, 2006.

4. Learned counsel for the SLP pointed out that the appeal filed by the Revenue in respect of Octroi charges is not maintainable for the reason that the octroi charged were paid by M/s SLP on behalf of their clients. She pointed out that the octroi charges are in nature of tax levied by the State Government on the entry or exit of the goods. She argued that Constitution of India provides that tax can only be collected by mandate of law and if the value of octroi is included in assessable value it would result in cascading effect. She argued that the said octroi was paid on behalf of their clients. She relied on the decision of Tribunal in the case of Traffic Manager, Mumbai Port Trust (In Service Tax Appeal No. 86265 of 2015) wherein CESTAT-Mumbai had examined similar issue relating to octroi collected by Mumbai Port Trust and held that octroi collected by Mumbai Port Trust was in the nature of Sovereign Function and the same cannot be taxed. She argued that collection of octroi is therefore, not an action that can be subjected to service tax. She also relied on Board Circular No. 192/02/2016-ST dated 13.04.2016 issued by CBIC wherein the following has been clarified.

Sr. No.	Issue	Clarifications
3.	Service Tax on taxes, cesses or duties	Taxes, cesses or duties levied are not consideration for any particular service as such and hence not leviable to service tax. **These taxes, cesses or duties include Excise duty, Customs duty, Service tax, State VAT, CST, Income tax, Wealth tax, Stamp duty, taxes on professions, trades, callings or employment, Octroi, Entertainment tax, Luxury tax and Property tax.**

She also relied on the decision of Tribunal in the case of International Seaport Dredging Limited 2018 (12) GSTL 185. She pointed out that in the said case while collecting service on the dredging operations, the customs duty and entry tax paid on the imported equipment which were reimbursed by the client, was held to be not taxable. She also argued that M/s SLP are not the owners or the importer of the goods and therefore, are not liable to pay octroi. She pointed out that they are merely C&F Agents. She also relied on the Form B Import Bill issued at the time of payment of octroi wherein there is a clear demarcation between the person from whom octroi is collected and person from whom octroi is received. She argued that Form B Import Bill carries this proforma demarcation as it is the usual practice that the transporter pays the octroi on behalf of the customers. She pointed out that the liability pay octroi is always on the client and M/s SLP were merely acting on behalf of their clients while paying octroi duty. She also relied on the decision of Hon'ble Apex Court in the case of InterContinental Consultants and Technocrats Private Limited 2018 (4) SCC 299 and on the decision of Tribunal in the case of Rolex Logistics Private Limited 2008 (9) TMI 123. She pointed out that the payment made by M/s SLP has been separately indicated in the invoices issued by them to the recipient of service. She also pointed out that they recover from the recipient of service only such amount as has been paid by them to the third party.

4.1 In so far as reimbursement of electricity charges are concerned, she submitted that as per agreement, M/s SLP has also agreed to bear certain expenditure on behalf of TIL which shall be reimbursed by TIL on actual basis as pure agent of TIL. She pointed out that one such expanse was electricity charges for running the unit of TIL which are payable by TIL and have been paid by M/s SLP on behalf of TIL. She pointed out that Section 67 determines the valuation of taxable service for charging service tax. She pointed out that Explanation-(a) of Section 67 defines consideration

and she stated that consideration includes "any reimbursable expenditure or cost incurred by the service provider and charged in the course of providing or agreeing to provide a taxable service, except in such circumstances and subject to conditions as may be prescribed." She pointed out that the said explanation was included in Section 67 w.e.f. 14.05.2015. She pointed out that the Revenue appeal merely relies on the definition of gross amount charged to assert that the electricity charges recovered by M/s SLP from TIL would be includible in the assessable value. She pointed out that gross amount charged does not include reimbursable expenditure up to 14.05.2015. She therefore argued that the decision of Commissioner (Appeals) in respect of Octroi charges and in respect of electricity charges for the period upto 14.05.2015 needs to be upheld. She also asserted that the decision of Commissioner (Appeals) for the period in respect of period after 14.05.2015 needs to be set aside and appeal of M/s SLP needs to be allowed.

5. We have gone through rival submissions. We find that the principal issue to be decided is if electricity consumed by the appellant for providing the services of managing "IMP watch packing units and warehouse for accessories and sunglasses" can be called as expenses incurred as pure agent. It is obvious that the electricity is consumed in the said operation as a primary input. The entire warehouse and packing activities are located in the premises located at Hosur. A large number of people work in the said premises and activity of packing, de-packing sorting etc. goes on within the premises.

6. The appeal of M/s SLP is in respect of the part of part of Commissioner (Appeals) Order which upholds inclusion of the value of electricity charges for which deductions as reimbursable expenditure was claimed by M/s SLP. It is seen that Commissioner (Appeals) has examined the issue threadbare and in para 8 to 8.2 and he has given findings which reads as under:

8. It is observed from the case records that the reimbursement of electricity charges in the present case was made in respect of taxable services provided by the appellant to TIL for managing TIL's IMP watch packing unit at Hosur in terms of Work Order No.IL/SC&S/WBWH/03/12-13 dated 31.05.2012 awarded to them. The scope of work as per the said Work Order covered the entire activities carried out in IMP watch packing unit, Warehouse for Accessories & sunglasses and E-commerce, which included custodian services, managerial services, manpower services, etc. Further, for the provision of the said services, in addition to the consideration as per the said contract, reimbursement of the expenses incurred towards security services, staff welfare, fuel, electricity, water, communication, housekeeping, pest control and administration, etc, are to be made by the service receiver viz. M/s Titan Industries Ltd., to the appellant. The appellant was issuing separate invoices for the reimbursement of expenses and paying service tax on the entire amount recovered as reimbursement, excluding the amount of reimbursement on electricity charges contending that the said expenditure had incurred by them in the capacity of pure agent.

8.1 As per Explanation I of Rule 5(2) of the Valuation Rules, "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 goods or 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 goods or services. Thus, to qualify as 'pure agent", one has to satisfy all the above four conditions.

8.2 The appellant is relying on the payment terms of the Work Order dated 31.05.2012 and the invoices issued by them in this regard to canvass their argument that they acted as pure agent while recovering the expenditure incurred towards electricity charges. It is their contention that clause 3(e) of the said Work Order pertaining 'Reimbursement' very explicitly indicates this nature of transaction. The relied clause 3(e) above reads as under:

"e) Reimbursement: The expenses incurred towards Security Services, staff welfare, fuel, electricity, water, communications. Extra hours of working, housekeeping, pest control & Administration will be reimbursed in actual with the monthly limit of Rs.7.8 L but not exceeding the yearly cumulative amount of Rs.93.6 L Sequel shall take the prior approval and provide necessary supporting for all expenditures. Details are as per Annexure-2 attached herewith."

The relevant entry, Sr.No.5, pertaining to Electricity Charges at Annexure-2 is reproduced below:

Sr. No.	Items	Period	Max. Limit	Remarks
5	Electricity Charges	Monthly	20000	Apr'12 E.B. was Rs. 9800.00. Estimated considering no power/ traffic increase.

From the above clause, it is evident that the expenditure of items specified therein are reimbursed in actual but with a monthly/yearly limit for the same. For electricity charges, the limit prescribed was Rs.20,000/- per month. It, therefore, clearly transpires that the electricity charges are only reimbursed to the extent of the maximum limit specified and in respect of such electricity charges over and above the said maximum limit the appellant have to bear the cost. Therefore, based on the terms of reimbursement referred above itself, it cannot be held that the electricity charges are reimbursed in actual always. There is nothing from the appellant side on record to suggest that the said maximum limit specified was revised later on. It is also not the case that the electricity charges were always below the maximum limit specified as is evident from the copy of the electricity bill submitted by the appellant in support of their contention itself which shows the amount of electricity charges as Rs 27.740/-. In view of the above, the appellant's contention that the electricity charges were reimbursed by the service receiver in actual does not hold water as it is contradicted by the evidences they have relied upon. When the appellant have to bear the cost of electricity charges over and above the maximum limit specified under the terms of agreement, it cannot be said that electricity charges are not part of cost of providing the service and it stand established that such electricity was used by them and thereby they hold title to it. Since the appellant was not receiving the actual amount incurred towards electricity charges, the entire impugned transaction would fail to qualify as that of a pure agent as most of the conditions prescribed for being a pure agent would not get satisfied whereby the exclusion of such expenditure sought by them in terms of Rule 5(2) becomes inadmissible. Needless to say, the onus to prove the admissibility of exclusion of such expenditure from the taxable value of service purely lies on the appellant as such exclusion was allowed as an exception in certain circumstances, which I find that they failed to do. Further, it is observed that as per Work Order, there is provision for payment of service tax and TDS as applicable for items specified in sub-clause (a) to (g) of Clause (3) which also included 'Reimbursement' at sub clause (e) and the appellant was paying service tax on all reimbursement expenses except Electricity Charges. The Work Order does not seem to specify anywhere that electricity charges reimbursable are not be considered for the purpose of payment of service tax. Therefore, there does not seem to be any specific exclusion for reimbursement of electricity charges as per agreement for the purpose of service tax on such charges. In view thereof, I am of the considered view that the consideration received by the appellant by way of reimbursement of electricity charges in the case would form part of the taxable value of service provided by them and the service tax would be payable accordingly for the period after 14.05.2015 covered in the demand. Since the appellant fails to qualify the test of being a pure agent so far as reimbursement of electricity charges, I do not find it relevant to consider the other contentions/arguments raised by them in the subject matter.

7. We find that the above arguments are clear and precise and cover all aspects of the issue on electricity charges.

8. The appeal of the Revenue is seeking to include in the assessable value, the octroi charges paid by M/s SLP which were claimed as deduction from the assessable value as reimbursable expenditure. The appeal of Revenue is also in respect of electricity charges claimed as deduction on

account of being reimbursable expenditure for the period prior to 14.05.2015. Section 67 of the Finance Act, 1994, prior to 2014, read as follows:-

> **[67. Valuation of taxable services for charging Service Tax**
> (1) Subject to the provisions of this Chapter, service tax chargeable on any taxable service with reference to its value shall,
>
> (i) in a case where the provision of service is a consideration in money, be the gross amount charged by the service provider for such [67. Valuation of taxable services for charging Service tax service provided or to be provided by him:
>
> (ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money, with the addition of service tax charged, is equivalent to the consideration.
>
> (iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.
>
> (2) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.
>
> (3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.
>
> (4) Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed.
>
> Explanation-For the purposes of this section,
>
> (a) consideration" includes any amount that is payable for the taxable services provided or to be provided;
>
> (b) "money" includes any currency, cheque, promissory note, letter of credit, draft, pay order, travellers cheque, money order, postal remittance and other similar instruments but does not include currency that is held for its numismatic value.
>
> (c) "gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and (book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.]]

The said Section was amended w.e.f. 14.05.2015 to read as follows:

> Amendment of section 67. — In section 67 of the 1994 Act, in the Explanation, for clause (a), the following clause shall be substituted, namely:

(a) "consideration" includes

(i) any amount that is payable for the taxable services provided or to be provided;

(ii) any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed;

(iii) any amount retained by the lottery distributor or selling agent from gross sale amount of lottery ticket in addition to the fee or commission, if any, or, as the case may be, the discount received, that is to say, the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such ticket.'.

On the issue of reimbursement, the Hon'ble Apex Court in the case of **Intercontinental Consultants and Technocrats Private Limited** (supra) has clarified on the issue as follows:

23. Undoubtedly. Rule 5 of the 2006 Rules brings within its sweep the expenses which are incurred while rendering the service and are reimbursed, that is, for which the service receiver has made the payments to the assessees. As per these Rules, these reimbursable expenses also form part of "gross amount charged". Therefore, the core issue is as to whether Section 67 of the Act permits the subordinate legislation to be enacted in the said manner, as done by Rule 5. As noted above, prior to 19-4-2006 i.c. in the absence of any such Rule, the valuation was to be done as per the provisions of Section 67 of the Act.

24. Section 66 of the Act is the charging section which reads as under:

> "66. ***Charge of service tax***.- (1) There shall be levied a tax (hereinafter referred to as the service tax) 12% of the value of taxable services referred to in sub-clauses... of Section 65 and collected in such manner as may be prescribed."

25. Obviously, this Section refers to service tax i.e. in respect of those services which are taxable and specifically referred to in various sub-clauses of Section 65. Further, it also specifically mentions that the service tax will be 12% of the "value of taxable services". Thus, service tax is reference to the value of service. As a necessary corollary, it is the value of the services which are actually rendered, the value whereof is to be ascertained for the purpose of calculating the service tax payable thereupon.

26. In this hue, the expression "such" occurring in Section 67 of the Act assumes importance. In other words, valuation of taxable services for charging service tax, the authorities are to find what is the gross amount charged for providing "such" taxable services. As a fortiori, any other amount which is calculated not for providing such taxable service cannot be a part of that valuation as that amount is not calculated for providing such "taxable service". That according to us is the plain meaning which is to be attached to Section 67 (unamended i.e. prior to 1-5-2006) or after its amendment, with effect from 1-5-2006. Once this

interpretation is to be given to Section 67, it hardly needs to be emphasised that Rule 5 of the Rules went much beyond the mandate of Section 67. We, therefore, find that the High Court was right in interpreting Sections 66 and 67 to say that in the valuation of taxable service, the value of taxable service shall be the gross amount charged by the service provider "for such service" and the valuation of tax service cannot be anything more or less than the consideration paid as quid pro qua for rendering such a service.

27. This position did not change even in the amended Section 67 which was inserted on 1-5-2006. Sub-section (4) of Section 67 empowers the rule-making authority to lay down the manner in which value of taxable service is to be determined. However, Section 67(4) is expressly made subject to the provisions of sub-section (1). Mandate of sub-section (1) of Section 67 is manifest, as noted above viz. the service tax is to be paid only on the services actually provided by the service provider.

28. It is trite that rules cannot go beyond the statute. In Babaji Kondaji Garad[1]?, this rule was enunciated in the following manner: (SCC p. 63. para 15)

> “15. …Now if there is any conflict between a statute and the subordinate legislation, it does not require elaborate reasoning to firmly state that the statute prevails over subordinate legislation and the bye-law if not in conformity with the statute in order to give effect to the statutory provision the rule or bye-law has to be ignored. The statutory provision has precedence and must be complied with."

29. The aforesaid principle is reiterated in S. Chenniappa Mudaliar's holding that a rule which comes in conflict with the main enactment has to give way to the provisions of the Act.

30. It is also well-established principle that Rules are framed for achieving the purpose behind the provisions of the Act, as held in Taj Mahal Hotel:

> "11.... the Rules were meant only for the purpose of carrying out the provisions of the Act and they could not take away what was conferred by the Act or whittle down its effect."

31. 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 the Finance Act, 2015 with effect from 14-5-2015, 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 14-5-2015, 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 CIT v. Vatika Township (P) Ltd 20 wherein it was observed as under: (SCC pp. paras 27-29)

> *"27. A legislation, be it a statutory Act or a statutory rule or a statutory notification, may physically consist 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 statules". vis-à-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. Eyre21, 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-Shinnikon Steamship Co. Ltd.22 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." (emphasis in original)

In terms of the above decision of the Hon'ble Apex Court, it was clearly held that there was no authority in law to include the reimbursable expenditures in the assessable value. The said decision also holds that w.e.f. 14.05.2015 by amendment of Section 67 wherein the definition of the term 'Consideration' was amended, reimbursable expenditure or cost would also form part of the value of taxable services. It is seen that prior to 14.05.2015, the only authority to include any reimbursable expenditure was arising out of Rule 5 of the Service Tax (Determination of Value) Rules, 2006. The Hon'ble Apex Court in the decision of **Intercontinental Consultants and Technocrats Private Limited** (supra) has held that Rule 5 of Service Tax (Determination of Value) Rules, 2006, went much beyond the mandate of Section 67. In these circumstances, and also considering the observation of Commissioner (Appeals) in the impugned order reproduced in para 5 above, we do not find any merit in the appeal filed by Revenue for inclusion of value of electricity charges into the assessable value by invoking Rule 5(1) of Service Tax (Determination of Value) Rules, 2006 for the period prior to 14.05.2015. For the same reason, we also do not find any merit in the appeal filed by SLP in respect of inclusion of electricity charges for period after 14.05.2015.

9. For the same reason, the appeal of Revenue on the count of inclusion of octroi charges for the period prior to 14.05.2015 by invoking Rule 5 of Service Tax (Determination of Value) Rules, 2006 cannot be upheld.

10. In respect of the inclusion of the octroi charges collected by SLP from TIL for the period after 14.05.2015 is concerned, we find that the Commissioner (Appeals) has observed as follows:

> "9. As regards the issue of reimbursement of Octroi charges, it is observed that the said expenditure was incurred by the appellant

on behalf of their customers during the course of provision of door to door delivery service of goods and in the present case, Octroi was levied by Greater Mumbai Municipal Corporation on entry of goods into the station of Greater Mumbai. The Revenue intends to levy service tax on the same considering it as cost incurred by the appellant towards provision of service by them. But, it is the contention of the appellant that Octroi is a statutory levy and they have acted as 'pure agent', in case of Octroi reimbursement made by clients and they are authorized to pay octroi on behalf of the customers and in return get the reimbursement of such expenses with nominal service charge, on which they have already paid Service Tax as per the applicable rate. The appellant has submitted copies of the invoice and the Form B Import Bill issued at the time of payment of Octroi in of their contention. From the said documents submitted, it is unambiguously evident that the liability to pay Octroi is on the customer of the appellant but the same is collected from the appellant who pays the same on behalf of the customer. The appellant was recovering from the customer, as reimbursement of octroi, the same amount they had paid as octroi on behalf of the customer and were also charging some service charge on which they were discharging service tax liability without any dispute. Thus, there is no doubt that the recovery of Octroi amount by the appellant from their customer in the case was reimbursable in nature. Now, the moot question is whether the said transaction of the appellant was in the capacity of pure agent or not.

9.1 As discussed in para 8.1 above, to qualify as 'pure agent', one has to satisfy all the four conditions specified under Explanation I of Rule 5(2) of the Valuation Rules. The first condition is that the person should have entered 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. In this regard, I agree with the contention raised by the appellant that the intention of the term 'contractual agreement' is to be understood holistically to mean that there is an arrangement between the parties whereby the appellant would incur costs for the customer and the customer would reimburse the same. It cannot be insisted that such an agreement has to be in a written form. Even an oral mutual consent between the two parties would suffice to cover as a 'contractual agreement' in the given context. In the present case, the invoice Issued by the appellant to their customers for reimbursement of charges paid towards Octroi by them by specifically mentioning the same amply indicates the presence of such a 'contractual agreement between them to incur the said expenditure for the customer by the appellant. Therefore, I do not agree with the adjudicating authority's observation that there was no such contractual agreement in the case between the appellant and service recipient. Regarding the second condition that the person should neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service, it is observed that such a condition is not applicable in the present case as it was not a case of procurement of any service or goods for the receiver of the service but was a mandatory payment to be made to a statutory authority under a legal obligation that falls upon the of goods while entering the specified station. Even otherwise, the facts that Octroi is a statutory levy collected on the goods and the title of such goods transported by the appellant being the customer of the appellant, who in fact was liable to pay the said levy of Octroi,

clearly shows that the title if any in the matter would be that of the goods, on which the levy is collected, which rest with the customer of the appellant and the appellant at no point of time was holding any such tile nor did they intend to hold the same The view of the adjudicating authority in this regard that the appellant was the person who conveyed article into Greater Mumbai and thus he was the importer of the goods as per Rule 2 of the Municipal Corporation of Greater Mumbai Octroi Rules, 1965 and was also liable to pay Octroi does not seem to be a correct inference in the context of the case. Copy of Form B Import Bill submitted by the appellant clearly shows the demarcation between the person from whom the Octroi was collected and the person from whom the same was received. Obviously, the person from whom the Octroi was received would be the importer who was actually liable to pay the said levy. The said levy was but collected from the transporter who pays the same on behalf of their customer viz, the importer and therefore the person who conveys the articles cannot be held as an importer. Neither car, they be said to the owner of goods. The third condition stipulates that the person does not use such goods or services procured. As discussed earlier, payment of Octroi was not towards procurement of any service or goods for the receiver of the service but was a mandatory payment to be made to a statutory authority under a legal obligation and hence there does not arise any question of use of service or goods by the appellant and the payment in this regard was made by the appellant on behalf of the owner/importer of goods. Therefore, the third condition stand satisfied. Coming to the fourth and last condition that the person receives only the actual amount incurred to procure such goods or services, though the said levy was not towards any procurement of service or goods for the service receiver it is not in dispute that the reimbursement of Octroi recovered/received by the appellant from their customer was exactly the same amount they had paid as Octroi to the Municipal Authority on behalf of their customer. The fact of appellant charging some service charge in this regard does not Ipso facto alters or affects the compliance of the above condition as the amount of reimbursement of Octroi and the service charge are separately mentioned in the Invoice issued by the appellant to their customer and it is not the case that they were recovering Octroi charges in excess of what they have actually paid. Therefore, the fourth condition also stand satisfied by the appellant. Having fulfilled all the conditions required as discussed above, the appellant qualifies as a pure agent while making payment of Octroi on behalf of the customers.

9.2 However, acting as pure agent simply does not allow the appellant to exclude the reimbursable expenditure from the purview of taxable value of service, but for that they also have to satisfy certain conditions stipulated under Rule 5(2) of the Valuation Rules which are discussed hereunder condition-wise:

(i) the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured;

This condition actually does not apply in cases of reimbursable expenditure incurred towards payment of statutory levies. As discussed earlier, the payment of octroi in the case was not towards any procurement of services or goods for the recipient of service but was mandatory payment to be made to a statutory authority under a legal obligation. It clearly stand established

from records that the obligation to pay the said levy was on the customer of the appellant viz. importer and the said payment was made by the appellant to the third party, viz. Municipal Authority, on behalf of the customer/importer. When it stand established that the appellant qualifies as pure agent as discussed above, this condition automatically stand satisfied.

(ii) the recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;

Observation at (1) above squarely holds good for this condition also. The payment of Octroi was made by the appellant for the recipient of service and when that is so, this condition was also satisfied.

(ii) the recipient of service is liable to make payment to the third party;

As discussed earlier, it is evident from the copy of the Form B Import Bill issued at the time of payment of Octroi that the liability to pay the Octroi was on the importer Le. customer of the appellant, who was the recipient of service. Thus, this condition stand fulfilled.

(iv) the recipient of service authorises the service provider to make payment on his behalf;

The invoice issued by the appellant to their customers viz. service recipients for reimbursement of charges paid towards Octroi by them by specifically mentioning the same arply indicates the presence of a 'contractual agreement between them to incur the said expenditure for the customer by the appellant and that is sufficient to qualify as the authorisation from the recipient of service to the appellant to make payment on their behalf.

(v) the recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party;

The payment in the case being towards levy of Octroi, the recipient of service was well aware of the fact that it was a statutory levy paid to Municipal Authority, 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;

The payment made by the appellant on behalf of the recipient of service viz. their customer has been separately clearly indicated in the invoice issued by the appellant to their customer and there is no dispute to this fact.

(vii) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and

The reimbursement of Octroi recovered/received by the appellant from their recipient of service viz. their customer was

exactly the same amount they had paid as Octroi to the Municipal Authority on behalf of their customer.

(viii) the goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account;

It is an obvious fact that Octroi was a statutory levy payable by the importer of goods, in the present case the customer of the appellant. It, in no way, form the part of service being provided by the appellant. Therefore, making payment of Octroi to the Municipal Authority on behalf of the customers was in addition to the service the appellant provided on his own account.

We find that the Commissioner (Appeals) has examined the issue in detail and we are in agreement with the observations of Commissioner (Appeals). The appeal filed by Revenue, the primary argument is: there is nothing on record in the contract between TIL and SLP to show that the octroi charges were being paid by SLP on behalf of TIL as reimbursable expenditure. It has been argued in Revenue appeal that in absence of any contract, the same cannot be treated as reimbursable expenditure. It has also been argued that M/s SLP have collected certain amount as extra charges over and above the octroi charge however, on the same amount, the appellant has paid the service tax. On that ground, it has been argued that M/s SLP has failed to follow the condition 5(2)(vii) of Service Tax (Determination of Value) Rules. The condition (vii) of Rule 5 reads as under:

> "(vii) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party;"

To counter this argument, SLP have argued that the intention of the term contractual agreement is to be understood holistically to mean that there is an arrangement between the parties whereby the Respondent would incur cost for the customer and the customer would reimburse the same. It has been argued by SLP that the invoice raised for reimbursement of charges paid towards octroi by the M/s SLP and reimbursement by TIL in furtherance of the same is itself a contractual agreement. It has been argued that the arrangement between the parties reveal that the transaction is of pure agent or not. It has been argued that in the present

case, SLP has incurred expenditure of octroi on behalf of TIL and same has been reimbursed by TIL on actual basis whenever SLP has raised an invoice for the same is itself a proof that SLP has acted as pure agent of TIL in that respect. It has also been argued that SLP do not hold any title to the goods and therefore, octroi cannot liability cannot arise on SLP under any circumstances. Therefore, any payment of octroi by SLP has to be treated as payment done by SLP on behalf of the owner of the goods, namely, TIL. We find that the question raised by Revenue in its appeal regarding inclusion of octroi has been adequately answered by SLP in the above arguments. Under these circumstances, we do not find any merit in the appeal filed by Revenue for inclusion of the octroi paid by SLP and recovered from TIL in the assessable value. The appeal of revenue on this count is therefore, rejected.

11. We do not find any merit in the appeals filed by Revenue as well as that filed by SLP and therefore, both are rejected. Cross Objection also disposed of.

(Pronounced in the open court on 14.09.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha