

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

REGIONAL BENCH - COURT No. I

**Service Tax Appeal No. 40031 of 2016**

(Arising out of order in Original no. CHN-SVTAX-002-COM-24 & 25 – 2015-2016 dated 12.10.2015 passed by Commissioner of Service Tax - II, Newry Towers, No.2054 – 1, II Avenue, Anna Nagar, Chennai 600 040).

**M/s. Chettinad Lignite Transports Pvt. Ltd.** .... **Appellant**  
5<sup>th</sup> Floor, Rani Seethai Hall  
No.603, Anna Salai  
Chennai 600 006

*VERSUS*

**Commissioner of GST & Central Excise** ...**Respondent**  
Commissioner of Service Tax – II  
Newry Towers, No.2054-1, II Avenue  
Anna Nagar, Chennai 600 040

**APPEARANCE :**

Shri Abhijit Roy, Advocate for the Appellant  
Shri N. Satyanarayana, Authorised Representative for the Respondent

**CORAM :**

**HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)**  
**HON'BLE MR. AJAYAN T.V, MEMBER (JUDICIAL)**

**FINAL ORDER NO.40255/2026**

DATE OF HEARING: 24.09.2025  
DATE OF DECISION:19.02.2026

**Per Mr. Ajayan T.V.**

The appellant, M/s. Chettinad Lignite Transport Services Private Limited, is registered with the Service Tax Department, Chennai, from July 2012 for providing Transport of Goods by Road service and other taxable services.

2. On verification of the appellant's records, the Department noticed that the appellant had been providing services prior to July 2012 without obtaining registration or discharging service tax. Verification of records revealed that the appellant had entered into an agreement dated 16.04.2002 with M/s. ST-CMS Electric Company Private Limited (ST-CMS) in terms of which the Appellant was required to design, finance, construct, own, operate and maintain a Lignite Transportation System

for transportation of lignite from Neyveli Lignite Corporation (NLC) to the power plant at Uttangal. The power plant at Uttangal was owned by ST-CMS who had entered into a Fuel Supply Agreement with NLC for the supply lignite.

3. The scope of work entrusted to the appellant included necessary equipment and facilities at NLC's loading end and power plant end, railway sidings from Southern Railways main line both at the loading end and the power plant end, removal of lignite from the NLC stockpile, loading, road transportation to the railway siding, unloading into hoppers, conveyance through conveyors and silos, loading into railway wagons, and the fully loaded rake is brought by the railways to the power plant siding, thereafter unloading at the power plant siding and further conveyance to storage or plant systems.
4. The department formed a view that the activities undertaken by the appellant constituted cargo handling services and were classifiable under "Cargo Handling Service" in terms of Section 65(105)(zr) read with Section 65(23) of the Finance Act, 1994. It appeared to the Department that the appellant had failed to discharge service tax amounting to Rs. 10,98,90,317/- for the period from October 2008 to June 2012, in contravention of Section 68(1) read with Rule 6(1) of the Service Tax Rules, 1994, and also had failed to obtain registration under Section 69 and to file statutory returns under Section 70 read with Rule 7 of the Service Tax Rules, 1994.
5. Accordingly, Show Cause Notice No. 67/2014 dated 21.04.2014 was issued by the Commissioner of Service Tax, Chennai, demanding service tax of Rs. 10,98,90,317/- for the period from October 2008 to June 2012. The department alleged suppression of facts with intent to evade payment of service tax and invoked the extended period of limitation under the proviso to Section 73(1) of the Finance Act, 1994 contending that the appellant had not registered with the Department and had not approached the Department with any query to ascertain the taxability or otherwise of the services provided by them from as early as 2002, and the facts came to light only during the audit conducted by the officers, but for which, the nonpayment of service

tax would not have come to light. The Notice also proposed to demand interest under Section 75 and proposed to impose penalties under Sections 76, 77 and 78 of the Finance Act, 1994.

6. A parallel investigation was conducted by the Puducherry Central Excise Commissionerate on the ground that the services were performed at Uttangal Village falling within its jurisdiction. Consequently, Show Cause Notice No. 25/2014 (C) dated 23.04.2014 was issued demanding service tax of Rs. 18,51,75,291/- for the same period under Business Auxiliary Service. The said notice was subsequently made answerable before the Commissioner of Service Tax-II, Chennai-40, by corrigendum dated 09.03.2015.
7. Pursuant to the reply filed by the appellant contesting the allegations, after due process of law, the impugned order was passed upholding the invoking of extended period of limitation and confirming the demand. Aggrieved by the impugned order, the Appellant has preferred the instant appeal.
8. Shri. Raghavan Ramabhadran, Ld. Advocate, appearing on behalf of the Appellant made extensive submissions which were also captured in the synopsis filed, contending inter-alia that the appellant is engaged only in the transportation of lignite, an activity that it had been pursuing since 2002 and the nature of activity undertaken prior to and during the impugned period remained the same. He would argue that for a service to be classified under Section 65(23)(b) of the Finance Act, 1994 (the Act), it is sine qua non that the Appellant should be engaged in the activity of "packing" together with the transportation of goods. It is contended that the Appellant is not engaged in "packing" of lignite before its transportation. The Impugned Order does not state anywhere that the Appellant is engaged in the activity of packing. Thus, it is not the case of the Department that the Appellant undertakes the activity of "packing" with transportation of goods. Therefore, the amendment made to Section 65(23) will have no bearing to the instant case as the services provided by the Appellant will still be outside the ambit of 'cargo handling service'.

9. The Ld. Counsel thereafter contends, without prejudice to the earlier submissions, that assuming without admitting that the Appellant is engaged in provision of composite services including transportation, loading, unloading, construction and maintenance of LTS, etc., still, the service which gives it its essential character is the service of transportation of lignite by Railways as is borne out by clause 4.6 of the Agreement dated 16.04.2002. This, according to the counsel, would require the services provided by the appellant to be classified as service of transportation of goods by rail under Section 65 (105)(zzzp) of the Act and not under cargo handling service, by virtue of Section 65A(b) of the Act. Reliance is placed on the decisions in *M/s. Maa Kalika Transport Private Limited v. Commissioner of CGST and Central Excise, Rourkela, 2023 (8) TMI 435-CESTAT Kolkata* and *M.s, Calcutta Industrial Supply Corporation v. Commissioner of CGST and Central Excise, Kolkata and others, 2024 (9) TMI 926*. Further It is contended that the said levy was kept in abeyance *vide* Notification No. 33/2009-ST dated 01.09.2009 which exempted the service provided to any person in relation to transport of goods by Railways. It is submitted that the said exemption continued till 30.06.2012. Thus, since the services provided by the Appellant are exempt from payment of Service tax during the Impugned Period and the entire demand confirmed in the Impugned Order merits to be set aside on this ground also.
10. Ld. Counsel also argued that the appellant is not a 'cargo handling agency' and therefore the services rendered by the appellant would not come under the ambit of taxable service as defined in Section 65 (105) (zr), placing reliance on the decision in the case of *Commissioner of Service tax, Mumbai v. Balaji Shipping (UK) Limited, 2020 (42) GSTL 121 (Tri- Mumbai)*.
11. Ld. Counsel would further argue that the extended period of limitation could not have been invoked and the demand upto the period of 31.03.2012 is barred by limitation. It was contended that the Appellant did not suppress any information with the intention to evade payment of Service tax in as much as the Appellant was under a bona fide belief that Service tax is not payable on the services rendered by the Appellant. Reliance in this regard is placed on the decisions in

*Secretary, Town Hall Committee v. Commissioner of C.EX., Mysore, 2007 (8) S.T.R. 170 (Tri. - Bang.), Commissioner of C.EX., Raipur v. Orion Ferro Alloys Pvt. Ltd. 2010 (259) E.L.T. 84 (Tri. - Del.) and Diamond Shipping Agencies (P) Ltd. v. Commissioner of Central Excise, Tirunelveli, Final Order No. 41223/2017 dated 07.07.2017-CESTAT Chennai.*

12. Ld. Counsel further submitted that in 2003 itself, the Superintendent of Central Excise, Cuddalore sought details from the Appellant in respect of the amounts received from ST-CMS pertaining to 'Cargo handling service' vide letter dated 29.08.2003. In this regard, vide letter dated 01.09.2003 itself, the Appellant submitted that they are not engaged in carrying out any clearing and forwarding operations for ST-CMS. Further, vide letter dated 26.09.2003, the Appellant once again reiterated the submissions made. It is thus submitted that from 2003 itself, relevant facts were already within the knowledge of the Department and therefore, there can be no suppression of information with the intent to evade payment of tax. Reliance in this regard is placed on the case of *Pushpam Pharmaceuticals Company v. Collector of Central Excise, Bombay, 1995 (78) E.L.T. 401 (SC)*.
13. Ld. Counsel also argued that non filing of ST-3 Returns cannot amount to suppression of facts without proving the intent to evade payment of service tax placing reliance on the decisions in *M/s. International Air Charter v. Commissioner of Central Tax (Appeals-II), Delhi, [2023 (12) TMI 1004-CESTAT New Delhi]* and *Mahanagar Telephone Nigam Limited v. Union of India and Others, [2023 (4) TMI 216-Delhi High Court]*.
14. It is further submitted that the extended period of limitation cannot be invoked in the absence of any positive act of the Appellant which proves the intention to evade Service tax. Reliance was placed on the decisions in *Anand Nishikawa Co. Ltd v. CCE, Meerut, 2005 (188) ELT 149-Supreme Court., Continental Foundation Jt. Venture v. CCE, Chandigarh-I, 2007 (216) ELT 177-Supreme Court., CCE, Mumbai IV v. Damnet Chemicals Pvt. Ltd. 2007 (216) ELT 3- Supreme Court and Padmini Products Ltd. v. CCE, 1989 (43) ELT 195-Supreme Court.*

15. It was also argued that the onus to prove mala fide intention of the Appellant is on the Department, and in the instant case, the Department has failed to discharge such burden. Reliance in this regard was placed on the case of *Uniworth Textiles Ltd. v. Commissioner of Central Excise, Raipur* - 2013 (288) E.L.T. 161 (S.C.).
16. Drawing attention to the SCN No. 25/2014(C) dated 23.04.2014 issued by the Commissioner of Central Excise, Puducherry covering the same period and for the same activities, proposing to demand service tax under the category of 'Business Auxiliary Service', it was contended that when the Department itself was confused and had classified the service under various different categories, extended period cannot be invoked. Reliance in this regard was placed on the case of *Messrs Darcy Reservoir Consultancy Services Private Limited v. C.S.T. Service Tax-Ahmedabad, 2023 (3) TMI 639 - CESTAT Ahmedabad*. Furthermore, it is settled law that extended period of limitation cannot be invoked when issue involves interpretation of statutory provisions. Reliance in this regard was placed on the case of *International Merchandising Company, LLC v. Commissioner of Service Tax, New Delhi, 2022 (67) G.S.T.L. 129 (S.C.)* and *Tamil Nadu State Transport Corporation (Coimbatore) Limited v. Commissioner of Customs, Central Excise and Service tax, Coimbatore, 2019 (28) G.S.T.L. 225 (Tri. - Chennai)*. Ld. Counsel also submitted that in view of the foregoing submissions, interest and penalty is not sustainable and prayed that the Appeal be allowed and the impugned order be set aside.
17. Shri. Sanjay Kakkar, Ld. Authorised Representative appearing for the Respondent vehemently opposed the submissions of the Ld. Counsel and in his arguments that were also reduced in writing and submitted, he would contend that the definition of 'Cargo Handling Services', as under Section 65(23) has a 'means', 'includes' and 'does not include' portion. While the 'does not include' does not have a dispute in the impugned case, it is submitted that the 'means' portion intends to categorically include the activities of loading, unloading, packing or unpacking of cargo, which terms are self-explanatory.

18. Ld. A.R. contends that the 'includes' clause of the definition is to be construed only as clarificatory elaboration of the whole without extending the normal meaning of the 'means' clause and that the word "includes" is used as an explanation in the sense of 'means' to make the definition exhaustive. In support of these contentions as to how the terms 'means', 'means and includes' etc. are to be understood, reliance was placed on the decisions in ***Commercial Taxation Officer, Udaipur Vs Rajasthan Texchem Ltd, 2007 (3) SCC 124; 2007 AIR SCW 757, Smt. S Vanitha Vs The Deputy Commissioner, Bengaluru Urban District & Ors., 2020 (12) TMI 1213 - Supreme Court, The Executive Engineer & Anr. Vs M/s Sri Seetaram Rice Mill ,2012 (2) SCC 108; 2011 (10) TMI 586 - Supreme Court, Commissioner of Central Excise, Hyderabad Vs M/s. Detergents India Ltd. & Anr, 2015 (318) E.L.T. 559 (SC); 2015 (7) SCC 198*** and ***Commissioner of Cen Excise & Cus Vs Parth Poly Woven Pvt.Ltd, 2012 (25) STR 4 (Guj.); 2011 (4) TMI 975.***
19. Ld. A.R. refers to various Articles and Clauses of the Lignite Transportation Agreement to emphasize that the service provided by the Appellant consists primarily of activities of loading and unloading of lignite. He argues that these clauses sufficiently establish that the 'means' portion of the definition of Cargo Handling Services is satisfied as loading and unloading is conclusively elicited from the Lignite Transportation Agreement. It is argued that any one of the activities listed in the 'means' clause of the definition of Cargo Handling Service viz. loading or unloading or packing or unpacking are sufficient to bring the service in the ambit of Cargo Handling Service. In the instant case, considering the above-mentioned Clauses/Articles of the Agreement describing varied nature of services pertaining to handling of cargo, more specifically relating to loading and unloading, with weighment, deployment of manpower, control and instrumentation equipment, idlers, apron feeders, movement through hoppers/silos/towers/tunnels/galleries/other structures with specialised arrangements, it emerges that transportation is only an incidental activity.

20. It is the contention of the Ld. A.R. that the lignite handled via the transportation system is a Cargo. Various International maritime organisations and domestic laws refer to the terms, 'bulk cargo', 'solid bulk cargo', 'break bulk cargo', etc. and have codified regulations for safe stowage and shipment of such cargo. It is submitted that lignite is also listed in the Schedules for such regulations. The Merchant Shipping (Carriage of Cargo) Rules, 1995 available at [https://www.dgshipping.gov.in/Content/PageUrl.aspx?page\\_name=CarriageofCargoRules1995](https://www.dgshipping.gov.in/Content/PageUrl.aspx?page_name=CarriageofCargoRules1995) and the International Maritime Solid Bulk Cargoes (IMSBC) Code refer to such terms, leaving little ambiguity that the lignite transported in the impugned case is 'Cargo' only. It is submitted that once the transported item falls in the description and categorization of 'Cargo' and 'Handling' is the essence of the Lignite Transportation Agreement, and the activity performed falls in the definition of 'Service', the classification as 'Cargo Handling Service' is the only, inescapable, and automatic inference. It is reiterated that in the impugned case, the activity of transportation is incidental to the primary activity of handling of cargo since huge part of the service activity is committed to loading and unloading of the cargo.
21. Ld. A.R. further contends that, notwithstanding the foregoing, clause (b) of the inclusive part of the definition of Cargo Handling Service in Section 65(23), which seeks 'services of packing along with transportation of cargo or goods' was introduced only to cover the services provided by packers and movers. The Appellants have argued that since no packing is involved in their case, lignite being a bulk commodity, this sub-clause would have no applicability in the impugned case. It is submitted that this argument would serve no benefit to their cause and case since 'includes' portion of the definition is only an illustrative explanation so that the scenario described therein is not interpreted in a manner to be excluded from the 'means' portion of the definition. It is argued that by no stretch of imagination, the sub-clause (b) of Section 65(23) is (meant to be) applicable for the impugned case as the intent was made clear in Circular No.D.O.F No.334/1/2008-TRU dated 29.02.2008 and Explanatory Notes-Service Tax to Budget of 2008-09.

22. Ld. A.R. further submits that even for the sake argument, but without conceding the point in the para foregoing, even if sub-clause (b) of Section 65(23) is taken into reckoning as applicable for the impugned case as contended by the Appellant, 'packing' in the case of bulk goods would imply the placement after loading of cargo in the tipper lorries and securing or covering them appropriately. Therefore, even in that scenario, the service extended through the Lignite Transportation System would seem to comply with the definition of Cargo Handling Service, being movement of cargo that is packed as well as transported, with or without one or more of other services like loading, unloading, unpacking.
23. Ld. A.R. argues that the varied nature of services provided, as mentioned in the Lignite Transportation Agreement, making it a case of 'composite services' and it would be most appropriate that the service be classified according to the predominant service i.e. the one that imparts essential character. Ld.A.R. further contends that it is evident from the records of the case that the service provided was NOT a mere transportation of service and wholesomely included loading and unloading of cargo, essentially a handling activity as per Section 65A(2)(b), the services appear to be classifiable as Cargo Handling Services, defined under Section 65(23).
24. Ld. A.R. further contends that it is a case where the Appellant suppressed the declaration of services to the department inspite of being specifically requested, kept contesting the classification of service while being uncooperative avoiding a proper determination of the same and failed to obtain Service Tax Registration, failed to file returns for more than a decade, and that therefore the invocation of extended period of limitation and imposition of penalty appear justified.
25. In the post hearing written submissions filed with the leave of the Tribunal, Ld. Counsel for the appellant contended that the Respondent, has extensively relied upon the 'means clause' of the definition of 'Cargo Handling Services' under Section 65(23) of the Finance Act, 1994 and is attempting to make out a new case altogether on a new

footing which has been held not applicable to the Appellant, in their favour, in the Impugned Order. It is submitted that the very basis of confirming the demand of Service tax in the Impugned Order was on the ground of inclusion of clause (b) to the definition of 'cargo handling service' provided under Section 65(23) of the Finance Act, 1994. In this regard, it is submitted that the Ld. Commissioner has itself given a positive finding that the term "Cargo" had a restrictive meaning and therefore, only with the amendment in the inclusive clause w.e.f., from 16.05.2008, the Appellant, who is dealing with 'goods' became liable to be taxed under this service head.

26. It was contended that, the Respondent at best, if aggrieved by any portion of the Impugned Order, ought to have challenged this portion of the Impugned Order-in-Original on the "means" clause of the Section 65(23) of the Finance Act, 1994, by way of an Appeal or Cross-objections. Without undertaking the same, the Respondent cannot seek to agitate the said point in the Appellant's appeal. Reliance was placed on the decisions in *Servo Packaging Ltd. v. CESTAT, Chennai, 2016 (340) E.L.T. 6 (Mad.)* and *Jaswal Neco Ltd. V. Commissioner of Customs, Visakhapatnam -2015 (322) E.L.T. 561 (S.C.)*.
27. It was further submitted without prejudice, that in any case the activity undertaken by the Appellant is not covered under the "means" clause of the Section 65(23)(b) of the Finance Act, 1994 as the lignite transported does not qualify as 'cargo' in absence of any packaging activity undertaken by the Appellant prior to transportation. In this regard, reliance was placed on the decision in the case of *Signode India Ltd. Versus Commissioner of Central Excise & Customs-II 2017 (50) S.T.R. 3 (S.C.)*.
28. Tabulating the reasoning for the non-applicability of the cases cited by the Respondent against the respective citation, it was submitted that none of the cases relied upon by the Respondent in their written submissions dated 13.09.2025 and 19.09.2025 pertained to 'cargo handling services' for the period post amendment to Section 65(23) of the Finance Act, 1994 w.e.f., 16.05.2008. Hence, the cases cited by the Respondent have no relevance to the instant Appeal.

29. It was submitted that in the following cases cited by the Respondent in their written submissions dated 13.09.2025, the facts pertain to contracts where the assesses were engaged in the activity of letting out payloaders and did not deal with any activity of transportation, *Gajanand Agarwal v. Commissioner of Central Excise, Bhubaneswar* (2008 (6) TMI 163 - CESTAT Kolkata) ,*Coal Carriers v. Commr. of Central Excise, Customs & S.T, Bhubaneswar*, (2011 (2) TMI 1140 - Orissa High Court) ,*Gangadhar Bulk Movers (P.) Ltd. v. Commr of Central Excise, Nagpur*, (2011 (11) TMI 358 - CESTAT, Mumbai) ,*Triveni Coal Transportation Pvt. Ltd. v. Commr. Of Central Excise, Nagpur*, (2014 (11) TMI 829 - CESTAT Mumbai), *Calcutta Industrial Supply Corporation v. Commr of Service Tax, Kolkata*; (2017 (11) TMI 158 - CESTAT Kolkata) and *Shreem Coal Carriers (P.) Ltd. v. Commr of Central Excise, Nagpur*, [2015 (6) TMI 20 - CESTAT Mumbai].
30. It is further submitted that in the case of *Khandelwal Transport, Khandelwal Earth Movers Versus Commissioner of Customs & Central Excise, Nagpur - 2018 (2) TMI 939 - CESTAT Mumbai*, the case of *Coal Carriers Versus Commr. Of C. Ex., Cus. & S.T., Bhubaneswar*, 2011 (24) S.T.R. 395 (Ori.) was rightly differentiated by noting that the activity undertaken therein was only limited to loading of the coal into the wagon and there was no activity of transportation undertaken. Therefore, the court in *Coal Carriers (supra)* had no occasion to consider whether a composite contract can be said to be covered under the category of 'Cargo Handling Service'. It was submitted that this decision has also attained finality as the Civil Appeal filed by Department before Hon'ble Supreme Court has been dismissed.
31. It was submitted that the Appellant's case is similar to that of *Khandelwal Transport* case and is no way similar to the *Coal Carriers* case, as what is involved in the present appeal is not a mere loading activity but composite contract of transportation of the lignite from one place to another through road, rail and conveyor belt, the essential service being that of transportation through rail. In light of the same, it was argued that the activities performed by the Appellant cannot be

classified under "cargo handling service" and the prayer to allow the appeal was reiterated.

32. The Ld. A.R. in his written submission reiterated the Respondent's earlier submissions and further contended that a passing reference made by the Adjudicating Authority to clause (b) of the inclusive part of the definition of 'Cargo Handling Service as under Section 65(23) does not alter the complexion of the service provided. It was also contended that the appellant has incorrectly tried to distinguish the case of Coal Carriers and in fact the activity of the appellants in the instant case is much more elaborate than the activity of coal carriers case, to be included in the term 'handling'. It was also reiterated that the appellant's contention that extended period of limitation was not invocable was incorrect. The submissions concluded with a fervent prayer that the Appeal be dismissed.

33. We have heard the rival submissions, carefully perused the appeal records and the written submissions filed, as well as perused the case laws submitted as relied upon.

34. The two issues that arise for our determination are :

I) Whether the finding of the Adjudicating Authority that the Appellant is rendering 'cargo handling services' as covered under Section 65(23)(b) of the Finance Act, 1994, and the consequent confirmation of demand, interest and penalties, are tenable.

II) Whether the finding of the Adjudicating Authority that the extended period is invocable is tenable.

35. We notice that during the period from October 2008 to June 2012, pertaining to the instant case, the relevant statutory provisions pertaining to cargo handling service are as reproduced below:

36. Section 65 (23) of the Act, with effect from 16-05-2008, defines cargo handling service as :

**"cargo handling service"** means loading, unloading, packing or unpacking of cargo and includes,—

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

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

37. Section 65(105)(zr) of the Act, defines the taxable service of cargo handling service as under:

" "taxable service" means any service provided or to be provided to any person by a cargo handling agency in relation to cargo handling services.

38. We notice that in the impugned order, the Adjudicating Authority has in para 4.6, held as under:

"4.6. Coming to the issue of taxability of the service involved, I find that the assessee is involved in transportation of lignite in a comprehensive manner, that is to say, it is entrusted with the responsibility of picking up the mineral directly from the stockpile of NLC, loading it on to the trucks and transporting by trucks, wagons and ensuring delivery of the mineral through conveyor system to the Power Generation facility of M/s. ST-CMS. This involves a host of other activities as well, such as building and maintaining the Lignite Transport System ( LTS), wherein the assessee is required to construct and maintain Railway Sidings, Loading collection point, Unloading collection point, the access road leading to the collection points, Stock pile, weigh bridges, etc. This activity of the assessee is much more than mere transportation of goods."

39. The adjudicating authority has also gone on to note the definition of 'cargo handling service' prior to the period involved herein. Thereafter, emphasising on the 'conscious addition' of clause (b) to the definition, as well as observing that such an addition is obviously to expand the scope of service to include composite handling and transportation of

goods, the adjudicating authority has stressed on the term "or goods" and "goods" in the impugned OIO by highlighting the same therein, making it evident that to the Ld. Adjudicating Authority's mind, the lignite being transported by the appellant is to be considered as "goods". The Ld. Adjudicating Authority has also observed that the term 'cargo' has a restrictive meaning and in common parlance it means carriage of luggage in ship, vessel or aircraft, thereby implying his emphasis of the treatment of the lignite being transported by the Appellant as "goods". The Ld. Adjudicating Authority then proceeded to analyse the definition as prevailing during the period under dispute and went on to hold in para 4.9 as under:

" From the above, it becomes clear that during the subject period, i.e., from October 2008 to June 2012, the services rendered by the assessee aptly fall within the category of 'Cargo Handling Service', (particularly with the inclusion of clause (b) to its definition provided under the erstwhile provisions of Section 65 (23) of the Finance Act, 1994), and as per erstwhile provisions of Section 65(105)(zr) of the Act, taxable service in relation to 'Cargo Handling Service' means "*any service provided or to be provided to any person, by a cargo handling agency in relation to cargo handling services*" and therefore I hold that appropriate service tax is liable to be paid on the consideration received by the assessee while providing the said service to M/s ST-CMS....."

40. The Adjudicating Authority, has reiterated the aforesaid finding yet again in para 4.14 of the impugned order in the context of considering the appellant's contentions on suppression holding that " As already discussed in detail above, only with effect from 16.05.2008 (by virtue of the amended definition), the activities of the assessee fell within the category of 'Cargo Handling Service' and the consideration received for rendering the said service became taxable.
41. The appellant is aggrieved by the said finding and the consequent demand and attendant detriments. As noticed supra, clause (b) of Section 65(23) stipulates "service of packing together with transportation of cargo or goods, with or without one or more of other services like loading, unloading, unpacking, but does not include,

handling of export cargo or passenger baggage or mere transportation of goods”.

42. We find that for a service to be classified as cargo handling service under Section 65(23)(b) of the Act, it is imperative that the service provider should be engaged in the activity of “packing” together with the transportation of cargo or goods. Thus, the following activities will be includable under Section 65(23)(b) of the Act:

*i) Service of ‘packing together with transportation’ of cargo, with or without one or more of other services like loading, unloading and unpacking; and*

*ii) Service of ‘packing together with transportation’ of goods, with or without other services like loading, unloading and unpacking;*

The usage of the preposition ‘with’ along with the adverb ‘together’, to form a compound preposition linking the two nouns packing and transportation in clause (b) makes it clear that the emphasis is on the conjoint nature of the service of packing and transportation. Effectively, what is being described is a bundling of the services of preparation of goods for transit and their subsequent movement into a combined singular logistical activity. However, the sequence indicates the primacy accorded to the activity of packing. Therefore, in so far as the activity of transportation of cargo or transportation of goods is concerned, the same would get covered under the clause (b) of Section 65 (23) as ‘cargo handling service’ only when it is undertaken alongwith the primary or essential activity of packing at first. The service of cargo handling under the Section 65 (23) (b) would acquire its essential characteristic so long as the principal activity of packing is undertaken together with transportation, irrespective of whether or not the ancillary services of loading, unloading and unpacking are undertaken. This is made all the more evident with the specific exclusion of ‘mere transportation of goods’ from the ambit of cargo handling service. It is also clear that if only the mere transportation of goods is undertaken along with one or more activities of loading, unloading and unpacking, then too it would not get covered under clause (b) of Section 65(23), as the main function of packing remains absent.

43. We see that in the impugned order, the Ld. Adjudicating Authority, while finding that the Appellant is involved in transportation of lignite in a comprehensive manner, nevertheless has not rendered any finding that the Appellant is engaged in the activity of "packing" of lignite before its transportation. Ld. A.R. has feebly attempted to argue that 'packing' in the case of bulk goods would imply the placement after loading of cargo in the tipper lorries and securing or covering them appropriately. However, absent any such finding by the Adjudicating Authority holding that the appellant is engaged in packing together with the transportation of goods, and in fact absent any evidence, that the appellant undertakes the activity of "packing" with transportation of goods, we find such an argument misconceived. We therefore hold that the Adjudicating Authority has erred in finding that the amendment made to Section 65(23) brings the appellant within the ambit of 'cargo handling service' and has also erred in holding that therefore the appellant is exigible to service tax having satisfied the requirement to come within the said clause (b) of Section 65 (23) of the Act.
44. Given our aforesaid finding that in the absence of any evidence that the appellant undertakes the activity of packing together with the transportation of goods, the service rendered by the appellant would itself not come within the ambit of Section 65(23)(b) as "cargo handling service", the issue of whether the service rendered by the appellant would qualify as taxable service under section 65(105)(zr) pertaining to cargo handling services is rendered otiose thereby also obviating any necessity for a further discussion of whether or not the appellant can be said to be a cargo handling agency.
45. We find that the Ld. A.R., on behalf of the Respondent, had strenuously urged that the Appellant would come within the main limb of the definition defining what "cargo handling service." However, it is seen that the Ld. Adjudicating Authority has confirmed the demand of Service tax in the impugned order on the basis of what he has chosen to term as "the conscious addition" of clause (b) to the definition of 'cargo handling service' provided under Section 65(23) of the Finance Act, 1994. Furthermore, the Ld. Adjudicating Authority has also

observed that the term "Cargo" had a restrictive meaning and with his emphasis on the term "goods", he has made it amply clear that what has weighed in his mind is the requirement to treat the lignite transported by the appellant as "goods". He has thereafter reiterated in para 4.14, that as already discussed in detail (thereby adverting to his emphasis that the appellant is found to be transporting goods), it is only with the amendment in the inclusive clause w.e.f., from 16.05.2008, the Appellant, became liable to be taxed under the category of "cargo handling service."

46. Therefore, the contentions urged now that the appellant would satisfy the means clause of the definition, being contrary to the categorical finding of the Adjudicating Authority in the impugned order that the appellant falls under Section 65(23)(b), tantamount to an attempt to make out a new case on an entirely different premise from the finding rendered. Undisputedly, the allegations against the appellant in the show cause notice have been replied to and the Ld. Adjudicating Authority has proceeded to confirm the demand on specific findings. Aggrieved, the appellant has preferred an appeal against the demand opposing the findings so crystallised. Indisputably, Revenue has neither preferred an appeal against the findings of the Ld. Adjudicating Authority, nor has preferred any cross-objections verified in such manner and within the time limit as specified upon receipt of notice of the Appellant having preferred its appeal. Having not done so, the Revenue cannot now raise such contentions in the Appellant's appeal. In this regard, the reliance placed on the decisions in *Servo Packaging Ltd. v. CESTAT, Chennai, 2016 (340) E.L.T. 6 (Mad.)* and *Jaswal Neco Ltd. V. Commissioner of Customs, Visakhapatnam -2015 (322) E.L.T. 561 (S.C.)*., by the appellant is apposite. It is profitable to reproduce what was held by the Jurisdictional High Court in the decision in *Servo Packaging Case*, relevant portion of which is reproduced below:

"**25.** In the absence of any appeal filed by the department on the finding, relating to alleged clandestine removal of raw materials, **the appellant cannot be put in a worse position, in their own appeal, and in such circumstances, the principle of "no reformatio in peius" would come into play, which means that a person should not be placed in a worse position, as a result of filing an appeal.**

**It is a latin phrase, expressing the principle of procedure, according to which, using the remedy at law, should not aggravate the situation of the one who exercises it.**

**26.** Had the assessee not filed an appeal, it would not be placed in a situation of inviting an adverse order, on the aspect of clandestine removal. **A party who files an appeal, expects that the appellate authority would only address the grounds of appeal, made against the order impugned, and the appellant does not expect the appellate authority to go beyond the scope of appeal, and pass an order, adverse to his interest, in which event, it certainly creates a worse situation for the appellant/assessee, in his own appeal, than the order under challenge.” (emphasis supplied)**

47. Given our findings aforesaid that Revenue having neither preferred an appeal or filed appropriate cross-objections as per statutory procedure, cannot now contend that the activity undertaken by the Appellant is covered under the “means” clause of the Section 65(23), we find that it is not necessary for us to address the contentions to the contrary on this aspect, advanced by the appellant. Furthermore, given our elucidation of what constitutes cargo handling service under section 65 (23) (b) and our considered view that to attract clause (b) of section 65(23), packing is the principal/main/primary element in the conjoint activity of packing together with transportation, as well as in the absence of any evidence, or finding, that the appellant is engaged in the activity of packing, a further enquiry as to whether or not the Lignite transported by the appellant can be considered to be ‘cargo’ is an exercise in superfluity and thus, we refrain from embarking on such an expedition. We also find that the decisions relied on by the Ld.A.R has been rightly distinguished by the appellants, as elaborated in the appellant’s written submissions.

48. In view of our aforesaid analysis, we are of the considered view that the finding of the Adjudicating Authority that the Appellant is rendering ‘cargo handling services’ as covered under Section 65 (23) (b) of the Finance Act, 1994, and the consequent confirmation of demand, interest and penalties, are wholly untenable and are liable to be set aside. Inasmuch as we have found the first issue in favour of the

appellant on merits, we find it unnecessary to address the alternate contention of the appellant that the services provided by the Appellant are classifiable under 'transport of goods by rail' and that resultantly the services provided by the appellant would be even otherwise exempt during the impugned period, for more reasons than one. First, in the absence of the said services rendered by the appellant being subjected to any other live demand under any other service category for the said period, the non-recurring nature of the dispute, renders the examination of the said alternate plea academic. Second, it is the categorical averment of the appellant in its written submissions that after the period of present dispute which is only upto June 2012, the Appellant, from July 2012 onwards has started paying service tax under the category of 'Other Taxable Services'. The Appellant has not shown that there has been any dispute raised by the Revenue thereafter. While raising the aforesaid alternate contention, the Appellant has also not put forth that the service rendered by it prior to the disputed period, during the period of dispute and post, has changed in any drastic manner and has on the contrary contended that it has remained the same. Third, chapter V of the Finance Act 1994 has been omitted, save as otherwise provided in the CGST Act, 2017 after the advent of GST Regime. Last, if a lis can be conclusively decided on narrow points that arise in a particular proceeding, it is the discretion of this Tribunal to decide the matter only on such points, without dealing with all other arguments that are raised in the alternate.

49. Turning to the question of whether the finding of the Adjudicating Authority that the extended period is invocable is tenable, we find that the Ld. Adjudicating Authority has confirmed the demand of Service tax by invoking the extended period of limitation under proviso to Section 73(1) of the Finance Act, 1994 on the ground that non-registration of the Appellant with the Service tax Department, non-filing of Service tax Returns and non-payment of appropriate Service tax amounts to suppression of facts with intention to evade payment of tax.
50. We find that the appellant has furnished cogent reasons in its reply substantiating its bonafide belief that Service tax is not payable on the

services rendered by the Appellant, premised on the multi modal nature of its transportation of lignite, which according to the appellant was predominantly using rail service on which the levy was kept in abeyance by notification No.33/2009-ST dated 01-09-2009 till 01-07-2012. It is a settled law that when the Appellant is under a bona fide belief that tax is not payable, extended period cannot be invoked.

51. Further, it is also noticed that in 2003 itself, the Superintendent of Central Excise, Cuddalore had sought details from the Appellant in respect of the amounts received from ST-CMS pertaining to 'Cargo handling service' vide letter dated 29.08.2003, which was replied to vide letter dated 01.09.2003 by the Appellant submitting that they are not engaged in carrying out any clearing and forwarding operations for ST-CMS. Again, vide letter dated 26.09.2003, the Appellant reiterated the submissions made. It is thus evident that from 2003 itself, relevant facts regarding the activities of the appellant were already within the knowledge of the Department and no suppression of information with the intent to evade payment of tax can be attributed to the appellant. The decision in *Pushpam Pharmaceuticals Company v. Collector of Central Excise, Bombay, 1995 (78) E.L.T. 401 (SC)* refers in this regard. We are also of the view that mere non filing of ST-3 Returns without proving the intent to evade payment of service tax on the part of the appellant, cannot amount to suppression of facts.
52. Furthermore, it is also settled position in law that the extended period of limitation cannot be invoked in the absence of any positive act of the Appellant which proves the intention to evade Service tax. The decisions in *Anand Nishikawa Co. Ltd v. CCE, Meerut, 2005 (188) ELT 149 SC*, *Continental Foundation Jt. Venture v. CCE, Chandigarh-I, 2007 (216) ELT 177 SC*, *CCE, Mumbai IV v. Damnet Chemicals Pvt. Ltd. 2007 (216) ELT 3- Supreme Court* and *Padmini Products Ltd. v. CCE, 1989 (43) ELT 195 SC*, are authorities for the said proposition.
53. It is also well settled that the onus to prove mala fide intention of the Appellant is on the Department, and in the instant case, we are of the considered view that the Department has failed to discharge such burden. The decision in *Uniworth Textiles Ltd. v. Commissioner of*

*Central Excise, Raipur, 2013 (288) E.L.T. 161 (S.C.)* refers in this regard.

54. That apart, admittedly another SCN No. 25/2014(C) dated 23.04.2014 was issued by the Commissioner of Central Excise, Puducherry on the same activities, however, containing a proposal to confirm the demand of tax under a different category, that is, 'Business Auxiliary Service'. This would amply indicate that the Department itself was unclear as to the classification of the activities undertaken by the Appellant and hence the issuance of two show cause notices proposing classification under different categories, extended period cannot be invoked. Reliance in this regard placed on the case of *Messrs Darcy Reservoir Consultancy Services Private Limited v. C.S.T. Service Tax-Ahmedabad, 2023 (3) TMI 639 - CESTAT Ahmedabad* is found appropriate. Furthermore, it is settled law that extended period of limitation cannot be invoked when issue involves interpretation of statutory provisions. Reliance in this regard placed on the case of *International Merchandising Company, LLC v. Commissioner of Service Tax, New Delhi, 2022 (67) G.S.T.L. 129 (S.C.)* is found to be appropriate. We are therefore of the considered view that the Ld. Adjudicating Authority has egregiously erred in invoking the extended period of limitation and the demand for the period beyond the normal period is therefore in any event unsustainable, being barred by limitation. Given our aforesaid findings we are of the firm opinion that the demand of Service Tax is unsustainable and resultantly, the question of demanding interest or imposing penalties does not arise and the findings of the Ld. Adjudicating Authority on these aspects are also liable to be set aside.

55. In the light of our discussions and findings stated above, we hold that the impugned order is unsustainable and liable to be set aside. Ordered accordingly.

The Appeal is allowed with consequential relief(s) in law, if any.

(Order pronounced in open court on 19.02.2026)

**(AJAYAN T.V.)**  
Member (Judicial)

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**(M. AJIT KUMAR)**  
Member (Technical)