CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 3

SERVICE TAX APPEAL NO. 51855 OF 2014

[Arising out of Order-in-Original No. 56-59/SA/CCE/ST/2013 dated 24.12.2013 passed by the Commissioner Central Excise Delhi III, Gurgaon]

M/S. INDRAPRASTHA MEDICAL CORPORATION LTD — **Appellant**

Vs.

COMMISSIONER OF SERVICE TAX-DELHI-III, GURGAON — **Respondent**

Appearance:
Present for the Appellant : Shri Vishal Kumar, Advocate
Present for the Respondent: Shashank Yadav, Authorised Representative

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

Date of Hearing : 30.07.2025
Date of Decision : 12.08.2025

Final Order No.51176/2025

SANJIV SRIVASTAVA:

This appeal is directed against order in original No 56-59/SA/CCE/ST/2013 dated 23.04.2013 of the Commissioner Central Excise Delhi III, Gurgaon. By the impugned order following has been held:

" **ORDER**

(i) I order for recovery of service tax amounting to Rs.1,37,56,815.00 (Rupees One Crore Thirty Seven Lakhs Fifty

Six Thousand Eight Hundred Fifteen Only) under the proviso to the Section 73(1) read with Section 68 of the said Act ibid and Rule 6of Services tax rules, 1994 and education cess under Section 95 of Finance Act(No.2) 2004 and Section 140 of Finance Act, 2007 read with Section 66of the chapter-V of the Finance Act, 1994;

(ii) I order for recovery of appropriate Interest at the appropriate rates on the amount of Service Tax & Education Cess confirmed at (i) above under the provision of Section 75 of the said Act

(iii) I impose penalty of Rs. 94,38,622.00(Rupees Ninety Four Lakhs Thirty Eight Thousand Six Hundred Twenty Two Only) under Section 78 of the Finance Act,1904, as amended, for contravention of various provisions of Finance Act, 1994 and Service Tax Rules, 1994.

(iv) I impose a Penalty @ 2% per month of the tax payable from the due date of payment of service tax till the date of actual payment of the outstanding amount of service tax in respect of show cause notices dated 29.04.2011 and dated14,09.2011, subject to a maximum penalty of Rs. 43,18,193.00 (Rupees Forty Three Lakhs Eighteen Thousand One Hundred Ninety Three only)under the provisions of Section 76 of the Finance Act,

(v) I impose a Penalty of Rs. 1,00,000.00 (Rupees One Lakh Only) under Section 77 of the Finance Act, 1994 for the contravention of various provisions of Finance Act, 1994 and Service Tax Rules, 1994 as discussed in para 44 and 44.01 above.

(vi) I drop demand for recovery of service tax amounting to Rs. 88,736.00 (Rupees Eighty Eight Thousand Seven Hundred Thirty six Only) under the heading of 'Business Auxiliary Service', being demand prior to 18.04.2006.

2.1 Appellant is engaged in the business of running a multi- speciality hospital – M/s Indraprastha Apollo Hospital, Sarit Vihar, New Delhi.

2.2 Acting on intelligence that appellant was providing/ receiving taxable services on which service tax was leviable but was not being paid by the appellant, investigations/ enquiries were initiated against the appellant. As result of the investigations/ enquiries made it was found that appellant was required to pay service tax in respect of following:

- Business auxiliary service – Appellant had paid commission to overseas agents referred as Health Care Facilitators for referring foreign patient for medical treatment to their facility. As these services qualify as import of services appellant was required to pay service tax on reverse charge basis on the commission amounts so paid.
- Business Support Services – Appellant provided infrastructure support to consultants and Doctors operating from their facilities. As they were supporting profession/ business of visiting consultants and Doctors, they were providing Business Support Services which were leviable to service tax under this category.
- Renting of Immovable Property Service – Appellant had given space appurtenant to the main building of the hospital on rent, to be used for parking purposes. The said activity was taxable under the category of Renting of Immovable Property Services.

2.3 A Show Cause notice dated 30.09.2009 was issued to the appellant asking them to show cause as to why:

(i) "The service tax (including Education Cess and Secondary and Higher Education Cess) due amounting to Rs. 62,04,886.00 (Sixty Two Lakhs Four Thousand Eight Hundred and Eighty six only (S, Tax of RS 60,43,554,00 + Edu. Cess. of Rs1,20,872.00 + Sec. & Higher Edu Cess of Rs. 40,460.00) as detailed in para - 11supra, should not be demanded and recovered from them under the proviso to the Section 73(1) read with Section 68 of the said Act ibid and Rule 6 of Services Tax Rules, 1994 and education cess under Section 95 of Finance Act (No.2) 2004 and Section 140 of Finance Act , 2007 read with Section 66 of the chapter-V of the Finance Act, 1994;

(ii) Interest at the appropriate rates on the amount of Service Tax & Education Cess not paid, should not be demanded and recovered from them under the provision of Section 75 of the said Act.

(iii) Penalty should not be imposed upon them under Section 76 of the Finance Act, 1994 in as much as they failed to pay due Service Tax on the said services as stated above.

(iv) Penalty should not be imposed upon them under Section 77 of the provisions of Finance Act 1994 as amended of the Finance Act, 1994 in as much as they failed to furnish the prescribed returns in time and take Registration within the prescribed period:

(v) Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 as amended in as much as they had suppressed facts as well as deliberately contravened various provisions of Finance Act, 1994 and Service Tax Rules, 1994 with intent to evade Service Tax on the said Services as stated herein above:"

2.4 For the subsequent periods, three more show cause notices were issued to the appellant, as detailed below:

Demand of Service Tax for subsequent periods.			
Show Cause Notice Date	22.04.2010	29.04.2011	14.09.2011
Period	Oct-08 to Sept-09	Oct-09 to Mar-10	Apr-10 to Mar-11
Business Auxiliary Service	18,70,863.00	8,31,401.00	16,80,172.00
Business Support Service	9,55,840.00	5,33,540.00	12,73,080.00
Renting of Immovable Property Services	4,95,769.00	0.00	0.00
Total	33,22,472.00	13,64,941.00	29,53,252.00

2.5 All the four show cause notices have been adjudicated by the impugned order.

2.6 Aggrieved appellant has filed this appeal.

3.1 We have heard Shri Vishal Kumar Advocate for the appellant and Shri Shashank Yadav, Authorized Representative for the Department.

3.2 Arguing for the appellant learned counsel submit that:

- Activity of referral of foreign patients by overseas Health Care Facilitators cannot be said to be covered by the (ii) of the definition of Business Auxiliary Services as per Section 65 (19) of the Finance

Act, 1994 hence cannot be subject to service tax as import of service.

- Word 'service' used in (ii) of the Section 65 (19) has not been defined by the Finance Act, 1994, however it ahs been held in the following decisions that the word 'service', used therein refers to the services defined by the said act on which service tax is leviable. As the appellant is providing Health Care Services which are not covered by the provisions of Finance Act, 1994, service tax cannot be demanded in respect of the these services received by the Health Care Facilitators under this category.

  - **Jetlite (India) Ltd. [2011 (21) S.T.R. 119 (Tri.- Del.)]**
  - **Martin Lottery Agencies Ltd. [2009 (14) S.T.R. 593 (S.C.)]**
  - **Steria India Ltd. [CESTAT Allahabad Final Order No. 70827 - 70828/ 2017 dated 30.08.2017]**

- Medical practitioners engaged in medical profession and not "business" - Activity not taxable under "business support service". Reliance is placed on the following decisions:

  - **Sir Ganga Ram Hospital & Ors. -2018-TIOL-352-CESTAT-DEL**
  - **Fortis Healthcare India Ltd. [2019-TIOL-3345- CESTAT-CHD]**
  - **Alchemist Hospital Limited [CESTAT Chandigarh Final Order No.60185-60186/2019].**
  - **Jaipur Golden Hospital [Final Order No. 50321/2023]**
  - **M/s. Ivy Health & Life Sciences Pvt. Ltd. [CESTAT Chandigarh Final Order No.63652-60654 /2019]**

- Adjudicating Authority has arrived at the incorrect finding that since the land used for parking is appurtenant to the main building, the same would get covered under the definition of "immovable property", hence, taxable,.
- Since the land let out by the Appellant was used for parking purposes, the samewould be out of scope of levy of service tax as per exclusion provided under clause (c)to Explanation 1 appended to Sec. 65(105)(zzzz) of the Act.
- Thus in view of the above submissions the entire demand needs to be set aside along with the interest and penalties.

3.3 Authorized representative reiterates the findings recorded in the impugned order.

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

4.2 Three issues can be flagged for our consideration in this appeal.

I. Demand of Service Tax under the category of Business Support Services;

II. Demand of Service Tax under the category of renting of immovable property services;

III. Demand of service tax on reverse charge basis on import of services under the category of Business auxiliary services.

I. Business Support Services

4.3.1 Demand under this category has been made on the consideration received from the visiting Doctors/ Consultants for providing OPD chambers, other incidental service and infrastructural facilities. Demand

has been confirmed by holding that the Doctors were being provided support service in conduct of their business. However we find that this issue has been considered and decided by the CESTAT in cases referred to by the counsel of appellant dropping the demands. In case of Fortis Health Care India Ltd., supra following has been held:

> "6. We find that the issue has been settled by this Tribunal in the case of M/s. Sir Ganga Ram Hospital and others-2018-TIOL-352-CESTAT-DEL wherein this Tribunal has observed as under:-
>
> > 4. We have heard both the sides and perused the appeal records. We have also perused specifically the terms of some of the agreements on record. The dispute in the present appeals is with reference to the tax liability of the appellant hospitals under the category of business support services. The statutory provision for the said tax entry is as below:
> >
> > > "Section 65 (104c) 'support services of business or commerce' means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfillment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational or administrative assistance in any manner, formulation of customer service and pricing policies, infrastructural support services and other transaction processing.
>
> Explanation. - For the purposes of this clause, the expression 'infrastructural support services' includes providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security."
>
> 5. The claim of the Revenue is that the appellants have provided infrastructural support service to various doctors. As a consideration for such support, they have retained a part of the amount collected from visiting patients. We have perused some

of the agreements/appointment arrangements entered into between the appellant's hospitals and the individual doctors. Typically, the arrangement contains details like duration of time for consultation, the obligations on the part of the doctors, fee to be paid, procedure for termination of agreement, etc. The agreements generally talk about appointment of consultants to provide services to the patients who will visit or admitted in the appellants hospital. The doctors will receive a percentage of share of the collection from the patients in case of consultation, procedures and surgeries done by them. In some cases, there is a provision for treating patients from low economic background without any financial benefits. On careful consideration of various terms and conditions and the scope of arrangement, we are of the considered view that such arrangement are for joint benefit of both the parties with shared obligations, responsibilities and benefits. The agreements do not specify the specific nature or list of facilities which can be categorized as infrastructural support to the doctors. The revenue model, as agreed upon between the contracting parties also, did not refer to any consideration attributable to such infrastructural support service.

6. The proceedings by the Revenue, initiated against the appellant hospitals, are mainly on the inference drawn to the effect that the retained amount by the hospitals out of total charges collected from the patients should be considered as an amount for providing the infrastructure like room and certain other secretarial facilities to the doctors to attend to their work in the appellants hospitals. We find this is only an inference and not coming out manifestly from the terms of the agreement. Here, it is very relevant to note that the appellant hospitals are engaged in providing health care services. This can be done by appointing the required professionals directly as employees. The same can also be done by having contractual arrangements like the present ones. In such arrangement, the doctors of required qualification are engaged/contractually appointed to provide health care services. It is a mutually beneficial arrangement. There is a revenue sharing model. The doctor is attending to the patient for treatment using his professional skill and knowledge. The appellants hospitals are managing the patients from the time they enter the hospital till they leave the premises. ID

cards are provided, records are maintained, all the supporting assistance are also provided when the patients are in the appellant hospital premises. The appellant hospital also manages the follow-up procedures and provide for further health service in the manner as required by the patients. As can be seen that the appellants hospitals are actually availing the professional services of the doctors for providing healthcare service. For this, they are paying the doctors. The retained money out of the amount charged from the patients is necessarily also for such health care services. The patient paid the full amount to the appellant hospitals and received health care services. For providing such services, the appellants entered into an agreement, as discussed above, with various consulting doctors. We do not find any business support services in such arrangement.

7. The inference made by the Revenue that the retained amount by the hospitals to compensate the infrastructural support provided to the doctors can be examined in another angle also. Reading the statutory provisions for BSS, we note that the services mentioned therein are "provided in relation to business or commerce." As such, to bring in a tax liability on the appellant hospital, it should be held that they are providing infrastructural support services in relation to business or commerce. That means, the doctors are in business or commerce and are provided with infrastructural support. This apparently is the view of the Revenue. We are not in agreement with such proposition. Doctors are engaged in medical profession. As examined by Hon'ble Gujarat High Court in Dr KK Shah (supra), though in an income-tax case, we note that there is a discernable difference between "business" and "profession". The Gujarat High Court referred to decision of Hon'ble Supreme Court in Dr Devender Surt is AIR 1962 SC 63. The Supreme Court observed as below:"There is a fundamental distinction between a professional activity and an activity of a commercial character" : "…a "profession"… involves the idea of an occupation requiring either purely intellectual skill, or of manual skill controlled, as in painting and sculpture, of surgery, by the intellectual skill of the operator, as distinguished from an occupation which is substantially the production or sale or arrangements for the production or sale of commodities" "…a

professional activity must be an activity carried on by an individual by his personal skill and intelligence…… and unless the profession carried on by (a person) also partakes of the character of a commercial nature" the professional activity cannot be said to be an activity of a commercial character. "8. Applying the above ratio and examining the scope of the tax entry for BSS, we are of the considered view that there is no taxable activity identifiable in the present arrangement for tax liability of the appellant hospitals.

9. Under negative list regime w.e.f. 01.07.2012, the health care services are exempt from service tax. Earlier the health care services were only taxed for specified category of hospitals and for specified patients during the period01.07.2010 to 01.05.2011. With effect from 01.05.2011, health care services were exempt from service tax under Notification No.30/2011 ST. After introduction of negative list tax regime, Notification No. 25/2011-ST exempted levy of service tax on health care services rendered by clinical establishments. We have examined the scope of the terms 'clinical establishments' and 'healthcare services'. The notification defines these terms. The term 'clinical establishments' is defined as below: "Clinical establishment" means hospital, nursing home, clinic, sanatorium or any other institution by whatever name called, that offers services or facilities requiring diagnosis or treatment of care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services"

10. The terms 'health care services' is defined as below:"health care services" means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment but does not include their transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of both affected due to congenial defects, developmental abnormalities, injury or trauma."

11. These two provisions available in Notification No.25/2012 will show that a clinical establishment providing health care services are exempted from service tax. The view of the Revenue that in spite of such exemption available to healthcare services, a part of the consideration received for such health care services from the patients shall be taxed as business support service/taxable service is not tenable. In effect this will defeat the exemption provided to the health care services by clinical establishments. Admittedly, the health care services are provided by the clinical establishments by engaging consultant doctors in terms of the arrangement as discussed above. For such services, amount is collected from the patients. The same is shared by the clinical establishment with the doctors. There is no legal justification to tax the share of clinical establishment on the ground that they have supported the commerce or business of doctors by providing infrastructure. We find that such assertion is neither factually nor legally sustainable.

12. The Revenue has filed an appeal against order dated 01.02.2016 of Commissioner of Service Tax, Delhi-I. In similar set of facts, as discussed above, the Commissioner, after detailed examination, held that the respondent(hospital) is not providing any services to the consultants/doctors. The service provided by the respondent hospital would merit classification under HealthCare Services extended to the patients. Accordingly, the demand proceedings against the respondent hospital was dropped. Revenue filed appeal against the said order. In view of our detailed analysis on the same dispute while dealing with appeals by the appellant hospitals, as above, we find no merit in the present appeal by the Revenue. We are in agreement with the ratio and decision of the Commissioner in the impugned order. Accordingly, the appeal by the Revenue is dismissed.

13. In view of above discussion and analysis, we hold that the impugned orders against which appellant hospitals filed appeal are devoid of merit, the same are set–aside. Upholding the order dated 01.02.2016 of Commissioner, Service Tax, New Delhi, we dismiss the appeal by the Revenue. All the 7 appeals are disposed of in these terms.”7. In view of the above decision of this Tribunal, we hold that the appellant had not provided any business support service to the consultants/doctors or patient,

> therefore, no service tax is payable by appellant under the category of "Business Support Service". "

4.3.2 Thus we do not find any merits in the demand made under this category.

II. Renting of Immovable Property Service:

4.4.1 Impugned order records as following for confirming the demand under this category:

> "C) Nonpayment of Service Tax on Renting of Immovable Property Service on the payment received for the parking area
>
> 32. 1 find that the Services of "Renting of Immovable Property" was brought under Service Tax ambit w.e.f 01.06.2007 vide Finance Act, 2007. Clause (90a) of section65 of the Finance Act. 1994, read as follows:
>
> "Renting of Immovable Property" includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course of furtherance of business or commerce but does not include -
>
> (i) renting of immovable property by a religious body or to a religious body; or
> (ii) renting of immovable property to an educational body, imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre;
>
> Explanation -For the purposes of this clause, "for use in the course of furtherance of business or commerce" includes use of immovable property as factories, office buildings warehouses, theatres, exhibition halls and multiple-use buildings;
>
> With effect from 16.05.2008, the above Explanation has been numbered as Explanation I, and the following Explanation 2 has been inserted: "Explanation 2- For the removal of doubts, it is hereby declared that for the purposes of clause 'renting of immovable property includes allowing or permitting the use of

space in an immovable property, irrespective of the transfer of possession or control of the said immovable property.

32.01 Further, under sub-clause (zzzz) of section 65(105) of the Act, the taxable service is defined as any service provided or to be provided "to any person, by any other person, in relation to renting of immovable property for use in the course of furtherance of business or commerce". The two Explanations in this sub-clause read as follows:

'Explanation 1 - For the purposes of this sub-clause, 'immovable property' includes-

(i) building and part of a building, and the land appurtenant thereto;
(ii) land incidental to the use of such building or part of a building;
(iii) the common or shared areas and facilities relating thereto; and
(iv) in case of a building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex or estate

but does not include-

(i) vacant land solely used for agriculture, aquaculture, farming, forestry. animal husbandry, mining purposes;
(ii) vacant land, whether or not having facilities clearly incidental to the use of such vacant land;
(iii) land used for educational, sports, circus, entertainment and parking purposes;
(iv) building used solely for residential purposes and buildings used for the purposes of accommodation, including hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities

Explanation 2.-For the purposes of this sub-clause, an immovable property partly for use in the course or furtherance of business or commerce and partly for residential or any other purposes shall be deemed to be immovable property for use in the course or furtherance of business or commerce;

32.02 The noticee has contended that the explanation to Section 65(105)(zzzz) of the said Act clearly states that "Land used for Parking Purposes" is not included under the definition of

Immovable Property. The clause reads Immovable Property includes - "Building and part of building, and the land appurtenant thereto" i.e. lancappurtenant will have to viewed only if the building is given on rent. In case of Car Parking only the vacant land is being rented, not a building and land appurtenant to the building. Hence, cemented or covered parking lot does not get covered in this clause.

32.03 Revenue has alleged that the parking space in question is appurtenant to the main building of the Hospital. This space is given on rent by the Hospital to be used for parking. In the said explanation, the exclusion clause (c) reads as land used for educational, sports, circus, entertainment & parking purposes. Whereas, in the instant case, the land being used for parking is appurtenant to the building and hence squarely covered under the definition of 'immovable property' as per clause (i)of the said explanation.

32.04 The dictionary meaning of the work 'appurtenant' is "belonging; pertinent"

32.05 I find that there is no dispute about the fact that the land used for parking is appurtenant to the main building. Further, the exclusion clause is only in respect of land used for parking purposes. The exclusion is not in respect of "Cemented space' used for parking purposes, which is appurtenant to any building and especially developed as parking space for vehicles. Accordingly, land used for parking purposes, which is appurtenant to noticee's building will be covered within the definition of 'Immovable Property' and accordingly, renting out of such property will attract levy of service tax.

32.06 I also find that what the legislature intended to exempt from payment of service tax was land used for general parking at public places.

32.07 Noticee's reliance on the judgment of the Hon'ble Delhi High Court in the case the renting of immovable property for use in course of furtherance of business or context. In the case law cited by the noticee the Hon'ble High Court has held that of Home Solution Retail India Ltd. Vs Union of India (2009) 20 STT 129 is also out of commerce by itself does not entail any value addition and therefore could not be regarded as a service eligible to Service Tax.

> 32.08 I find that in HOME SOLUTIONS RETAILS (INDIA) LTD. Versus UNION OF INDIA, reported in 2011 (24) S.T.R. 129 (Del.), the Hon'ble HIGH COURT OF DELHI, regarding imposition of service tax on Renting of immovable property has held that " Premises taken for commercial purpose facilitates/promotes commerce and business, thereby adding value and element of service" and has overruled Contrary view taken in Home Solution Retail India Ltd. [2009 (237)_E.L.T. 209 (Del.)], especially for not adverting appositely to Section 65(90a) of Finance Act, 1994 Amendment to Section 66 of Finance Act, 1994 by Finance Act, 2010 has been found to sustain the above position and Retrospective effect given to the amendment found to be proper and by way of ex abundanti cautela.
>
> 32.09 In view of the above, I hold that the noticee will be liable to service. tax on this count also."

4.4.2 From the definition of the "renting of immovable property services", as per the section 65 (90a) reproduced in the impugned order, it is apparent that as per the exclusion made by the Explanation 1, the land used for parking purpose, have been specifically excluded from the definition of immovable property. The only reason that has been recorded by the impugned order is the legislative intention which is based on the understanding of the adjudicating authority. However, we do not find any merits in the said findings when the wording employed in the said definition are unambiguous and clear. It s settled principal of interpretation of statute, that the statute should be interpreted on the basis of the word employed in literal manner. In the case of **Dilip Kumar & Co.** [(2018) 9 SCC 1 (FB)(SC)] Hon'ble Supreme Court has explained the said principal stating as follows:

> "19. The well settled principle is that when the words in a statute are clear, plain and unambiguous and only one meaning

can be inferred, the Courts are bound to give effect to the said meaning irrespective of consequences. If the words in the statute are plain and unambiguous, it becomes necessary to expound those words in their natural and ordinary sense. The words used declare the intention of the Legislature. In Kanai Lal Sur v. Paramnidhi Sadhukhan, AIR 1957 SC 907, it was held that if the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.

20. In applying rule of plain meaning any hardship and inconvenience cannot be the basis to alter the meaning to the language employed by the legislation. This is especially so in fiscal statutes and penal statutes. Nevertheless, if the plain language results in absurdity, the Court is entitled to determine the meaning of the word in the context in which it is used keeping in view the legislative purpose.2 Not only that, if the plain construction leads to anomaly and absurdity, the court having regard to the hardship and consequences that flow from such a provision can even explain the true intention of the legislation. Having observed general principles applicable to statutory interpretation, it is now time to consider rules of interpretation with respect to taxation.

21. In construing penal statutes and taxation statutes, the Court has to apply strict rule of interpretation. The penal statute which tends to deprive a person of right to life and liberty has to be given strict interpretation or else many innocent might become victims of discretionary decision making. Insofar as taxation statutes are concerned, Article 265 of the Constitution 3 2 Assistant Commissioner, Gadag Sub-Division, Gadag v. Mathapathi Basavannewwa, 1995 (6) SCC 355.

265. Taxes not to be imposed save by authority of law- No tax shall be levied or collected except by authority of law.

prohibits the State from extracting tax from the citizens without authority of law. It is axiomatic that taxation statute has to be interpreted strictly because State cannot at their whims

and fancies burden the citizens without authority of law. In other words, when competent Legislature mandates taxing certain persons/certain objects in certain circumstances, it cannot be expanded/interpreted to include those, which were not intended by the Legislature.

22. At the outset, we must clarify the position of 'plain meaning rule or clear and unambiguous rule' with respect of tax law. 'The plain meaning rule' suggests that when the language in the statute is plain and unambiguous, the Court has to read and understand the plain language as such, and there is no scope for any interpretation. This salutary maxim flows from the phrase "cum inverbis nulla ambiguitas est, non debet admitti voluntatis quaestio". Following such maxim, the courts sometimes have made strict interpretation subordinate to the plain meaning rule 4, though strict interpretation is used in the precise sense. To say that strict interpretation involves plain reading of the statute and to say that one has to utilize strict interpretation in the event of ambiguity is self-contradictory .

23. Next, we may consider the meaning and scope of 'strict interpretation', as evolved in Indian law and how the higher Courts have made a distinction while interpreting a taxation statute on one hand and tax exemption notification on the other. In Black's Law Dictionary (10th Edn.) 'strict interpretation' is described as under:

Strict interpretation. (16c) 1. An interpretation according to the narrowest, most literal meaning of the words without regard for context and other permissible 4 Mangalore Chemicals Case (Infra para 37).

meanings. 2. An interpretation according to what the interpreter narrowly believes to have been the specific intentions or understandings of the text's authors or ratifies, and no more.- Also termed (in senses 1 & 2) strict construction, literal interpretation; literal construction; restricted interpretation; interpretatiostricta; interpretatio restricta; interpretatio verbalis. 3. The philosophy underlying strict interpretation of statues.- Also termed as close interpretation; interpretatio restrictive. See strict

constructionism under constructionism. Cf. large interpretation; liberal interpretation (2).

"Strict construction of a statute is that which refuses to expand the law by implications or equitable considerations, but confines its operation to cases which are clearly within the letter of the statute, as well as within its spirit or reason, not so as to defeat the manifest purpose of the legislature, but so as to resolve all reasonable doubts against the applicability of the statute to the particular case.' Willam M. Lile et al., Brief Making and the use of Law Books 343(Roger W. Cooley & Charles Lesly Ames eds., 3d ed. 1914).

"Strict interpretation is an equivocal expression, for it means either literal or narrow. When a provision is ambiguous, one of its meaning may be wider than the other, and the strict (i.e., narrow) sense is not necessarily the strict(i.e., literal) sense." John Salmond, Jurisprudence 171 n. (t) (Glanville L. Williams ed., 10th ed. 1947).

24. As contended by Ms. Pinky Anand, learned Additional Solicitor General, the principle of literal interpretation and the principle of strict interpretation are sometimes used interchangeably. This principle, however, may not be sustainable in all contexts and situations. There is certainly scope to sustain an argument that all cases of literal interpretation would involve strict rule of interpretation, but strict rule may not necessarily involve the former, especially in the area of taxation. The decision of this Court in Punjab Land Development and Reclamation Corporation Ltd., Chandigarh v. Presiding Officer, Labour Court Chandigarh and Ors., (1990) 3 SCC 682,made the said distinction, and explained the literal rule- "The literal rules of construction require the wording of the Act to be construed according to its literal and grammatical meaning whatever the result may be.

Unless otherwise provided, the same word must normally be construed throughout the Act in the same sense, and in the case of old statutes regard must be had to its contemporary meaning if there has been no change with the passage of time." That strict interpretation does not encompass

strict- literalism into its fold. It may be relevant to note that simply juxtaposing 'strict interpretation' with 'literal rule' would result in ignoring an important aspect that is 'apparent legislative intent'. We are alive to the fact that there may be overlapping in some cases between the aforesaid two rules. With certainty, we can observe that, 'strict interpretation' does not encompass such literalism, which lead to absurdity and go against the legislative intent. As noted above, if literalism is at the far end of the spectrum, wherein it accepts no implications or inferences, then 'strict interpretation' can be implied to accept some form of essential inferences which literal rule may not accept.

25. We are not suggesting that literal rule de hors the strict interpretation nor one should ignore to ascertain the interplay between 'strict interpretation' and 'literal interpretation'. We may reiterate at the cost of repetition that strict interpretation of a statute certainly involves literal or plain meaning test. The other tools of interpretation, namely contextual or purposive interpretation cannot be applied nor any resort be made to look to other supporting material, especially in taxation statutes. Indeed, it is well settled that in a taxation statute, there is no room for any intendment; that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification. Equity has no place in interpretation of a tax statute. Strictly one has to look to the language used; there is no room for searching intendment nor drawing any presumption. Furthermore, nothing has to be read into nor should anything be implied other than essential inferences while considering a taxation statute.

26. Justice G.P. Singh, in his treatise 'Principles of Statutory Interpretation' (14th ed. 2016 p. – 879) after referring to Re, Micklethwait, (1885) 11 Ex 452; Partington v. A.G.,(1869) LR 4 HL 100;Rajasthan Rajya Sahakari Spinning & Ginning Mills Federation Ltd. v. Deputy CIT, Jaipur, (2014) 11 SCC 672,State Bank of Travancore v. Commissioner of Income Tax,(1986) 2 SCC 11 and Cape Brandy Syndicate v. IRC, (1921) 1 KB 64, summed up the law in the following manner- "A taxing statute is to be strictly

construed. The well-established rule in the familiar words of LORD WENSLEYDALE, reaffirmed by LORD HALSBURY AND LORD SIMONDS, means: 'The subject is not to be taxed without clear words for that purpose; and also, that every Act of Parliament must be read according to the natural construction of its words. In a classic passage LORD CAIRNS stated the principle thus: "If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable construction, certainly, such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute. VISCOUNT SIMON quoted with approval a passage from ROWLATT, J. expressing the principle in the following words: "In a taxing Act one has to look merely at what is clearly said. This is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used." It was further observed:

"In all tax matters one has to interpret the taxation statute strictly. Simply because one class of legal entities is given a benefit which is specifically stated in the Act, does not mean that the benefit can be extended to legal entities not referred to in the Act as there is no equity in matters of taxation…." Yet again, it was observed:

"It may thus be taken as a maxim of tax law, which although not to be overstressed ought not to be forgotten that, "the subject is not to be taxed unless the words of the taxing statute unambiguously impose the tax on him", [Russel v. Scott, (1948) 2 All ER 1]. The proper course in construing revenue Acts is to give a fair and reasonable construction to their language without leaning to one side or the other but keeping in mind that no tax can be imposed without words clearly showing an intention to lay the burden and that equitable

construction of the words is not permissible[Ormond Investment Co. v. Betts, (1928) AC 143]. Considerations of hardship, injustice or anomalies do not play any useful role in construing taxing statutes unless there be some real ambiguity [Mapp v. Oram, (1969) 3 All ER 215]. It has also been said that if taxing provision is "so wanting in clarity that no meaning is reasonably clear, the courts will be unable to regard it as of any effect [IRC v. Ross and Coutler, (1948) 1 All ER 616]." Further elaborating on this aspect, the learned author stated as follows:

"Therefore, if the words used are ambiguous and reasonable open to two interpretations benefit of interpretation is given to the subject[Express Mill v. Municipal Committee, Wardha, AIR 1958 SC 341]. If the Legislature fails to express itself clearly and the taxpayer escapes by not being brought within the letter of the law, no question of unjustness as such arises [CIT v. Jalgaon Electric Supply Co., AIR 1960 SC 1182]. But equitable considerations are not relevant in construing a taxing statute, [CIT, W.B. v. Central India Industries, AIR 1972 SC 397], and similarly logic or reason cannot be of much avail in interpreting a taxing statute [Azam Jha v. Expenditure Tax Officer, Hyderabad, AIR 1972 SC 2319]. It is well settled that in the field of taxation, hardship or equity has no role to play in determining eligibility to tax and it is for the Legislature to determine the same [Kapil Mohan v. Commr. of Income Tax, Delhi, AIR 1999 SC 573]. Similarly, hardship or equity is not relevant in interpreting provisions imposing stamp duty, which is a tax, and the court should not concern itself with the intention of the Legislature when the language expressing such intention is plain and unambiguous [State of Madhya Pradesh v. Rakesh Kohli & Anr.,(2012) 6 SCC 312]. But just as reliance upon equity does not avail an assessee, so it does not avail the Revenue." The passages extracted above, were quoted with approval by this Court in at least two decisions being Commissioner of Income Tax vs. Kasturi Sons Ltd., (1999) 3 SCC 346 and State of West Bengal vs. Kesoram Industries Limited, (2004) 10 SCC 201[hereinafter referred as 'Kesoram Industries Case' for

> brevity]. In the later decision, a Bench of seven Judges, after citing the above passage from Justice G.P. Singh's treatise, summed up the following principles applicable to the interpretation of a taxing statute:
>
> "(i) In interpreting a taxing statute, equitable considerations are entirely out of place. A taxing statute cannot be interpreted on any presumption or assumption. A taxing statute has to be interpreted in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any deficiency; (ii) Before taxing any person, it must be shown that he falls within the ambit of the charging section by clear words used in the section; and (iii) If the words are ambiguous and open to two interpretations, the benefit of interpretation is given to the subject and there is nothing unjust in a taxpayer escaping if the letter of the law fails to catch him on account of Legislature's failure to express itself clearly".

4.4.3 Thus in view of the law laid down by the Hon'ble Supreme Court with regards to the interpretation of the statutes – tax statutes, we do not find any merits in the confirmation of the demand made on this account.

III Business Auxiliary Services

4.5.1 Appellant/ Appellant Counsel have challenged the demand made on this account before us by saying that the word "service" used in the (ii) of Section 65 (19) of the Finance Act, do not cover the activities undertaken by them as Health Service providers, therefore the services provided to them by the Health Facilitators cannot be classified under this category, of Business Auxiliary Services.

4.5.2 The grounds taken by the appellant in the appeal before us are not the same grounds which were taken before the adjudicating authority. Impugned order records the findings as follows while confirming this demand:

> "A. Non payment of Service Tax on Business Auxiliary Services
>
> 30. I find that the demand on this count has been raised on the noticee under reverse charge mechanism on the money paid by the noticee to foreign based entities for referring patients to them. 1also find that as submitted by the noticee they are paying a fixed percentage to the agent of the total bill raised by them on the referred foreign patient.
>
> 30.01 I find that promoting and marketing noticee's services and referring foreign patients by the agents to the noticee for a consideration (Commission) are squarely covered under the definition of "Business Auxiliary Services" as prevalent during the material time.
>
> 30.02 "Business Auxiliary Services" were brought under the Service Tax net by the Finance Act, 2003, w.e.f. 01.07.2003 vide notification No.7/2003-ST, dated 20.06.2003. The definition of Business Auxiliary Services as provided under Clause 19 of Section 65(2) of the Finance Act, 1994 as amended, was as under:
>
> "Business Auxiliary Service" means any service in relation to-
>
> (i) promotion or marketing or sale of goods produced or provided by or belonging to the client; or
>
> (ii) promotion or marketing of service provided by the client; or
>
> (iii) any customer care service provided on behalf of the client; or
>
> (iv) any incidental or auxiliary support service such as billing collection or recovery relation services, of cheques, accounts and remittance, evaluation or prospective customer and public relation service

and includes services as a commission agent, but does not include any information technology service.

30.03 The definition was amended wef 10.09.2004 which read as follows: "Business Auxiliary Service" means any service in relation to-

(i) Promotion or marketing or sale of goods produced or provided by or belonging to the client; or

(ii) promotion or marketing of service provided by the client; or

(iii) any customer care service provided on behalf of the client: or

(iv) procurement of goods or services, which are inputs for the client or

(v) production or processing of goods for, or on behalf of, the client. Or

(vi) provision of service on behalf of the client; or

(vii) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, maintenance of accounts and remittance, inventory management payments evaluation or development of prospective customer or vendor, public relation management or supervision,

and includes services as a commission agent services,

but does not include any information technology service and any activity that amounts to "manufacture" within the meaning of clause (I) of section 2 of the Central Excise Act, 1944 (1 of 1944)

30.04 Further vide notification No. 13/2003-ST dated 20.06.2003. exemption from payment of Service Tax was granted to the Commission Agents on the amount of commission received by them for providing the services relating to sale or marketing of the goods. However, this, exemption was withdrawn w.e.f 09.07.2004 vide Notification No. 8/2004-ST.

30.05 Admittedly, the agents are promoting/marketing the services provided by the noticee and the noticee is paying a fixed percentage of the total bill amount to the agents. I further find that the noticee has not contested the nature of the

services The noticee has contested this demand only on the ground that their agents have provided these services outside India and have at no point of time visited India to perform the same either in part or in full The scope of the services provided by these agents inter alia includes marketing the services provided by them to prospective customers staying overseas, and to refer the patients to their hospital. The services were only performed by the agents outside India and accordingly received by them outside India.

30.06 I do not agree with the contention of the noticee. Definitely, the services in question were performed by the agents outside India, but the services were used by the noticee in their business and commerce and for the promotion of their business Recipient of a service is a person who requested the service and is liable to make payment for it and whose need is satisfied by the service. It is not the person affected by performance of service. Accordingly, noticee is the recipient of the service in question.

30.07 The Finance Act, 1994 levies a charge of service tax on the service provider.

30.08 However, the jurisdiction to demand service tax from the service receiver for services provided by a non-resident service provider arises only after the insertion of Section 66A which has been introduced with effect from 18.04.2006. Hence, at least there can be no demand of service tax prior to 18.04.2006. The Explanation to Section 65(105) was deleted with effect from 18.04.2006. Section 66A came into force from the same date. For the ease of reference section 66A of the Act is reproduced herewith as under:

66A (1)Where any service specified in clause (105) of section 65 is,-

(a) provided or to be provided by a person who has established a business or has a fixed establishment from which the service is provided or to be provided or has his permanent address or usual place of residence, in a country other than India, and

(b) received by a person (hereinafter referred to as the recipient) who has his place of business, fixed

establishment, permanent address or usual place of residence, in India,

such service shall, for the purposes of this section, be the taxable service, and such taxable service shall be treated as if the recipient had himself provided the service in India, and accordingly all the provisions of this Chapter shall apply:

Provided that where the recipient of the service is an individual and such service received by him is otherwise than for the purpose of use in any business or commerce, the provisions of this sub-section shall not apply:

Provided further that where the provider of the service has his business establishment both in that country and elsewhere, the country, where the establishment of the provider of service directly concerned with the provision of service is located, shall be treated as the country from which the service is provided or to be provided.

(2) Where a person is carrying on a business through establishment in India and through another permanent establishment in a country a permanent other than India, such permanent establishments shall be treated as separate persons for the purposes of this section.

Explanation 1 A person carrying on a business through a branch or agency in any country shall be treated as having a business establishment in that country.

Explanation 2. - Usual place of residence, in relation to a body corporate, means the place where it is incorporated or otherwise legally constituted

30.09 I find that taxability of services under 'Reverse Charge Mechanism' has attained finality in view of the judgment of Hon'ble Bombay High court in Indian National Ship-owners Association V. UOI 2009 (13) S.T.R. 235 (Bom.). The Order of the Hon'ble high Court has been maintained by the Hon'ble Supreme Court of India, reported as 2010 (17) STR J 57 (SC). The order of the Hon'ble Bombay High Court is reproduced below:-

7. The learned Counsel submitted that reading of sub-section 2 of Section 68 and this notification along with the scheme

of the Act shows that under this notification the recipients of service cannot be made liable for levy of service tax. The learned Counsel further submitted that on 16-6-2000 the Service Tax Rules 1994 were amended and a provision was added in Rule (2), which reads as under :-

> (iv) in relation to any taxable service provided or to be provided by a person, who has established a business or has a fixed establishment from which the service is provided or to be provided, or has his permanent address or usual place of residence, in a country other than India, and such service provider does not have any office in India, the person who receives such service and has his place of business, fixed establishment, permanent address or, as the case may be, usual place of residence, in India.
>
> By this provision while defining the term "person liable to pay service tax" a person who has received services outside India was made liable for levy of service tax. The learned Counsel submits that provision of Rule 2(d)(iv) quoted above is invalid, because it is contrary to the scheme of the Act. On 16-6-2005, an amendment was made to the Act also, by which an explanation was added below Section 65(105), which explanation reads as under :-
>
> *Explanation* - For the removal of doubts, it is hereby declared that where any service provided or to be provided by a person, who has established a business or has a fixed establishment from which the service is provided or to be provided, or has his permanent address or usual place of residence, in a country other than India and such service is received or to be received by a person who has his place of business, fixed establishment, permanent address or, as the case may be, usual place of residence, in India, such service shall be deemed to be taxable service for the purposes of this clause.

8. The learned Counsel submits that by this explanation services provided by a person who does not have permanent

residence in India to a person having present permanent residence in India is deemed to be taxable service. But by this explanation levy of service tax from the recipients of the service is not provided for. The learned Counsel submits that thus the levy of service tax from the members of the Petitioners-Association with effect from 16-6-2005 was on the basis of the explanation and the provision of Rule 2(1)(d)(iv) quoted above. The learned Counsel submits that the provisions of Rule 2(1)(d)(iv) are invalid and under the explanation service tax cannot be levied from the members of the Petitioners-association, who have received services to their vessels and ships outside India. With effect from 18-4-2006 Section 66 A was added to the Act, which reads as under :-

> "(1) 66A (1) Where any service specified in clause (105) of section 65 is, -
>
> (a) provided or to be provided by a person who has established a business or has a fixed establishment from which the service is provided or to be provided or has his permanent address or usual place of residence, in a country other than India, and
>
> (b) received by a person (hereinafter referred to as the recipient) who has his place of business, fixed establishment, permanent address or usual place of residence in India,
>
> such service shall, for the purposes of this section, be the taxable service, and such taxable service shall be treated as if the recipient had himself provided the service in India and accordingly all the provisions of this Chapter shall apply;
>
> Provided that where the recipient of the service is an individual and such service received by him is otherwise than for the purpose of use in any business or commerce, the provisions of this sub-section shall not apply;
>
> Provided further that where the provider of the service has his business establishment both in that country and elsewhere, the country, where the establishment of the

provider of service directly concerned with the provision of service is located, shall be treated as the country from which the service is provided or to be provided.

(2) Where a person is carrying on a business through a permanent establishment in India and through another permanent establishment in a country other than India, such permanent establishments shall be treated as separate persons for the purposes of this section.

Explanation 1. - A person carrying on a business through a branch or agency in any country shall be treated as having a business establishment in that country.

Explanation 2. - Usual place of residence, in relation to a body corporate, means the place where it is incorporated or otherwise legally constituted."

9. The learned Counsel submits that it is only from 18-4-2006 that a substitute provision was made for levy of service tax from a person who receives service outside India. Thus, according to the learned Counsel, before 18-4-2006 no service tax could have been levied on the members of the Petitioners-association whose vessels and ships receive service outside India. Though the learned Counsel appearing for the Petitioners submitted that service tax is sought to be levied from the members of the Petitioners-association from 1-3-2002, in the written submission filed on behalf of the Respondents there does not appear to be any justification given for levying service tax from the members of the Petitioners-association whose vessels and ships receive services outside India.

10. In the written submission filed on behalf of the Respondents reliance is placed on the provisions of Rule 2(1)(d)(iv) of the Rules, which have come into force from 16-8-2002 to claim that in view of those Rules service tax was leviable. It was submitted that it is unambiguously clear that a statutory effect had already been created w.e.f. 16-8-2002, by an omnibus provision made by incorporating clause (iv) in Rule 2(1)(d) of the Service Tax Rules under which every service receiver in India became liable to pay Service tax in relation to any taxable service provided by non-

resident, who did not have office in India. This statutory effect has to be read harmoniously as if complementing the provisions of Section 68(2) as it existed prior to issue of Notification No. 36/2004-ST, dated 31-12-2004 rather than negating its existence or challenging its vires since the date of its incorporation, i.e. 1-8-2002. The statutory effect created vide rule 2(1)(d)(iv) cannot be reduced by reference to a subsequently issued notification repeating the contents of the said rule. It was further submitted that in respect of the recipient of services who have been made liable to pay service tax on services received from foreign based persons, there is no denying the fact that the recipients of these services are the ultimate beneficiaries of the services rendered to them. Moreover, in the case of an indirect tax, it is the recipient of service who has to ultimately bear the incidence of a tax. Thus, the liability cast upon the recipient of service has a direct connection with him and there exists a direct nexus between recipient of these services from foreign based service provider and the Indian Union.

11. The learned Counsel appearing for both sides relied on the judgment of the Supreme Court in the case of *Laghu Udyog Bharati* v. *Union of India*, 2006 (2) S.T.R. 276 (S.C.) = 1999 (112) E.L.T. 365 (S.C.) and the judgment of the Supreme Court in the case of *Gujarat Ambuja Cements Ltd.* v. *Union of India*, 2006 (3) S.T.R. 608 (S.C.) = 2005 (182) E.L.T. 33 (S.C.). The Petitioners in this petition are challenging levy of service tax from the members of the Petitioners-association in relation to the services rendered to the vessels and ships owned by the members of the Petitioners-association outside India from 1-3-2002 to 17-4-2006.

12. Article 265 of the Constitution of India lays down that "no tax shall be levied or collected except by authority of law". Therefore, an enquiry that is to be made is whether during the period from 1-3-2002 to 17-4-2006 there was valid law which authorises levy of service tax in relation to the services rendered outside India."

> 30.10 In view of the above, there is no ambiguity regarding taxability of services received from abroad prior to 18.04.2006 and accordingly demand in this regard prior to 18.04.2006 is liable to be dropped and the noticee is liable to pay service tax under reverse charge mechanism on the services received by them after 17.04.2006."

4.5.3 The definition of the Business Auxiliary Service as per Section 65 (19) has been reproduced in the impugned order. The contention of the appellant that word "service" used in the said section 65 (19) is only referring to the taxable services defined by the Finance Act, 1994 lacks merit. If the word service as used in the said section was to be equated and read as "taxable service as per Finance Act, 1994" then it will not only lead to be absurdity but would do violence to the scheme of Finance Act, 1994.. Further we have referred to the decision of Hon'ble Supreme Court in the case of Dilip Kumar & Co., which clearly lays down that the while interpreting a taxable statute there is no room for intendment, addition or deletion of the words in the statute. The intention of the legislature is to be gathered from the words employed in the statute.

4.5.4 Further if we look into the scheme of the section 65 (19), we find that word service has been used in (ii), (iii), (iv), (vi) & (vii). Clause (vii) lists out by using the phrase "such as" a number of services which are not defined by Finance Act, 1994, and are not taxable services, but become taxable if provided in relation to conduct of business of the client. Further undisputedly the services provided by the "Health Care Facilitators", from abroad to the appellant are "commission agent services" which have been included in the definition of Business Auxiliary Services defined by the Section 65 (19) of the Finance Act, 2019.In the case of Sahara India [Final

Order No 70036/2024 dated 29.01.2024 in Service Tax Appeal No.979 of 2009] Allahabad bench has observed as follows:

> "4.3 From the definition of Business Auxiliary Service as per Section 65 (19) reproduced as above it is quite evident that for the period up to 09.10.2004, the clause (ii) was with reference to promotion and marketing of services provided by the client and clause (iv) was with reference to the incidental or auxiliary support services provided to the client. The clause (i), (ii), (iii) & (iv) were mutually exclusive and referred to different categories of activity which need not necessarily be in relation to the taxable service provided by the client. Counsel has argued that the client of appellant is in business of accepting deposits, which per-se is not a service hence the clause (ii) and (iv) of section 65 (19) would not be applicable to them, and their services cannot be taxed under this category. On the contrary Commissioner has in the impugned order applied this clause to hold that the services provided by appellant to fall under the category of "business auxiliary services by application of these two clauses. To understand the exact purport of the word „service" used in this clause we need have no option but to refer to the general understanding of the word service as the same has not been defined in the Finance Act,1994."

4.5.5 Argument advanced by the appellant with regards to taxation and exemption to services as defined by Section 65 (105) (zzzzo) with effect from 01.07.2010 is totally out of context, as the services which fall under that category are not even subject matter of dispute in the present proceedings. The dispute in the present case is not in respect of the services provided by the appellant but is with regards to services received by the appellant, from the Health Care Facilitators (Commission Agents), located abroad under reverse charge mechanism. Since the issue involved in these proceedings is not in relation to the Health Care Services

provided by the appellant, we do not find any merits in these arguments advanced by the appellant.

4.5.4 To argue that the word 'service', used in the (ii) will not include the health care services appellant has placed reliance on the three decisions. We will deal with each of the decisions now:

A. Martin Lottery Agency Ltd. [2009 (14) S T R 593 (SC)]

> *"16. Organizing lottery by the State is tolerated being an economic activity on its part so as to enable it to raise revenue. Raising of revenue by the State, in our opinion, by itself cannot amount to rendition of any service. It may be true that for the purpose of invoking the provisions of taxing statute, the morality aspect may not be of much consequence but such a question assumes significance for the purpose of ascertaining as to whether the same amounts to rendition of service within the meaning of the aforementioned sub-clause. The word `service' has not been defined in the Act. Its dictionary or etymological meaning may or may not be appropriate. We would, however, notice its dictionary meaning :*
>
> *"Work done or duty performed for another or others; a serving; as, professional services, repair service, a life devoted to public service. An activity carried on to provide people with the use of something, as electric power, water, transportation, mail delivery, telephones, etc. Anything useful, as maintenance, supplies, installation, repairs, etc., provided by a dealer or manufacturer for people who have bought things from him."*
>
> *17. While the State raises its revenue by controlling dealing in liquor and/or by transferring its privilege to manufacture, distribute, sale etc., as envisaged under Entry 8 of List II of the Seventh Schedule of the Constitution of India, thereby it does not render any service to the society. Service tax purports to impose tax on services on two grounds (1) service provided to a consumer and (2) service provided to a service provider.*
>
> *18. Service provided in respect of the matters envisaged under clause (19) of Section 65 of the Act must be construed strictly.* ***Before a tax is found to be leviable, it must come within***

> ***the domain of legitimate business and/or trade.*** *The doctrine of res extra Commercium was invoked in the United States of America where keeping in view the nature of right conferred on its citizens and the concept of imposition of reasonable restrictions thereon being absent, it was held that gambling should be frowned upon being opposed to constitutional jurisprudence. While borrowing the said principle in the Indian context, however, it must be borne in mind that Constitution of India envisages reasonable restrictions in respect of almost all the fundamental rights of the citizens. No citizen has an absolute fundamental right. Whereas the same principle may apply in Australia but it may not apply to the European Countries where gambling and even sale of narcotic drugs subject to licensing provisions, if any, is permissible*."

From the reading of the above paras of this decision we find that supreme court has itself referred to dictionary meaning of the word "service", while interpreting the meaning of same in the (ii) of section 65 (19), but they also observe that while interpreting the said phrase due consideration should be made of the legality of the service. No service tax could have been levied in respect of the activities under taken for promoting the activities considered illegal in taxing jurisdiction. After reading this para a specific query was made to the counsel to the effect, whether the health care services provided by the appellant would qualify as illegal activities within the taxing jurisdiction. The counsel had replied in negative admitting that the services provided were not illegal services. Thus we do not find any support to the contention made by the appellant from this decision.

B. Jetlite (India) Ltd. [2011 (21) STR 119 (T-Del)]

C. Steria India Ltd. [CESTAT Allahabad Final Order No 70287-70828/2017 dated 30.08.2017]

Both these judgments were considered by us in the case of Sahara India Limited referred earlier by us and following has been observed:

> "4.19 Appellant have relied upon the decision of tribunal in case of Jetlite (India) Ltd [2011 (21) STR 119 (T-Del)] and Steria

India Limited [2017-TIOL-3837-CESTAT-ALL to argue that for holding the services rendered by them to the service recipient, to be taxable under these clauses of Section 65 (19), it is necessary to show that the service recipient was providing taxable services to the third party. However on perusal we do not find any such averment made in any of these orders. In case of Jetlite, tribunal has observed:

"61. The Finance Act, 1994 does not define the term —Service‖. It merely describes the expression —Taxable Service‖. As far as the matter in hand is concerned the liability of the appellants is said to be in terms of Section 65(19)(ii) read with Section 65(105)(zzb) of the said Act.

62. Section 65(19) of the said Act defines the —Business Auxiliary Services‖ and under clause (ii) thereof it provides that Business Auxiliary Service means, any service in relation to promotion or marketing of service provided by the client. Section 65(105)(zzb) defines the "Taxable Service means, any service provided or to be provided to a client by any person in relation to Business Auxiliary Service. In fact, the expression "any person" was substituted for the earlier expression "a commercial concern" since 18th April, 2006, consequent to the amendment to Finance Act.

63. Perusal of the above provisions of law, therefore, would disclose that a person can be said to have rendered Business Auxiliary Service in terms of the provisions of law in force, on being established that he has rendered service in relation to either promotion or marketing of some service provided by the client. The fact, that the service provider has rendered the service of promotion or marketing of the service provided to others by the service recipient, has to be established before such person can be said to have rendered the taxable service which can be classified under the said clause. Unless the service recipient is shown to have been engaged in rendering some service to others and the service provider is shown to have rendered his service for promotion or marketing of such service provided by the service recipient to others, the question of creating liability under the said Act in terms of Section 65(19)(ii) read with 65(105) (zzb) of the said Act does not arise.

65. As already stated above, the term "Service‖ has not been defined under the said Act. In Black's Law Dictionary the term "service" has been defined to be an act of doing something useful for a person or a company for a fee. The expression "service charges" is defined therein to mean charge assessed for performing of service, such as charges assessed by bank against the expenses of maintaining or servicing a customer checking account. Even while defining the term taxable service under the said Act, the definition specifies the taxable service to mean any service provided or to be provided to any person whereas the business auxiliary service has been defined to mean any service in relation to the service provided by the client. Being so, taking into consideration the common understanding of the definition of the term "service" as well as the definition of the term "taxable service" under the said Act, it is evident that the service contemplated under Section 65(19) is the one which relates to service rendered by the service recipient. It may be taxable service or may not be so. However, the situation invariably contemplates existence of two entities in order to bring the case within the scope of definition of business auxiliary service. One entity which provides service to others is called a service recipient. Another entity is one which provides service to the service recipient in relation to the service rendered by such service recipient to others, and such entity is called the service provider.

77. The discussion on the point in issue would be incomplete without reference to some more decisions of the Apex Court, and they are Tamilnadu Kalyan Mandapam Association v. Union of India reported in 2006 (3) S.T.R. 260 = 2004 (167) E.L.T. 3, Fakir Chand Gulati v. Uppal Agencies Private Limited reported in 2008 (12) S.T.R. 401, Home Solutions Retail India Limited v. Union of India reported in 2009 (14) S.T.R. 433 = 2009 (237) E.L.T. 209 (Del.), Association of Leasing & Financial Service Companies (supra), All India Federation of Tax Practitioners v. Union of India reported in 2007-TIOL-149- SC-ST = 2007 (7) S.T.R. 625 (S.C.), Bharat Sanchar Nigam (supra) and Gannon Dunkerley's case.

78. In Tamilnadu Kalyana Mandapam Association case, the Apex Court while dealing with the issue as to whether the High Court was correct in coming to the conclusion that the provisions in

the Finance Act, 1994 imposing Service tax on the services rendered by the Mandap Keeper were intra virus of the Constitution of India or not. After going through the scheme of the said Act and various judgements relevant for the decision in the matter, it was observed that the Mandap Keeper provide a wide variety of services apart from the service of allowing temporary occupation of mandap. Apart from proper maintenance of the mandap, they were providing the necessary paraphernalia for holding function, besides providing condition and ambience required by the customers which included provision for lighting arrangements, furniture and fixtures, floor covering etc, decoration and organizing catering services in the mandap. In fact, the logistic of setting up, selection and maintenance was the responsibility of the Mandap Keeper. The services of Mandap Keeper could not possibly be termed as a higher purchase agreement of a right to use goods or property. The services provided by Mandap Keeper are professional services which he alone by virtue of his experience as the wherewithal to provide. However, temporary occupation of mandap does not involve transfer of the property either under Transfer of Proper Act or otherwise. The nature and character of the Service tax levied on Mandap Keeper is in relation to transaction between the Mandap Keeper and his customer which is essentially that of providing a service.

79. In Fakir Chand Gulati case, the point for consideration before the Apex Court was whether a land owner who enters into agreement with a builder for construction of an apartment building and for sharing of the constructed area is a consumer entitled to maintain a complaint against the builder as a service provider under the Consumer Protection Act, 1986. It was held therein that the basic underlying purpose of such agreement is the construction of a house or an apartment in accordance with the specification by builder for the owner, the consideration for such construction being the transfer of undivided share in land to the builder and grant of permission to the builder to construct two or more floors. Apart from consideration flowing from the land owner to the builder in the form of sale of undivided share in the land and permission to construct and sell other floors of the building is to adjust the value to the extent of land to be transferred to the builder, the important aspect is the availment

of services of the builder by the land owner for house construction for a consideration. To that extent, the land owner would be a consumer and the builder to be a service provider.

80. In Home Solution case, the point for consideration before the Apex Court was whether the Finance Act, 1994 envisages the levy of Service tax on letting out/renting out of immovable property per se. The Apex Court after referring to various relevant provisions of the said Act as well as taking into consideration the various reported decisions including Kalyan Mandapam Association case held that the Supreme Court in Kalyan Mandapam case had held that the service of a Mandap Keeper does not involve transfer of movable property nor does it involve a transfer of any immovable property of any kind known to law either under the Transfer of Property Act or otherwise and therefore, the said activity could be only classified as a service. It was further held that the observation of the Supreme Court in Kalyan Mandapal case that the utilization of the premises as a mandap by itself would constitute a service was required to be distinguished from the kind of activity that is contemplated under Section 65(105)(zzzz) of the said Act. The case of a mandap and service provided by Mandap Keeper would not be applicable to a case of renting of immovable property simplicitor. It was further held that the Service tax is a value added tax. It is a tax on value addition provided by a service provider. It is, therefore, obvious that it must have connection with a service and there must be some value addition by that service. If there is no value addition then there is no service. In so far as renting of immovable property for use in the course of or furtherance of the business or commerce is concerned by itself does not entail any value addition and, therefore, cannot be regarded as a service.

81. In Association of Leasing & Financial Service Companies the Apex Court was dealing with the matter of an association of lending and financial companies. The Finance Act provided for levy of Service tax for banking and other financial services. Section 137 of the Finance Act, 2001 substituted Section 65 which defined banking and other financial services. Subsequently the definition underwent changes which were introduced by way of Section 90 of the Finance Act, 2004 and Section 135 of the Finance Act, 2007. The appellant filed writ

petition in the High Court challenging the levy of Service tax imposed by Section 65(12)(a)(i) of the said Act. During the pendency of the writ petition, the government issued a Notification dated 1-3-2006 exempting 90% of the amount payable under higher purchase/equipment leasing agreements from Service tax on the ground that the said 90% represented interest income earned by the service provider. By virtue of the amended definition of the expression banking and other financial services, the transactions in the nature of financial leasing, equipment leasing and hire-purchase had been sought to be brought within the Service tax net. The Apex court after taking note of various provisions of law observed that the Reserve Bank of India was constituted under RBI Act, 1934 inter alia to regulate the country's monetary system. Chapter III-B of the RBI Act deals with the provision relating to non-banking financial companies and financial institutions. Section 45-I(c) of RBI Act treats financing as an activity. Those activities are regulated by Reserve Bank of India. The expression financial institution means any non banking institution which carries on as its business and activity inter alia of financing, whether by way of making loans or advances or otherwise. Under notification dated 2-1-1998, the deposit taking activities of non-banking financial companies were also sought to be regulated. Similarly, under RBI guidelines dealing with the accounting for investments, the non-banking financial companies having not less than 60% of the total assets in lease and higher purchase and deriving not less than 60% of their total income from such activities can be classified as higher purchase/equipment leasing companies. The Apex Court further observed that the significance of the said circulars and guidelines is to show that the activities undertaken by non-banking financial companies of equipment leasing and hire-purchase finance are facilities extended by nonbanking financial companies to their customers. They are financial services rendered by such non-banking financial companies to their customers and they fall within the meaning of the words banking and other financial services which were sought to be brought within the Service tax net under Section 66 of the said Act. Referring to the Sale of Goods Act and commentary of the said statute by Mulla, the Apex Court specifically observed that:

"a common method of selling goods is by means of an agreement commonly known as a hire-purchase agreement which is more aptly described as a hiring agreement coupled with an option or purchase, i.e. To say that the owner lets out the chattel on higher and undertakes to sell it to the hirer on his making certain number of payments. If that is the real effect of the agreement there is no contract of sale until the hirer has made the required number of payments and he remains a bailee till then. But some so-called hire-purchase agreements are in reality contracts to purchase, the price to be paid by installments and in those cases the contract is a contract of sale and not of hiring. It depends on the terms of the contract whether it is to be regarded as a contract of hiring or a contract of sale".

82. The Apex Court further observed that in All India Federation of Tax Practitioners' the Apex Court had explained the concept of Service tax and had held that the Service tax is a valued added tax which in turn is destination-based consumption tax in the sense that it is levied on commercial activities and it is not a charge on the business but on the consumer. And that the Service tax is an economic concept based on the principle of equivalence in a sense that consumption of goods and consumption of services are similar as they both satisfy human needs. It was further held by the Apex Court that: -

"Today with the technological advancement there is a very thin line which divides a "sale" from "service". That, applying the principle of equivalence, there is no difference between production or manufacture of saleable goods and production of marketable/saleable services in the form of an activity undertaken by the service provider for consideration, which correspondingly stands consumed by the service receiver. It is this principle of equivalence 63 Service Tax Appeal No.979 of 2009 which inbuilt into the concept of Service tax under the Finance Act, 1994. That Service tax is, therefore, a tax on an activity. That, Service tax is a value added tax. The value addition is on account of the activity which provides value addition, for example, an activity undertaken by a Chartered Accountant or a broker is an activity undertaken by him based on his performance and skill. This is from the point of view of the professional. However, from the point of view of his client,

the Chartered Accountant/broker is his service provider. The value addition comes in on account of the activity undertaken by the professional like tax planning, advising, consultation etc. It gives value addition to the goods manufactured or produced or sold. Thus, Service tax is imposed every time service is rendered to the customer/client". The Apex Court further held that "every tax may be levied on an object or on the event of taxation. Service tax is, thus, a tax on activity whereas sales tax is a tax on sale of a thing or goods".

Having held so, it was also ruled that:

"A contract of sale is different from an agreement to sell and unlike other contracts, operates by itself and without delivery to transfer the property in the goods sold. The word —sale‖ connotes both a contract and a conveyance or transfer of property. The law relating to building contracts was well known when Gannon Dunkerlay's case was decided and under that law the supply of goods as part of the works contract was not a sale. Thus, the essential ingredients of the —sale‖ are agreement to sell movables for a price and property passing therein pursuant to an agreement".

83. Referring to the facts of the case of Association of Leasing & Financial Service Companies, the Apex Court held that :

"the impugned levy relates to or is with respect to the particular topic of "banking and other financial services" which includes within it one of the several enumerated services, viz, financial leasing services. These include long time financing by banks and other financial institutions (including NBFCs). These are services rendered to their customers which comes within the meaning of the expression —taxable services‖ as defined in Section 65(105)(zm). The taxable event under the impugned law is the rendition of service. The impugned tax is not on material or sale. It is on activity/service rendered by the service provider to its customer. Equipment Leasing/HirePurchase finance are long term financing activities rendered. Such amount is credited to the capital account of the lessor/hire-purchase service provider. It is the interest/finance charge which is treated as income or revenue and which is credited to the revenue account, Such interest or finance charges together with the lease management fee/processing fee/documentation charges are treated as

considerations for the services rendered and accordingly they constitute the value of taxable services on which Service tax is made payable".

84. In Bharat Sanchar Nigam's case the matter related to the state Legislative competency to levy sale tax on the transaction, by which mobile phone connections are enjoyed by the customers, under Entry 54 List-II of the Seventh Schedule to the Constitution. After taking note of the consensus amongst the parties on the point that the "goods" element in telecommunication were the electromagnetic waves by which data generated by the subscriber was transmitted to the desired destination and proceeding on the basis that incorporeal rights may be goods for the purpose of levying sale tax, it was held that electromagnetic waves are neither abstracted nor are they consumed in the sense that they are not extinguished by their user. They are not delivered, stored or possessed. Nor are they marketable. They are merely the medium of communication, what is transmitted is not an electromagnetic wave but the signal through such means. The signals are generated by the subscribers themselves. In telecommunication what is transmitted is the message by means of the telegraph. No part of the telegraph itself is transferable or deliverable to the subscribers. It was ruled that "the electromagnetic waves are not 'goods' within the meaning of the word either in Article 366(12) or in the State Legislation". It was further observed that "it is not in the circumstances necessary for us to determine whether telephone system including the telephone exchange was not goods but immovable property as contended by some of the petitioners". It was further held that "a telephone service is nothing but a service. There is no sale element apart from obvious one relating to the hand set if any. That and any other accessory supplied by the service provider in our opinion remain to be taxed under the State Sales Tax Laws." It was also held that the nature of the transaction involved in providing the telephone connection may be a composite contract of service and sale. It is possible for the State to tax the sale element provided there is a discernible sale and only to the extent relatable to such sale.

85. In Gannon Dunkerley case it was held that if there is an instrument of contract which may be composite in form in any

case other than the exceptions in Article 366(29A), unless the transaction in truth represents two distinct and separate contracts and is discernible as such, then the State would not have the power to separate the agreement to sell from the agreement to render service and impose the tax on sale. However, the said finding was preceded by the reasoning that "we are concerned herewith a building contract, and in the case of such a contract, the theory that it can be broken up into its component parts and as regards one of them it can be said that there is a sale must fail both on the grounds that there is no agreement to sell materials as such, and that property in them does not pose as movables".

86. Plain reading of the decisions of the Apex Court would disclose that the Apex Court clearly brought out the difference between sale and services. Besides it has been clearly clarified that the taxable event under the said Act is the rendition of service. It is on the activity conducted or service rendered by the service provider to its customer that attracts the provisions of the said Act. The tax under the said Act cannot be levied on materials or on sale. Undoubtedly, in case of sale, if any services are rendered in the nature of processing fee or documentation charges, etc., that could form part of the services rendered and may constitute the value of taxable service on which the Service tax may be leviable. In other words, sale, by itself, of immovable property, either developed or undeveloped, or even alongwith construction therein, would not amount to rendering any service, either taxable or otherwise. But at the same time, any service rendered in the form of documentation or the like, certainly the same could amount to rendering service and would attract the provisions of the said Act. It is, therefore, necessary for the department before classifying an activity of service provider to be taxable service, to establish the factum of rendering of any such service by the service recipient to others in the course of sale of the immovable property by such service recipient, and only then it could be said that the service provider had provided Business Auxiliary Service by promoting or marketing such services of the service recipient. Needless to say that to establish such facts, it is primarily necessary to have a clear charge in that regard with the factual foundation in the show cause notice to give proper

> and fair opportunity to the assessee to meet the case of the department and thereupon to establish such charge in the course of adjudication proceedings. As far as the case in hand is concerned, as already seen above in relation to the service aspect is concerned, the allegation or charge in that regard relates to the sale of immovable properties or the developed properties or the constructed project by Sahara Corporation. It does not relate to any service rendered by Sahara Corporation to others in relation to the sale of such properties or projects."
>
> 4.20 From the observations made in the said decision it is quite evident that the issue under consideration of the tribunal in this case was making distinction between sale and service. Tribunal has in the above decision nowhere concluded that the service rendered by the service recipient should have been taxable service. Similarly we do not find any such finding recorded by the tribunal in the case of Steria also. Therefore the submissions made by the appellant on the basis of these decisions cannot be accepted. We have referred to the memorandum of understanding, balance sheet and other documents in the earlier part of our order, and have concluded that the client of appellant was engaged in the business of providing services to his clients."

4.5.5 Also from the reading of para 10 of the decision in case of **Steria India**, we observe that said judgment has been rendered without recording any finding on the provisions of statue and fact. Even if some benefit has been extended without recording any reasons or findings the said decision could not be reason for extending the benefit of same in subsequent cases as has been held in case of **Super Cassettes [1997(94)ELT302(ALL)]** by Hon'ble Allahabad High Court observing as follows:

> "8 ……..Learned counsel for the petitioner contended that in several cases the Tribunal has taken the view that since in Rule 57G there is no provision for reversal of a credit once taken by a

> manufacturer the dealer was not legally obliged to reverse the credit already taken by it by making debit entries in the PLA account. I was informed that apart from some judgments passed by CEGAT no High Court has yet dealt with the controversy. The mere fact that the CEGAT has accepted the claim for refund in some other cases cannot be a ground for taking the view that the credit taken by the petitioner was correct and its reversal was illegal and Article 14 cannot be invoked by the petitioner for claiming equality [See Chandigarh Administration v. Jagjeet Singh [J.T. 1995 (1) S.C. 445]."

4.5.6 Thus, as we conclude that the appellant was providing a service which was legal and recognized service within the territory of India, the demand of service tax made from the appellant in respect of these services is to be upheld on merits.

Limitation and Penalty

4.6 Impugned order records as follows for invoking the extended period of limitation:

> "36.Further, as per the provisions of Section 70 of the Act ibid read with Rule 7(1& (2), every person, liable to pay the Service Tax. himself assess the tax due on the services provided by him shall submit to the Superintendent of Central Excise a half-yearly return in form ST-3 along-with a copy of the form TR-6 for the month covered in the half yearly return by the 25th of the month following the particular half year.
>
> 37. In view of foregoing, it is apparent that the fact regarding receipt of Business Auxiliary Services from overseas Agents was suppressed from the Department with intent to evade payment of service tax. Further, it was never disclosed to service tax authority that they were availing services of foreign based agents for procuring orders etc and were engaged in providing services of "Renting on Immovable Property Services" and "Business Support Services" nor an attempt was made by the party to seek clarification on the issue from the Department. Further, they failed to register themselves within 30 days of the

> said services becoming taxable. They did not file Service Tax Returns on time. Their non compliance and giving information in phases indicates their deliberate intention of non-compliance of service tax law and rules. It is on account of the investigation, that the evasion of Service Tax as explained above was detected. Thus, it is apparent that there was willful suppression of facts by the party and contravention of the provisions of the Finance Act, 1994 with an intent to evade payment of Service Tax on the value of taxable services. Therefore, the proviso of Section 73(1) of the said act has correctly been invoked for recovery of Service Tax."

4.7 At the time of argument appellant have not contested the invocation of extended period of limitation. It is quite evident from the facts of the case that fact of commission agent services received from the Health Care Facilitators, abroad was exclusively in the knowledge of the appellant. The said fact was never disclosed by the appellant to the revenue authorities prior to start of investigation. Further we also observe that extended period of limitation has been invoked only for making the demand under show cause notice dated 30.09.2009, and the demand for the period prior to 18.04.2006 has been dropped by the impugned order on merits.

4.8 The fact that appellant had never disclosed the facts in relation to the receipt of the services of Health Care Facilitators, to the revenue authorities with intention to evade payment of service tax, is enough to uphold invocation of the extended period of limitation for making the demand for the period from 18.04.2006.

4.9 As we uphold invocation of the extended period of limitation the penalty under Section 78 of the Finance Act, 1994 is also justified in view

of the decision of the Hon'ble Supreme Court in case of Rajasthan Spinning and Weaving Mills Ltd. [2009 (238) ELT 3 (SC)]

4.10 Appellant have failed to pay the service tax leviable by the due date, and have also not taken registration as per the provisions of the Finance Act, 1994 and have also not filed any returns as required. Hence the penalties imposed under Section 76 and 77 also cannot be faulted with. Impugned order records in detail the reasons justifying penalties imposed under this section along with the case law on the subject. We do not interfere with penalties so imposed.

4.11 Since we have upheld the penalties imposed, we also observe that the same need to be modified according to demand upheld.

4.12 As appellant has failed to pay the service tax leviable by the due date, demand of interest as per Section 75 of the Finance Act, 1994 is also upheld

Summary

4.9 Summarizing our findings:

(a) Demand of Service Tax under the category of Business Support Services is dropped;

(b) Demand of Service Tax under the category of renting of immovable property services is dropped;

(c) Demand of service tax on reverse charge basis on import of services under the category of Business auxiliary services is upheld.

(d) Invocation of extended period of limitation for making demand at (c) is upheld

(e) Penalties imposed under Section 76, 77 & 78 are upheld, however same will be modified according to the demand upheld.

(f) Demand for interest as confirmed by (c) is upheld

5.1 Appeal is partly allowed as indicated in the para 4.9 above.

(Order pronounced on **12.08.2025**)

(BINU TAMTA)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

Archana