IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 76851 of 2016

(Arising out of Order-in-Original No. 38/Commr/ST-II/Kol/2016-17 dated 25.07.2016 passed by the Commissioner of Service Tax-II Kendriya Utpad Shulk Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107)

M/s. Middleton Leaseholders Pvt. Ltd, **: Appellant**
1, Middleton Street, Jeevan Deep Building,
Kolkata-700071

VERSUS

Commissioner of Service Tax-II, Kolkata **: Respondent**
Kendriya Utpad Shulk Bhawan,
180, Shantipally, Rajdanga Main Road, Kolkata-700107

APPEARANCE:

Shri Ankit Kanodia, Advocate
MS. Megha Agarwal, Advocate for the Appellant
Shri Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.77013/ 2025

DATE OF HEARING: 09.07.2025
DATE OF PRONOUNCEMENT: 23.07.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the Order-in-Original No. 8/COMMR/ST-II/KOL/2016-17 dated 25.07.2016 passed by Commissioner of Service Tax-II, Kolkata, wherein the Ld. Commissioner has confirmed the demand of service tax of Rs. 36,62,152/- along with interest under Maintenance or Repair Services in terms of Section 73(2) of the Finance Act, 1994. Rs. 5,36,856/- has

been confirmed along with interest under Maintenance or Repair Services in terms of Section 73(2) of the Finance Act, 1994. Penalty of Rs.41,99,006/- equal to the service tax confirmed has also been imposed. Interest of Rs.13,72,096/- for delayed payment of Service Tax for renting of Immovable Property Services has been confirmed in terms of Section 75 of the Finance Act, 1994. Interest of Rs.1,03,220/- for Maintenance or Repair Services in terms of Section 75 of the Finance Act, 1994. Penalty of Rs. 10,000/- has also been imposed under Section 77 of the Finance Act, 1994. Aggrieved against the confirmation of the said demands of service tax along with interest and penalty, M/s. Middleton Leaseholders Put. Ltd (hereinafter referred as the appellant), has filed this appeal.

2. The Appellant states that they are registered with the Service Tax Authority and are having the Registration No. AABCM7806LSD001 for providing taxable service under the category of "Maintenance and Repairing Services". They have not taken registration for rendering 'Renting of immovable property service' till 2011. The Appellant states that they had taken the building 'Jeevan Deep 'belongs to Life Corporation of India (hereinafter referred to as "LICI") on lease rent and had rented the same on sub-lease to different companies to whom various floors or rooms of the building were given on rent.

2.1. During the course of scrutiny of records of the appellant for the period 2009-10 to 2012-13, it was observed that the Appellant has been providing taxable service of 'Renting of Immovable Property ' and Maintenance & Repair 'services without obtaining

Service Tax registration in contravention of the provisions of Section 69 of the said Act. Furthermore, the Appellant had not discharged their service tax liability for the said period. In their reply, the Appellant submitted to the department that the expenditure incurred by them does not fall within the purview of the service tax liability as these expenditures were incurred as incidental expenses on account of providing maintenance and repair services to the Companies/Service Recipients. But, the reply was not accepted by the department.

2.2. The Appellant was served with the Show Cause-cum-Demand Notice issued under C. No. V(15)324/ST-Adjn./Commr./14/19585-86 dated 17.10.2014. On adjudication, the Ld.Commissioner, Service Tax-II, Kolkata, has passed this Order-in-Original bearing reference no. 38/COMMR/ST-II/KOL/2016-17 dated 25.07.2016 confirming the demands as mentioned in para 1 supra.

3. The appellant submits that the demand of Service Tax of Rs. 41,99,006/- has been confirmed on the value of 'Other Expenses '& 'Extra Hour Service Charges' for the financial years 2009-10 to 2012-13, citing that the Appellant failed disclose the service tax liability in their ST-3 returns filed by them. In the impugned order, it has been alleged that the Appellant had incurred certain expenses under Maintenance or Repair services and had received charges under the head 'extra hour service charges.' Consequently, these expenses should be included in the taxable value, as per Rule 5 of the Service Tax (Determination of Value) Rules, 2006, in conjunction with Section 67 of the Finance Act, 1994.

3.1. The Appellant submits that they are engaged in providing "Renting of Immovable Services" to different member companies. The demand raised by the department includes expenditure under the heading "Other Expenses" and also includes expenditure incurred on "Extra Hour Service Charges". The Appellant states that as per the terms of reference between the Appellant and the LICI, they collect rent from the member companies to whom the Appellant had sub-lease the immovable property and after collecting the same they pays the rent amount to LICI. Moreover, apart from rent, they also collect expenses which were incurred during the course of providing taxable services. These expenses collected were merely incidental expenses which were reimbursed by the member companies for discharging certain expenses and reimbursing their staff for performing extra/overtime duties. The appellant submits that as per Rule 5 of the Service Tax (Determination of Value) Rules, 2006, this incidental recovery of expenses cannot be added to taxable value of service. In support of this claim, the Appellant relied on the judgment of the Hon'ble Supreme Court in the case of *Union of India vs Intercontinental Consultants and Technocrats Pvt. Ltd. 2018 (10) G.S.T.L. 401 (S.C.),* wherein it has been held that reimbursement expenses received on actual basis are not includable in the assessable value for the purpose of payment of service tax. Accordingly, the appellant submitted that the demand confirmed in the impugned order on this count is not sustainable.

3.2. Regarding the demand of interest of Rs. 13,72,096/- confirmed for delayed payment of Service Tax for renting of Immovable Property

Services, the Appellant states that during the period the issue of liability of service tax was being agitated before various forums. The Hon'ble High court of Delhi in its order dated 18.04.2009 in the case of Home Solutions Retail India Ltd. & Others v. UOI had struck down the levy as not being a service. Subsequently, an amendment was made to the 'Renting of immovable property service' in order to overcome the earlier judgment of the Hon'ble High court of Delhi. Accordingly, the appellant submits that the delay in payment of service tax was not intentional. The delay has occurred due to uncertainty of the levy itself. Accordingly, the appellant submits that the demand of interest for the delay in payment of service tax on renting of immovable property service cannot be sustained and hence the same is liable to be quashed.

3.3. The appellant submits that the issue regarding the demand of interest on the tax paid under renting of immovable property service is no longer *res integra* in view of the judgment of the Hon'ble CESTAT Hyderabad in the case of *D.S. NARAYANA & COMPANY PVT. LTD. Versus C.C. & C.E., VISAKHAPATNAM-II 2017 (4) G.S.T.L. 20 (Tri. - Hyd.).* In support of the above view, the Appellant relied on the judgment of the CESTAT, Chennai in the case of Commissioner, Namakkal Municipality vs Commissioner of Gst & Central Excise, Salem (2024) 22 Centax 490 (Tri.-Mad).

3.4. The appellant submits that extended period of limitation cannot be invoked in this case since there was no fraud, collusion or any wilful misstatement or suppression of facts, or contravention of any of the provisions of this Act or of the Rules made

thereunder with intent to evade payment of tax established in this case.

3.5. In view of the above submissions, the appellant prayed for setting aside the demands of service tax, interest and penalties confirmed in the impugned order and allow their appeal.

3.6. Regarding the demand of interest of Rs. 1,03,220/- for Maintenance or Repair Services in terms of Section 75 of the Finance Act, 1994, the appellant has not made any submission.

4. The Ld. A.R reiterated the findings in the impugned order.

5. Heard both sides and perused the appeal documents.

6. We observe that Service Tax of Rs. 41,99,006/- has been confirmed on the value of 'Other Expenses '& 'Extra Hour Service Charges' for the financial years 2009-10 to 2012-13, by invoking the provisions of Rule 5 of the Service Tax (Determination of Value) Rules, 2006. For ready reference, the said Rule 5 is reproduced below:-

> *"Where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging service tax on the said service"*.

6.1. In the present case, we find that apart from rent, the appellant also collect expenses which were

incurred by them during the course of providing the taxable services. We find that these expenses collected were merely incidental expenses which were reimbursed by the member companies for their staff performing extra/overtime duties. We observe that as per Rule 5 of the Service Tax (Determination of Value) Rules, 2006, this incidental recovery of expenses cannot be added to taxable value of service. We observe that the Hon'ble Supreme Court has taken this view in the case of *Union of India vs Intercontinental Consultants and Technocrats Pvt. Ltd. 2018 (10) G.S.T.L. 401 (S.C.),* wherein it has been held as under:-

> *"24. In this hue, the expression 'such' occurring in Section 67 of the Act assumes importance. In other words, valuation of taxable services for charging service tax, the authorities are to find what is the gross amount charged for providing 'such' taxable services. As a fortiori, any other amount which is calculated not for providing such taxable service cannot a part of that valuation as that amount is not calculated for providing such 'taxable service'. That according to us is the plain meaning which is to be attached to Section 67 (unamended, i.e., prior to May 1, 2006) or after its amendment, with effect from, May 1, 2006. Once this interpretation is to be given to Section 67, it hardly needs to be emphasised that Rule 5 of the Rules went much beyond the mandate of Section 67. We, therefore, find that High Court was right in interpreting Sections 66 and 67 to say that in the valuation of taxable service, the value of taxable service shall be the gross amount*

charged by the service provider 'for such service' and the valuation of tax service cannot be anything more or less than the consideration paid as quid pro quo for rendering such a service.

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

.....

29. In the present case, the aforesaid view gets strengthened from the manner in which the Legislature itself acted. Realising that Section 67, dealing with valuation of taxable services, does not include reimbursable expenses for providing such service, the Legislature amended by Finance Act, 2015 with effect from May 14, 2015, whereby Clause (a) which deals with 'consideration' is suitably amended to include reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service. Thus, only with effect from May 14, 2015, by virtue of provisions of Section 67 itself, such reimbursable expenditure or cost

would also form part of valuation of taxable services for charging service tax. Though, it was not argued by the Learned Counsel for the Department that Section 67 is a declaratory provision, nor could it be argued so, as we find that this is a substantive change brought about with the amendment to Section 67 and, therefore, has to be prospective in nature. "

6.2. Thus, by relying on the decision of the Hon'ble Apex Court cited supra, we hold that the demand of Service Tax of Rs. 41,99,006/- confirmed on the value of 'Other Expenses' & 'Extra Hour Service Charges' for the financial years 2009-10 to 2012-13, in the impugned order is not sustainable and hence we set aside the same.

6.3. Regarding the demand of interest of Rs. 13,72,096/- confirmed for delayed payment of Service Tax for renting of Immovable Property Services, we observe that during the period the issue of liability of service tax was being agitated before various forums. The Hon'ble High court of Delhi in its order dated 18.04.2009 in the case of Home Solutions Retail India Ltd. & Others v. UOI had struck down the levy as not being a service. Subsequently, an amendment was made to the 'Renting of immovable property service' in order to overcome the earlier judgment of the Hon'ble High court of Delhi. Accordingly, we observe that the delay in payment of service tax was not intentional. The delay has occurred due to uncertainty of the levy itself. Thus, we hold that the demand of interest for the delay in payment of service tax on renting of immovable property service is not sustainable.

6.4. We observe that the issue regarding the demand of interest on the tax paid under renting of immovable property service is no longer *res integra* in view of the judgment of the Hon'ble CESTAT Hyderabad in the case of *D.S. NARAYANA & COMPANY PVT. LTD. Versus C.C. & C.E., VISAKHAPATNAM-II 2017 (4) G.S.T.L. 20 (Tri. - Hyd.),* wherein it has been held as under:

> *"8. I have heard the submissions made before me. The appellant does not contest the liability of Service Tax to the tune of Rs. 1,90,676/-. The challenge in the appeal is confined to the demand of interest prior to 8-5-2010 and also on the penalty imposed under Section 76 and the late fee imposed under Section 70 of the Finance Act, 1994. The services of Renting of Immovable Property services became taxable with retrospective effect pursuant to an amendment brought forth in Finance Act, 2010. The services thus became taxable with effect from 1-6-2007. The Finance Bill received assent of the President on 8-5-2010. The contention of appellant is that when the levy is made retrospectively, the liability to pay the interest starts only when such Bill receives assent of the President and comes into force. That interest cannot be demanded retrospectively. The ld. Counsel relied upon the judgment in the case of Star India Pvt. Ltd.*
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> *9. The Hon'ble Apex Court in the case of Star India Pvt. Ltd., held that interest need not be paid for the liability it is created*

retrospectively. The relevant para is quoted as under :

6. Factually, this appears to be incorrect. From the decision of the Tribunal it is clear that the Tribunal had in fact held that the appellant was liable by reason of the amendment to the term 'broadcasting' effected by the Finance Act, 2002.

7. In any it is clear from the language of the validation clause, as quoted by us earlier, that the liability was extended not by way of clarification but by way of amendment to the Finance Act with retrospective effect. It is well established that while it is permissible for the legislature to retrospectively legislate, such retrospectively is normally not permissible to create an offence retrospectively. There were clearly judgments, decrees or orders of Courts and Tribunals or other authorities, which required to be neutralized by the Validation Clause. We can only assume that judgments, decree or orders etc. had, in fact, held that persons situate like the appellants were not liable as service providers. This is also clear from the Explanation to the Validation Section which says that no act or acts on the part of any person shall be punishable as an offence which would have been so punishable if the Section had not come into force.

8. The liability to pay interest would only arise on default and is really in the nature of a quasi-punishment. Such liability although

created retrospectively could not entail the punishment of payment of interest with retrospective effect.

9. It is also to be noted that the Tribunal itself deleted the imposition of penalty imposed by the Commissioner (Appeals) on the appellants on this ground.

10. Besides, if the liability has been created under the amended section by virtue of sub-section (2) of Section 148 of the Finance Act, 2002, it must be given effect to wholly. The section expressly makes the assessee liable under the amended provision to pay the tax within the period of 30 days from the date of the Presidential Assent to the Finance Bill, 2002. It is admitted that the Finance Bill, 2002 was assented to on 11-5-2002 by the President. In the circumstances, the appellant was entitled to a period of thirty days thereafter to make payment of the tax. Needless to say, if it did not make payment within thirty days from the 11-5-2002, it would be liable to pay interest at the rate specified after that date.

11. The appeals are, accordingly, allowed but without any order as to costs.

10. Similar issue was discussed in the case BOC India Ltd. v. CCE, Bangalore (supra). The relevant portion is reproduced as under :-

4. The question is whether the interest was imposable in the instant case or if it, from which date. In Laghu Udyog Bharati & Others v. Union of India reported in 1999 (112)

E.L.T. 365 (S.C.) = 1999 (33) RLT 911 (SC) struck down the levy of Service Tax and declared it ultra vires. Subsequently, Government reintroduced the levy with retrospective effect for the period 16-11-1997 to 1st June, 1998 in the Finance Act, 2000 which received the assent of the President in May, 2000. From above it is clear that Service Tax was not applicable for the period from 16-11-1997 to 1st June, 1998. It was made applicable from May, 2000 with retrospective date from 16th November, 1997. Any penal provision cannot be made effective from retrospective date. They can only be prospective. The liability to pay the tax arises against the appellant after revalidation of Section 117 of the Finance Act, 2000.

5. In present case also the duty was made effective from May, 2000 for the period 16-11-1997 to 1st June, 1998. Prior to it, it was declared ultra vires by the Hon'ble Apex Court. Consequently, the appellant was not under an obligation to discharge the duty liability pertaining to period 16-11-1997 to 1st June, 1998. The contention of the learned Commissioner (Appeals) is not acceptable. Learned Commissioner of Appeals has mentioned in his impugned order "the normal course for the appellant would have been that they should have paid the tax, followed the procedure and claim refund like others". The levy of tax was not in force from 16-11-1997 to 1-6-1998. It is futile or a farce fallacy to deposit a tax and get it refunded. From above discussion it is clear that appellant was under

obligation to discharge the Tax liability from 16-11-1997 to 1st June, 1998 only on May, 2000 and consequently he was not liable to pay interest prior to May, 2000 i.e. the date on which the duty was payable. In the instant case the interest has been realized from 16-11-1997 which is contrary to law. The appellant is liable to pay interest from May, 2000 onwards. Accordingly I partially allow the appeal with the direction that the appellant will be liable to pay interest from May, 2000. Consequently, I allow the appeal in above terms with consequential relief to appellant.

11. In Asean Aromatics Pvt. Ltd. (supra). The Tribunal observed as under :

2. In the present appeal, the assessee has challenged the demand of interest and the imposition of penalties. The ld. Counsel has supported the challenge against the penalties by relying on "Explanation to Section 132 of the Finance Act, 2001". He has relied on the decision of the Apex Court in Star India Pvt. Ltd. v. Commissioner - 2006 (1) S.T.R. 73 (S.C.) in support of the assessee's challenge against the levy of interest. We have heard the ld. JCDR also.

3. After considering the submissions, we note that the erstwhile Rule 173GG had, apart from providing the facility of monthly payment of duty, also provided for levy of interest from, and imposition of penalty on, defaulters of duty. The provision was omitted on 1-4-2000 without any saving clause for

any action already initiated under the provision against any manufacturer of excisable goods. The SCN, in this case, was issued subsequently on 1-8-2000, but the same would not amount to "action already initiated". While the department was prosecuting action pursuant to the SCN against the assessee, the Finance Act, 2001 came into force on 11-5-2000 without any saving clause for any action already initiated under the provision against any manufacturer of excisable goods. The SCN, in this case, was issued subsequently on 1-8-2000, but the same would not amount to "action already initiated". While the department was prosecuting action pursuant to the SCN against the assessee, the Finance Act, 2001 came into force on 11-5-2001. This Act introduced Section 38A in the Central Excise Act providing for protection, with retrospective effect, for actions taken by the department under Rules, Notifications, Orders etc. amended, superseded, rescinded, repealed etc. Thus the SCN dated 1-8-2000 issued under the omitted Rule 173GG became operative by virtue of the retrospective operation of the provisions of Section 38A of the Act. Section 132 of the Finance Act revalidated actions already taken under omitted Rules. However, the Explanation to this Section protected persons targeted by such actions, from penalty. This provision declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so

punishable if the Section had not come into force. The appellants are entitled to the benefit of this Explanation to Section 132 of the Finance Act, 2001 and, accordingly, the penalties imposed on them are vacated.

4. As regards interest, reliance has been placed on the Apex Court's judgment, which reads as under :

"The liability to pay interest would only arise on default and is really in the nature of a quasi-punishment. Such liability although created respectively could not entail the punishment of payment of interest with retrospective effect."

In view of the above decision, interest on duty cannot be recovered from the respondents as liability to pay interest is in the nature of a quasi-punishment. In other words, by virtue of the Apex Court's ruling, the benefit of Explanation to Section 132 of the Finance Act, 2001 gets extended to interest also. The impugned order gets set aside and this appeal is allowed.

12. In this regard the validation clause in Finance Bill, 2010 is noteworthy and reproduced as under :

76. Any action taken or anything done or omitted to be done or purported to have been taken or done or omitted to be done under sub-clause (zzzz) of clause (105) of Section 65 of the Finance Act, 1994, at any time

during the period commencing on and from the 1st day of June, 2007 and ending with the day, the Finance Bill, 2010 receives the assent of the President, shall be deemed to be and deemed always to have been, for all purposes, as validly and effectively taken or done or omitted to be done as if the amendment made in sub-clause (zzzz) of clause (105) of Section 65, by sub-item (i) of item (h) of sub-clause (5) of clause (A) of Section 75 of the Finance Act, 2010 had been in force at all material times and, accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority,

(a) any action taken or anything done or omitted to be taken or done in relation to the levy and collection of Service Tax during the period on the taxable service of renting of immovable property, shall be deemed to be and deemed always to have been, as validly taken or done or omitted to be done as if the said amendment had been in force at all material times;

(b) no suit or other proceedings shall be maintained or continued in any court, tribunal or other authority for the levy and collection of such Service Tax and no enforcement shall be made by any court of any decree or order relating to such action taken or anything done or omitted to be done as if the said amendment had been in force at all material times;

(c) recovery shall be made of all such amounts of Service Tax, interest or penalty or fine or other charges which may not have been collected or, as the case may be, which have been refunded but which would have been collected or, as the case may be, would not have been refunded, as if the said amendment had been in force at all material times.

Explanation. - For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable had this amendment not come into force.

13. It is seen stated in the above clause, that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable had this amendment not come into force. On the basis of the judgment rendered by the Hon'ble High Court of Delhi in Home Solutions Retail India Ltd. (supra) during the relevant period, no demand of Service Tax of renting of immovable property could be made in the absence of the amendment. From the above, it is clear that the appellant is not liable to pay interest prior to 8-5-2010 and also the penalty. The appellant has paid the interest on the entire demand after 8-5-2010 till payment. Following the judgments cited above I hold that the demand of interest and the penalty imposed under Section 76 is unsustainable. However, I do not interfere

with the late fee imposed under Section 70 of the Finance Act, 1994. The impugned order is modified to the extent of setting aside the demand of interest after 8-5-2010 and the penalty imposed under Section 76 of Finance Act, 1994. Appeal is partly allowed in above terms."

6.5. We also find that the same view has been taken by the CESTAT, Chennai in the case of Commissioner, *Namakkal Municipality vs Commissioner of Gst & Central Excise, Salem (2024) 22 Centax 490 (Tri.-Mad),* wherein it has been held as under:

7. We find that this is a case where a retrospective amendment was made to the definition of 'Renting of Immovable Property Service' in order to clarify the legislative intent and also bring in certainty in tax liability. The amendment clarified that the activity of renting of immovable property per se would also constitute a taxable service under the relevant clause. It was given retrospective effect from 01.06.2007. Para 9 of Annexure - B of D.O.F. No.334/1/2010-TRU, dated 26/02/2010 which clarifies the matter is reproduced below;

"9. Renting of immovable property service

9.1 This service was introduced in 2007 with a view to tax the commercial use of immovable property hired on rent. The tax on rent paid is available as input credit if the commercial activity involves provision of taxable service or manufacture of dutiable goods. However, the Hon'ble High court of Delhi in its order dated

18.04.2009 in the case of Home Solutions Retail India Ltd. & Others v. UOI has struck down this levy by observing that the renting of immovable property for use in the course of furtherance of business or commerce does not involve any value addition and therefore, cannot be regarded as service. Apart from the revenue loss caused to the exchequer, the judgement has placed the landlords in a very precarious situation. In view of this judgement, the commercial tenants have stopped them reimbursing the tax element. However, the landlords are receiving regular demand notices from the department issued to protect government's revenue for the interim period.

9.2 In order to clarify the legislative intent and also bring in certainty in tax liability the relevant definition of taxable service is being amended to clarify that the activity of renting of immovable property per se would also constitute a taxable service under the relevant clause. This amendment is being given retrospective effect from 01.06.2007"

The appellant has paid a major portion of the duty and is only seeking a waiver of the interest demanded and penalties imposed. They have relied upon the judgment of the Hon'ble Supreme Court in the case of *Star India (P) Ltd.* (*supra*) to support their stand. The relevant portion of the judgment is extracted below:-

"7. In any it is clear from the language of the validation clause, as quoted by us earlier, that

the liability was extended not by way of clarification but by way of amendment to the Finance Act with retrospective effect. It is well established that while it is permissible for the legislature to retrospectively legislate, such retrospectivity is normally not permissible to create an offence retrospectively. There were clearly judgments, decrees or orders of courts and tribunals or other authorities, which were required to be neutralized by the validation clause. We can only assume that the judgments, decrees or orders etc. had, in fact, held that persons situate like the appellants were not liable as service providers. This is also clear from the Explanation to the validation section which says that no act or acts on the part of any person shall be punishable as an offence which would have been so punishable if the section had not come into force.

8. The liability to pay interest would only arise in default and is really in the nature of a quasi-punishment. Such liability although created retrospectively could not entail the punishment of payment of interest with retrospective effect."

8. We find, as sated in the DO letter of the Joint Secretary (Tax Research Unit-II) dated 26/02/2010, that an amendment was made to the 'Renting of immovable property service' in order to overcome the earlier judgment of the Hon'ble High court of Delhi in its order dated 18.04.2009 in the case of Home Solutions Retail India Ltd. & Others v.

UOI wherein the Hon'ble Court it had struck down the levy as not being a service. This being so liability although created retrospectively could not entail the punishment of payment of interest with retrospective effect as decreed by the Apex Court in Star India (P) Ltd. (*supra*). Further, in para 10 of the said judgment, it is stated that where the amendment expressly makes a provision for the payment of the retrospectively amended tax liability within a specified time, in such circumstance, the appellant is not entitled to pay interest if the monies are paid within the said date and that they would be liable to pay interest only after the said date. We find that no provision of time has been made in the present amendment for payment of retrospectively assessed duty. Hence, the interest would be in the nature of a quasipunishment as per the above judgment and is not payable by the appellant. This is based on the well settled principle of constitutional law that sovereign legislative bodies can make laws with retrospective operation however no ex post facto penalty is permissible. In the light of the same no penalty is also payable by the appellant. Hence the appellant is liable for waiver of interest and penalty. The Hon'ble Tribunal's judgment in *Coal Mines Provident Fund Organisation* (*supra*) cited by Revenue is not on an issue related to demands based on retrospective amendment to a legislation and is distinguished, moreover it will have to give way to a judgement of the Apex Court on the

matter. The judgment of the Hon'ble High Court in Cuddalore Municipality (*supra*) cited by the appellant is not relevant as the appeal is only with regard to the waiver of interest and penalty.

9. In the light of the discussions above, we allow the prayer of the appellant and set aside the interest and penalties confirmed in the impugned order. The impugned order is hence partly modified as above. The appeal is disposed of accordingly."

6.6. By relying on the decisions cited supra, we hold that the demand of interest for the delay in payment of service tax on renting of immovable property service is not sustainable and hence we set aside the same.

6.7. Regarding the demand of interest of Rs. 1,03,220/- for Maintenance or Repair Services in terms of Section 75 of the Finance Act, 1994, we observe that the appellant has not made any submission. We find that there is a delay in payment of service tax under the category of Maintenance or Repair Services and hence the appellant is liable to pay interest for the same. Hence, we uphold the demand of interest of Rs.1,03,220/- for the delay in payment of service tax for Maintenance or Repair Services.

6.8. We observe that that extended period of limitation cannot be invoked in this case since there was no fraud, collusion or any willful misstatement or suppression of facts, or contravention of any of the provisions of this Act or of the Rules made

thereunder with intent to evade payment of tax established in this case. Accordingly, we hold that the penalties imposed on the appellant on the allegation of suppression of facts, is not sustainable. Hence, we set aside the penalties imposed on the appellant.

6.9. As the appellant has not been registered with the department for rendering the 'Renting of immovable property service', we hold that the Penalty of Rs.10,000/- has been rightly imposed under Section 77 of the Finance Act, 1994 and hence the same is upheld.

7. In view of the above discussions, we pass the following order:

(I) We set aside the demands of Service Tax of Rs. 41,99,006/- along with interest confirmed on the value of 'Other Expenses' & 'Extra Hour Service Charges' for the financial years 2009-10 to 2012-13. Penalty equal to the service tax confirmed in the impugned order is also set aside.

(II) Interest of Rs. 13,72,096/- confirmed for delayed payment of Service Tax for renting of Immovable Property Services is set aside.

(III) We uphold the demand of interest of Rs. 1,03,220/- for the delay in payment of service tax for Maintenance or Repair Services, under section 75 of the Finance Act.

(IV) We confirm the Penalty of Rs.10,000/- imposed under section 77 of the Finance Act.

(V) The appeal filed by the appellant is disposed of on the above terms with consequential relief, if any, as per law.

(Order Pronounced in Open court on 23.07.2025)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP