

Form No. J(1)

OD-1

**IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [CENTRAL EXCISE]
ORIGINAL SIDE
CEXA 49 of 2009**

NARESH KUMAR & CO.
-Versus-
COMMISSIONER, SERVICE TAX

Present:

The Hon'ble Justice RAJASEKHAR MANTHA

The Hon'ble Justice AJAY KUMAR GUPTA

For the Appellant: Mr. Dr. J.K. Mittal, Adv.
 Mr. Paritosh Sinha, Adv.
 Mr. Amitava Mitra, Adv.
 Ms. Urmi Sengupta, Adv.
 Mr. Naman Aggarwal, Adv.

For the Respondent: Mr. U.S. Bhattacharyya, Adv.
 Mr. K.K. Maiti Adv.

Hearing Concluded on: 2nd February, 2026

Judgment On: 04th February, 2026

Rajasekhar Mantha, J:-

1. The subject appeal under Section 35G of the Central Excise Act, 1944, is against the judgment and order dated May 29, 2008, passed by the Customs, Excise and Service Tax Appellate Tribunal, Eastern Zonal

Bench, Kolkata in S.P A.P. 31 of 2007. Section 35G enables filing of an appeal to the High Court when a substantive question of law is involved.

2. By the said judgment dated May 29, 2008, the Tribunal has partially upheld the order of the first authority that the appellant has provided 'Clearing and Forwarding' services to the Tata Iron and Steel Company (TISCO) and Tata Ryerson Limited (TRL) [the said two companies], between the years September 1999 to March 2004. The Ld. Tribunal, however, remanded the issue of limitation, back to the first authority, in respect of the claim of service tax and penalty imposed for not paying service tax.
3. The appellant herein is Naresh Kumar and Company, a registered partnership firm. The respondent is the Central Commissioner of Service Tax, Kolkata. The appellant is a service provider. The respondent has claimed service tax on the 'Clearing and Forwarding' services provided by the appellant to the said two companies. The tax claimed is for the period September 1999 to March 2004. The tax break-up is set out hereinafter.
4. The undisputed records indicate that the appellant undertook to do following works for the said two companies under the agreements executed between the parties. The terms and conditions of the agreement dated December 21, 2002 between the appellant and the said two companies are summarized below:-
 - I. To receive and unload the materials of the said two companies.

- II. To thereafter transport the said materials.
 - III. To also arrange for the storage of the materials.
 - IV. To further ensure that the said materials are forwarded to customers of the said two companies.
5. The appellant also assisted the personnel of TISCO in conducting stock verification of the goods lying in the godown. The TISCO used to pay the appellant for the said service, in addition to remuneration paid for the clearing and forwarding services. The appellant also undertook the work of cutting and bending steel products of TISCO. The latter also remunerated the former for the said service.
6. The respondent revenue authority has classified the aforesaid services as 'Clearing and Forwarding' services under the Finance Act, 1994. The appellant disputes the same. The appellant has argued that it did not provide any clearing and forwarding services to the said companies. The appellant has taken a novel plea that it has only provided either clearing or forwarding services to the said companies. It simultaneously did not provide both clearing and forwarding services to the said companies. The appellant has argued that the mandate of the Finance Act is that an entity has to *simultaneously* provide clearing and forwarding services to be taxed thereunder.
7. The services provided by the appellant to the said two companies came under the radar of the revenue authority when the later conducted a search and seizure operation in the office premises of the appellant. The

Deputy Commissioner of Central Excise, Kolkata has stated that upon receiving information from sources, of evasion of service tax by the appellant, he carried out a search and seizure operation at the appellant's office premises at 9B Wood Street, Kolkata -700016 on April 19, 2002. The Commissioner of Central Excise authorized the said search and seizure.

8. The appellant sent the letter dated May 2nd, 2002 to the Commissioner of Central Excise, Kolkata and the Deputy Commissioner of Central Excise, Kolkata regarding the said search and seizure operation. In the said letter dated May 2nd, 2002, the appellant argued that it did not provide the services of a 'Clearing and Forwarding' agent to the said two companies. The appellant submitted that the services provided by it to the said two companies do not fall under any of the taxable services under the Finance Act, 1994. The appellant thus argued that the remuneration received by it from the said two companies during September, 1999 to March, 2004 cannot be taxed under the Finance Act. The appellant submitted that the said search and seizure operation is illegal.
9. Within 2 years of the said search and seizure operation, the respondent revenue authority further visited the said office premises of the appellant on January 29, 2004. It found that the appellant had registered itself under the Central Excise Act on May 27, 2002 i.e. 38 days after the aforesaid search and seizure operation. The respondent revenue authority found that the appellant has started to pay services

tax on the remuneration received from the said two companies from the financial year 2002- 2003.

10. Therefore, it is clearly seen that after the said search and seizure operation conducted on April 19, 2002, the appellant voluntarily registered itself under the Central Excise Act and obtained a certificate of service tax registration. During the said visit, the respondent further found that even after the said registration under the Central Excise Act on May 27, 2002, the appellant is not paying the service tax at the rate mandated under the Central Excise Act as amended by the Finance Act.
11. Accordingly, on June 10, 2004, the Senior Intelligence Officer of the respondent send summons to the appellant. The General Manager of the appellant attended the office of the respondent and was interrogated. During the interrogation, it was revealed that the appellant did not pay any service tax for the period 1999 to 2004 for the services and remuneration rendered and received by it from the said two companies.
12. During the interrogation, the said General Manager of the appellant firm informed that the appellant firm had deposited Rs 5,32 744/- (rupees five lakhs, thirty-two thousand and seven hundred and forty-four) on January 29, 2004 with the respondent revenue authority, the day when the respondent revenue authority visited the office premises of the appellant firm.

13. During interrogation, the General Manager of the appellant firm admitted the said payment was made towards the past service tax dues for the period of September 1999 to December 1999. The appellant further deposited Rs 20 lakhs on the direction of the Assistant Commissioner Central Excise, Tiljala Division, towards past service tax dues. The general manager of the appellant stated that the appellant firm works as a consignment agent for the said two companies.

14. The appellant firm was show caused vide Notice dated September 13, 2004. The said show cause notice levelled the following evasions of tax, committed by the appellant:-

HEAD OF TAX	THE PERIOD OF EVASION.	AMOUNT OF TAX CLAIMED.
Item no. 1. Clearing and Forwarding services	September 1 st , 1999 to 31 st , March, 2002	Rs. 49,27,918 (rupees forty-nine lakhs, twenty seven thousand, and nine hundred and eighty only).

Item no. 2- Tax on the direct expenses of the appellant amounting to Rs 6,64,45,249 (Six crores, sixty four lakhs, forty-five thousand, and two hundred and forty nine.	September, 1999- March 2004	Rs 36,56,555 (thirty-six lakhs, fifty-six thousand and five hundred and fifty- five.
Item no. 3- Bending and Bundling services for which remuneration received Rs 66,44,322 (sixty six lakhs, forty-four thousand and three hundred and twenty two)	September, 1999- March, 2004	3, 71, 610(three lakhs seventy- one thousand and six hundred and ten

Item no. 4- Stock verification services for which remuneration received Rs 14, 71, 445(rupees fourteen lakhs, seventy-one thousand and four hundred and forty five).	September 1999- March 2004	80, 402 (eighty thousand and four hundred and two only.
Item no- 5- Clearing and forwarding services provided to the TRIAL for which remuneration received was 7,45, 231(seven lakhs forty-five and two hundred and thirty one.	September 27, 2002 to May 10, 2004	Rs 48,396. (Forty eight thousand and three hundred and ninety six.

15. The appellant sent a reply dated May 20, 2005 to the aforesaid show cause notice dated September 13, 2004. The appellant argued that it is not a Clearing and Forwarding agent. It instead has provided cargo handling services and business support services to the said two companies. Thus, it is not liable to pay any service tax under the head Clearing and Forwarding services. The appellant further filed additional reply dated August 29, 2006

to the said show cause notice. The appellant argued that the claim of service tax is barred by limitation under Section 73 of the Finance Act, 1994.

16. The Central Commissioner of Service Tax, Kolkata, (the first authority) passed the order dated March 22, 2007 upholding the claim of service tax, of the respondents, against the appellants. The first authority upon perusal of the agreement between the parties held that the appellant is indeed a Clearing and Forwarding agent. The first authority has negated the argument that the appellant was involved in only clearing services, and held that the appellant was a clearing and forwarding agent. The first authority held that the extended period of limitation under Sec. 73 of the Finance Act, 1994 applies to the claim of service tax against the appellant firm. The first authority upheld the imposition of penalty on the appellant firm for evading service tax.

17. The appellant preferred the appeal against the aforesaid order of the first authority. The Ld. Appellate Tribunal upheld the decision of the first authority that the appellant is a Clearing and Forwarding agent. The Tribunal however remanded the issue of limitation and imposition of penalty to the first authority for re-adjudication. The appellant has challenged the said judgment and order of the Tribunal in the present appeal.

18. In the order dated December, 3rd, 2009, a coordinate Bench of this Court admitted the present appeal by framing the following substantial questions of law:-

(i) Whether the learned Tribunal was justified in passing an order of remand on the issues mentioned therein after having decided on fact that the appellant is a clearing and forwarding agent?

(ii) Whether on the facts and circumstances of the case and also the materials placed before the learned Tribunal, the learned Tribunal was legally correct to conclude that the appellant is a clearing and forwarding agent?

19. The aforesaid questions were summarised in arguments by counsel for the appellant, as follows:-

- a. Whether the appellant provided any Clearing and Forwarding services to M/s TISCO and TRL.*
- b. Was it not possible for the Tribunal to decide the point of limitation against the claim of past service tax dues in view of the evidence on record? Was the remand for re-adjudicating the point of limitation unavoidable?*
- c. Was the remand for re-adjudicating the imposition of penalty of evading service tax unavoidable in view of the evidence on record*

ANALYSIS OF THIS COURT

20. Learned counsel for the revenue, has argued that the subject appeal ought to have been filed under Section 35L read with Section 35G of the Central Excise Act, 1944 before the Honourable Supreme Court of India. The subject appeal is thus barred under Section 35G, under which the subject appeal is in fact been filed. The learned counsel seeks to rely on a conjoint reading of Section 35G and 35L of the Central Excise Act in support.

I) JURISDICTION

21. Section 35G is set out below:-

“35G. Appeal to High Court. - (1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law.”

22. Section 35G, therefore, excludes an appeal where the rate of excise duty or the value of goods to be taxed is at issue. Clearly, in the present case, we are not called on to decide the rate of service tax on the services provided by the appellant to the said two companies. We are not concerned with the value of the services provided by the appellant. In fact, the appellant herein has provided services and in return has received remuneration.

23. This Court, in this appeal is not concerned with the value of any goods held by the appellant, since there is none. In the present case, service tax was imposed on the remuneration for services rendered, but not on the goods handled.
24. The questions framed by a coordinate Bench in this appeal and further summarised by Counsel for the appellant, clearly indicate that this Court is called upon to decide the questions of law arising from the admitted facts on the record. The issues involved will not have a pan-India effect in view of that we are not going to decide the rate of excise duty or the value of goods to be assessed.
25. The scope of Section 35G was alluded to in ***Navin Chemicals Mfg and Trading Co Ltd vs. Collector of Customs, reported in (1993) 4 SCC 320***, wherein it was held as follows:-

“7. The controversy, therefore, relates to the meaning to be given to the expression „determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment“. It seems to us that the key lies in the words „for purposes of assessment“ therein. Where the appeal involves the determination of any question that has a relation to the rate of customs duty for the purposes of assessment that appeal must be heard by a Special Bench. Similarly, where the appeal involves the determination of any question that has a relation to the value of goods for the purposes of assessment, that appeal must be heard by a Special Bench..... The phrase “relation to” is, ordinarily, of wide import but, in the context of its use in the said expression in Section 129-C, it must be read as meaning a direct and proximate relationship to the rate of C Ex Ref No.1/2009 Page 4 of 10 duty and to the value of goods for the purposes of assessment.”

26. The limited bar under Section 35G applies when the question raised has a relation with the rate of duty or value of goods. In the present case, we are not faced with such a situation.

II. MERITS OF THE CASE-WHETHER THE APPELLANT FIRM HAS PROVIDED SERVICES AS A CLEARING AND FORWARDING TO THE SAID M/S. TISCO & TRL.

27. The appellant is clearly guilty of approbation and reprobation. The appellant has belatedly but voluntarily registered itself under the Central Excise Act on May 27, 2002. The said registration was in respect of the remuneration received by it from TISCO and TRL. The appellant therefore has admitted that the said remuneration received from the said two entities amenable to the service tax under the Central Excise Act.

28. The said registration did not have a rider that the appellant would be liable to pay the service tax from the date of its registration. The event of registration will relate back to the date on and from which the appellant started to provide Clearing and Forwarding services to the TISCO and TRL. The reason is that the appellant got itself specifically registered for payment of service tax, under the Central Excise Act, in connection to its Clearing and Forwarding services provided to TISCO and TRL.

29. The appellant started to provide the said services from September 1999 and not from the date of the said registration. The

principle of relating back thus has to be applied to the remuneration of the appellant received from September, 1999 onwards. Any other interpretation will deprive the public exchequer from its entitled dues.

30. Further, the purpose of the said registration would be rendered meaningless if the said registration does not include the period of services provided by the appellant from September 1999 onwards.

31. Notably, the appellant got itself registered only after the search and seizure operation conducted in its premises on April 19th, 2002. The said search and seizure operation was conducted in connection to the services provided to the said two companies. The appellant therefore was always aware that its remuneration received from TISCO and TRL is subject to service tax. The appellant was, however, testing the water till the time the revenue authorities took any action.

32. In fact, the appellant has also paid a sum of Rs 5,32 744 lakhs on January 29, 2004 and a further amount of Rs 20 lakhs (Rupees twenty lakhs) towards its past service tax dues for the period starting from September 1999. Thus, the appellant by its conduct has admitted to the incidence and application of service tax on the services rendered to M/s TISCO and TRL with retrospective effect to its registration under the Central Excise Act.

33. The aforesaid payment of Rs 5, 32, 744 lakhs was made on the same day on which the General Manager of the appellant was interrogated by the respondent i.e. on January 29th, 2004. The

interrogation was in connection to the appellant's remuneration received from TISCO and TRL. The said payment was made before the issuance of the said show cause notice. The appellant therefore has made the said payment knowing fully well and accepting its liability for service tax. It did not pay the past dues of service tax under the threat of any recovery proceedings. The appellant therefore cannot argue that it would be liable to pay the service tax only from the date of its registration under the Central Excise Act.

34. The appellant cannot take the advantage of the principle that there is no estoppel against the law. It cannot claim that it paid a portion of the past dues in an erroneous understanding of the law. The plea of estoppel is applied with reference to the conduct of the parties. The conduct of the appellant is evasive with respect to paying service tax. The plea of promissory estoppel cannot be applied in isolation from the conduct of the parties. The appellant therefore being dishonest in its conduct cannot claim the benefit of an equitable principle of law.

35. The appellant has first registered itself under the Central Excise Act. Thereafter, the appellant has made payments towards past service tax dues. The appellant made such registration and payments under the tax bracket of Clearing and Forwarding services. The appellant clearly understood the law as it is.

36. The concept of self-assessment will stand defeated if the deliberate inaction of the appellant to register itself under the Central Excise Act and pay service tax from 1999 to 2002 is condoned.

37. The definition of clearing and forwarding services is alluded to in the decision in ***Coal Handlers (P) Ltd. v. CCE, reported in (2015) 11 SCC 683*** wherein it was held as follows:-

15. From the reading of the definition contained in the aforesaid provision, together with its dictionary meanings contained in legal and commercial dictionaries, **it becomes apparent that in order to qualify as a C and F agent, such a person is to be found to be engaged in providing any service connected with “clearing and forwarding operations”.** Of course, once it is found that such a person is providing the services which are connected with the clearing and forwarding operations, then whether such services are provided directly or indirectly would be of no significance and such a person would be covered by the definition. Therefore, we have to see as to what would constitute clearing and forwarding operations. **As is clear from the plain meaning of the aforesaid expression, it would cover those activities which pertain to clearing of the goods and thereafter forwarding those goods to a particular destination, at the instance and on the directions of the principal. In the context of these appeals, it would essentially include getting the coal cleared as an agent on behalf of the principal from the supplier of the coal (which would mean collieries in the present case) and thereafter dispatching/forwarding the said coal to different destinations as per the instructions of the principal. In the process, it may include warehousing of the goods so cleared, receiving dispatch orders from the principal, arranging dispatch of the goods as per the instructions of the principal by engaging transport on his own or through the transporters of the principal, maintaining records of the receipt and dispatch of the goods and the stock available in the warehouses and preparing invoices on behalf of the principal.** The larger Bench rightly enumerated these activities which the C and F agent is supposed to perform.

(Emphasis Applied)

38. A clearing and forwarding agent is therefore an entity who receives and dispatches goods on behalf of the principal. In the process of receipt and dispatch of the said goods, a Clearing and Forwarding agent may need to store the goods. For that purpose, a clearing and forwarding agent may need to have a warehouse. A clearing and forwarding agent has to also arrange for the transportation of the said goods. The appellant has to bear the transportation charges for forwarding the goods to the destination. The appellant thus fulfils all the criteria adverted to in the decision in ***Coal Handlers (supra)***.

39. The Appellant received materials of TISCO and TRL. The appellant ensured that the said goods reach their destination. The appellant has borne the transport expenses. Thus, the service tax of Rs. 49,27,918 (rupees forty-nine lakhs, twenty seven thousand, and nine hundred and eighty only) assessed between September 1st, 1999 to 31st, March, 2002 and the service tax of Rs 48,396 (Forty eight thousand and three hundred and ninety six) for the period September 27, 2002 to May 10, 2004 under the head 'Clearing and Forwarding' are thus sustainable. We therefore hold that the appellant firm is liable to pay the said amount of service tax along with interest indicated hereinafter.

40. The appellant has dishonestly claimed exemption of service tax of Rs 36,56,555 (thirty-six lakhs, fifty-six thousand and five hundred and fifty- five on the direct expenses of Rs 6,64,45,249 (Six crores, sixty four lakhs, forty-five thousand, and two hundred and forty nine) incurred by

it on transportation charges for forwarding the goods to their destination. The transportation charges form part of the remuneration received by the appellant from the said companies. Therefore the appellant cannot claim exemption from service tax on the direct expenses. In fact in **Coal Handlers (supra)**, the Court held that a clearing and forwarding agent has to bear the transport expenses of the goods. We therefore hold that appellant firm is also liable to pay the said amount of service tax on direct expenses along with interest indicated hereinafter.

41. The appellant has also undertaken the work of bending and bundling the goods of the said two companies. This area of work, however, clearly falls outside the scope of clearing and forwarding services. The clearing and forwarding services will only include the incidental works required to carry out the actual act of clearing and forwarding goods. For illustration, the act of storing the goods in a proper place, namely in a warehouse house. For this purpose, a clearing and forwarding agent may need to purchase or rent a warehouse.
42. Bending and Bundling of goods have an impact on the nature of the goods. It amounts to reshaping of the goods. Bending and Bundling may change the character of the goods. The duty of a clearing and forwarding agent is not to develop or change the character of the goods. In other words, a clearing and forwarding agent is not concerned with the quality and merits of the goods. A clearing and forwarding agent is indeed aware of the nature of goods to preserve the goods. The service tax of Rs 3, 71,

610 (three lakhs seventy- one thousand and six hundred and ten) raised towards the Bending and Bundling services for the period September, 1999- March, 2004 thus cannot be claimed under the head Clearing and Forwarding Services. The said demand of service tax under the tax bracket of Clearing and Forwarding services is thus quashed. The revenue authority will, however be at liberty to tax the same under appropriate tax heading, if any, under the Central Excise Act or applicable tax laws and rules in accordance with law.

43. The appellant has also assisted the said two companies in the stock verification of the goods received. The process of stock verification is different from the preservation of the goods. Admittedly, the appellant has educated employees of the two companies in ascertaining the quality of the goods. The appellant thus had entered into the merits and quality of the goods. The service of the stock verification of goods therefore does not fall within the meaning of Clearing and Forwarding services.

44. The process of stock verification is not simply preservation of the goods, which a Clearing and Forwarding agent is obliged to do. It is one step ahead of it. The said companies have learnt about the goods from the appellant. The imparting of the said learning is not required of a Clearing and Forwarding agent. The service tax of 80, 402 (eighty thousand and four hundred and two only for the period) raised for the period September 1999- March 2004 towards stock verification charges therefore cannot be levied under the head Clearing and Forwarding

services. The said demand of service tax thus is quashed. The revenue will, however, at liberty to tax the said stock verification services of the appellant provided to the said companies under the appropriate tax head in accordance with the law.

III. WHETHER THE CLAIM OF DUES OF SERVICE TAX IS BARRED BY LIMITATION UNDER SECTION 73

45. The appellant has argued that the claim of service tax is time-barred.

The show cause notice was issued on September 13, 2004. It demanded the payment of service tax for the periods beginning from September 1999.

46. It is thus argued that the show cause notice was issued 4 years after the cause of action for the payment of service tax arose in September, 1999. The un-amended Sec. 73 of the Finance Act, 1994, provides for two different periods of limitation (discussed hereinafter). One was 1 year and other was 5 years.

47. The appellant has argued that it is covered by the un-amended Sec.73. The appellant has argued that the period of limitation of 1 year under Section 73 of the Finance Act applies to the issuance of the said show cause notice. The show cause notice thus ought to have been issued within one year from the September 1999.

48. In ***Union of India &Ors. v. Rajeev Bansal reported in 2024 INSC 754***, it was held that the law existing on the date of the show cause notice shall apply to the tax payer. Section 73 was amended by the Finance Act, with effect from September 10, 2004. By the said

amendment, the period of limitation was increased from 1 year to 1 year 6 months. The said show cause notice was issued on September 13, 2004, i.e. 3 days after the said amendment. Thus, the amended section 73 will apply to the appellant in view of the decision in ***Rajeev Bansal supra***. Para no. 48 of ***Rajeev Bansal supra*** is set out below:-

48. Notices have to be judged according to the law existing on the date the notice is issued...

49. Section 73 has undergone several amendments. Any legislation should be read along with its subsequent amendments. The said conjoint reading aids the interpretative exercise. Reference in this regard may be made to decision in ***Rajeev Bansal (supra)*** wherein it was held as follows:-

56.....The principle which emanates from Shamrao V Parulekar (supra) is that after an amendment, the legislation has to be read along with the amended provisions.

57. The legislative practice of amendment by substitution is often used by the legislatures. The process of substitution of a statutory provision generally involves two steps: first, the existing rule is deleted; and second, the new rule is brought into existence in its place. The deletion effectively repeals the existing provision. Thus, an amendment by substitution results in the repeal of an earlier provision and its replacement by a new provision. The repealed provision will cease to operate from the date of repeal and the substituted provision will commence operation from the date of its substitution. After the substitution, the legislation must be read and construed as if the altered words have been written into the legislation “with pen and ink and the old words scored out.” Therefore, after amendment by substitution any reference to a legislation must be construed as the legislation as amended by substitution.

50. The amended section 73 applicable to the appellant firm is set out below:-

Section 73- Recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded-

- (1) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, The Central Excise Officer) may, within **eighteen months** from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid of the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

Provided that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded **by reason of**

(a) fraud; or

(b) collusion, or

(c) wilful mis-statement, or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax,

by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, **as if, for the words eighteen months, the words "five years" had been substituted.**

Explanation- Where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the aforesaid period of "[eighteen months) or five years, as the case may be.

(1A) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of fraud collusion or any wilfulmis-statement or suppression of facts, or contravention of any of the provisions of this Chapter or the rules made thereunder, with intent to evade payment of service tax, by such person or his agent, to whom a notice is served under the proviso to sub-section (1) by the Central Excise Officer, such person or agent may pay service tax in full or in part as may be accepted by him, and the interest payable thereon under section 75 and penalty equal to twenty-five per cent of the

service tax specified in the notice or the service tax so accepted by such person within thirty days of the receipt of the notice"

- (2) The [Central Excise Officer, shall after considering the representation, if any, made by the person on whom notice is served under sub-section (1), determine the amount of service tax due from, or erroneously refunded to, such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.

"Provided that where such person has paid the service tax in full together with interest and penalty under sub-section (1A), the proceedings in respect of such person and other persons to whom notices are served under sub-section (1) shall be deemed to be concluded:

Provided further that where such person has paid service tax in part along with interest and penalty under sub-section (1A), the Central Excise Officer shall determine the amount of service tax or interest not being in excess of the amount partly due from such person.

- (3) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person chargeable with the service tax, or the person to whom such tax refund has erroneously been made, may pay the amount of such service tax, chargeable or erroneously refunded, on the basis of his own ascertainment thereof, or on the basis of tax ascertained by a Central Excise Officer **before service of notice on him** under sub-section (1) in respect of such service tax, and inform the [Central Excise Officer) of such payment in writing, who, on receipt of such information shall not serve any notice under sub-section (1) in respect of the amount so paid:

Provided that the [Central Excise Officer) may determine the amount of short payment of service tax or erroneously refunded service tax, if any, which in his opinion has not been paid by such person and, then, the [Central Excise Officer) shall proceed to recover such amount in the manner specified in this section, and the period of "[thirty months) referred to in sub-section (1) shall be counted from the date of receipt of such information of payment.

Explanation 1 -For the removal of doubts, it is hereby declared that the interest under section 75 shall be payable on the amount paid by the person under this sub-section and also on the amount of short payment of service tax or erroneously refunded service tax, if any, as may be determined by the Central Excise Officer) but for this sub-section

Explanation 2-For the removal of doubts, it is hereby declared that no penalty under any of the provisions of this Act or the rules made thereunder shall be

imposed in respect of payment of service-tax under this sub-section and interest thereon.]

(4) Nothing contained in sub-section (3) shall apply to a case where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of

(a) fraud; or

(b) collusion; or

(c) wilful mis-statement; or

(a) suppression of facts; or

(e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax.

(4A) Notwithstanding anything contained in sub-section (4), **where during the course of any audit, investigation or verification, it is found that any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, but the true and complete details of transactions are available in the specified records, the person chargeable to service tax or to whom erroneous refund has been made, may pay the service tax in full or in part, as he may accept to be the amount of tax chargeable or erroneously refunded along with interest payable thereon under section 75 and penalty equal to one per cent of such tax, for each month, for the period during which the default continues, up to a maximum of twenty-five per cent of the tax amount, before service of notice on him and inform the Central Excise Officer of such payment in writing, who, on receipt of such information, shall not serve any notice under sub-section (1) in respect of the amount so paid and proceedings in respect of the said amount of service tax shall be deemed to have been concluded:**

Provided that the Central Excise Officer may determine the amount of service tax, if any, due from such person, which in his opinion remains to be paid by such person and **shall proceed to recover such amount in the manner specified in sub-section (1).**

Explanation.-For the purposes of this sub-section and section 78, **"specified records" means records including computerized data as are required to be maintained by an assessee in accordance with any law for the time being in force or where there is no such requirement, the invoices recorded by the**

assessee in the books of account shall be considered as the specified records.

(5) The provisions of sub section (3) shall not apply to any case where the service tax had become payable or ought to have been paid before the 14th day of May. 2003.

(6) For the purposes of this section, "**relevant date**" means,-

(i) in the case of taxable service in respect of which service tax has not been levied or paid or has been short-levied or short-paid-

(a) where under the rules made under this Chapter, a periodical return, showing particulars of service tax paid during the period to which the said return relates, is to be filed by an assessee, the date on which such return is so filed,

(b) where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules;

(c) in any other case, the date on which the service tax is to be paid under this Chapter or the rules made thereunder;

(ii) in a case where the service tax is provisionally assessed under this Chapter or the rules made thereunder, the date of adjustment of the service tax after the final assessment thereof;

(iii) in a case where any sum, relating to service tax, has erroneously been refunded, the date of such refund.

51. Section 73 is lengthy. Its fundamental purpose, however, is that it enables the revenue authority to recover the unpaid service tax by issuing a show cause notice. Section 73 provides periods of limitation for the initiation of recovery proceedings. Sec. 73 contemplates two situations under which the correct amount of service tax may not be credited to the revenue authorities.

52. The first situation is when the taxpayer has honestly filed its returns, the amount of service tax however appears to the revenue authorities under-assessed. The revenue authority in that event can raise a claim within 1 year 6 months from the relevant date. The relevant date is defined under sub-section of Section 73. It will be discussed presently. This fundamental purpose of Sec. 73 has remained un-amended.

53. The second situation is when the taxpayer suppressed information from the revenue authorities. As a result, the assessment of the service tax was undervalued or no service tax returns and consequently no service tax have been paid at all. In that event, the revenue authorities will also be entitled to raise a claim within 5 years from the relevant date. This fundamental purpose of Sec. 73 has also remained un-amended. The nature of the amendments effected in Section 73 may be summarized below:-

- a) When the taxpayer pays the unpaid service tax before the issuance of the show cause notice, the amount of penalty that may be imposed.
- b) When the taxpayer has paid the unpaid service tax immediately upon the service of the show cause notice upon him, the amount of penalty that may be imposed.
- c) The length of the period of limitation that should apply to the issuance of a show cause notice when the taxpayer is

not at fault but the revenue authority is at fault, for the under-assessment of service tax.

- d) The length of the period of limitation that should apply to the issuance of a show cause notice when the taxpayer has suppressed information to evade tax.

54. Clearly therefore, the amendments introduced to Section 73 is to ensure that taxable services do not go un-assessed or under-assessed, as the case may be. This is evident from the amendment to the period of limitation. The period of limitation has been increased from time to time. This is further evident from a higher period of limitation fixed to recover unpaid service tax, when the taxpayer has suppressed information to evade tax.

55. Amendments to Section 73 have encouraged a taxpayer to duly pay the correct amount of service tax. In that regard, section 73 has provided that if a person pays the unpaid service tax before the issuance of the show cause notice, the penalty will be lesser. Whereas when paid after the issuance of the show causes notice, the penalty will be higher. Clearly therefore, the period of limitation under Sec.73 should be interpreted in a way that encourages the taxpayer to pay the unpaid service tax.

56. Section 73 prescribes two different periods of limitation for the said two situations. A limitation period of 1 year 6 months has been fixed for recovering unpaid service tax in the first situation. Whereas, a limitation

period of 5 years is fixed for recovering unpaid tax in the second situation.

57. In the first situation, the service tax has remained unpaid due to the fault of the revenue authority. In the second situation the service tax remained unpaid because the tax payer made misleading statements in its returns.

58. The fixation of different limitation periods has a purpose. The Legislature has indeed taken note of the situation at ground zero and genuine difficulties faced by the revenue authority to trace unpaid service tax. In a case where the taxpayer has suppressed facts to evade tax, the revenue authority may not be able to immediately call out the said action of the taxpayer and raise a claim. The revenue authority may need to be tipped off or conduct its own research to know that an entity is evading tax. Thus, a higher period of limitation is fixed i.e. 5 years.

59. However, when the taxpayer has presented all relevant facts before the revenue authority in its returns, a lower period of limitation is fixed to recover the unpaid service tax i.e. 2 years. The latter case is based on the premise that a citizen should not suffer due to the fault of the state. The Legislature expected that the revenue authority will act swiftly to detect any under-assessed return, when the taxpayer had filed correct tax returns, hence, a lower period of limitation has been prescribed.

60. In light of the above, the plea for an extended period limitation has to be considered.

61. The appellant has argued that the claim of service tax relates to the financial year 1999 onwards. The show cause notice for the said claim however was issued on September 13, 2004. The appellant has argued that it is covered by the first situation of section 73, where the taxpayer is not at fault. The limitation period therefor will be of 1 year and 6 months. The said claim is thus time barred having been issued after 4 year whereas it ought to have been issued within 1 years and 6 months from September, 1999.

62. This Court notes that the cause of action for the show-cause notice dated September 13, 2004, stood revived on January 29, 2004. On January 29, 2004, the revenue authority visited the official premises of the appellant. On that very date, the Appellant paid Rs 5, 32, 744, (rupees five lakhs, thirty-two thousand and seven hundred and forty-four) and Rs 20 lakhs(twenty lakhs) towards the past service tax dues i.e. from September 1999 onwards.

63. The principle flowing from Section 18 of the Limitation Act, 1936 can be applied to the said payments. Indeed Section 18 provides for acknowledgement of debt before the expiration of period of limitation. The said Section however codifies the principle that when the debtor comes forward and admits his liability, the said admission renews the cause of action. Reference in this regard may be made to the decision in

Il & Fs Financial Services Limited Appellant (S) Versus

AdhunikMeghalaya Steels Private Limited reported in 2025 INSC

911, wherein it was held as follows:-

27. It will be clear from the above passage that an acknowledgment of debt merely renews the debt and does not create a new right of action. It is further essential that the acknowledgment must relate to a subsisting liability and must indicate the jural relationship between the parties such as that of debtor and creditor, and it must appear that the statement is made with the intention to admit such jural relationship. It was also held that such intention can be inferred by implication from the nature of the admission and need not be expressed in words. It has also been held that in construing the words used in the statements, surrounding circumstances can always be considered and that Courts lean in favour of a liberal construction of such statements, though intention cannot be fastened by an involved or far-fetched process of reasoning.

64. The said payment has established the jural relationship between the appellant and revenue authority i.e. relationship between the taxpayer and tax-collector. The jural relationship was with regard to 'Clearing and Forwarding' services provided by the appellant to the said two companies. The amount of the said payment by the appellant, however, did not cover all the past dues of service tax. Accordingly, the general manager of the appellant was interrogated on June 10, 2004. On September 13, 2004, the Show Cause Notice was issued.

65. Thus, assuming that the appellant did not commit any wrong and thus the limitation period of 1 year and 6 months will apply, then also, the show cause notice was issued within 2 years from January 29, 2004, when the appellant made the said payment towards past service tax dues.

66. The said payments are covered under sub-section 4A of Section 73. The said sub-section 4A of Section 73 stood omitted by the Finance Act , 2015 w.e.f. 14.05.2015. Since the payment was made on January 29, 2004 before sub-section 4A was omitted, it would apply to the said payment. Sub section 4A of section 73 is set out below:-

(4A) Notwithstanding anything contained in sub-section (4), **where during the course of any audit, investigation or verification, it is found that any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, but the true and complete details of transactions are available in the specified records, the person chargeable to service tax or to whom erroneous refund has been made, may pay the service tax in full or in part, as he may accept to be the amount of tax chargeable or erroneously refunded along with interest payable thereon under section 75 and penalty equal to one per cent of such tax, for each month, for the period during which the default continues, up to a maximum of twenty-five per cent of the tax amount, before service of notice on him and inform the Central Excise Officer of such payment in writing, who, on receipt of such information, shall not serve any notice under sub-section (1) in respect of the amount so paid and proceedings in respect of the said amount of service tax shall be deemed to have been concluded:**

Provided that the Central Excise Officer may determine the amount of service tax, if any, due from such person, which in his opinion remains to be paid by such person and **shall proceed to recover such amount in the manner specified in sub-section (1).**

Explanation.-For the purposes of this sub-section and section 78, **"specified records" means records including computerized data as are required to be maintained by an assessee in accordance with any law for the time being in force or where there is no such requirement, the invoices recorded by the assessee in the books of account shall be considered as the specified records.**

67. Sub section 4A of Section 73 covers a situation where the tax payer has cleared the past service tax dues upon the investigation or verification conducted by the revenue authority. On January 29th, 2004,

the revenue authority visited the office premises of the appellant. The said visit thus falls within the scope of investigation or verification under sub-section 4A of Sec.73.

68. During the said visit, the revenue authority came to learn about the deficit payment of service tax by the appellant. Admittedly, the revenue authority has issued the said show cause notice based on the information revealed during the office visit of the appellant and from the invoices produced by the general manager of the appellant during interrogation. Thus, the information has been fetched from the specified records adverted to under Subsection 4A of Section 73. Subsection 4A is unique in the sense that it says that the taxpayer may have suppressed information, but the taxpayer has properly maintained his business records in its custody. It has brought all his business returns on its books. The taxpayer has, however, not supplied the same to the revenue authority. The proper maintenance of records with the appellant firm has enabled the revenue authority to assess the service tax.

69. The appellant firm on January 29th, 2004 made payments of Rs. 5, 32,744 (Rupees five lakhs, thirty-two thousand and seven hundred and forty-four) and Rs 20 lakhs towards past dues. Thus, the appellant has made the said payment before issuance of the said show cause notice on September 13, 2004. The appellant therefore is squarely covered under the said sub-section 4A of Section 73.

70. The proviso to the sub-section 4A states that after the payment of the unpaid service tax by the taxpayer when the revenue authority finds that the taxpayer needs to pay more, the revenue may issue a show cause notice calling upon the taxpayer to pay the rest.

71. The appellant has paid the said amounts towards the past service tax dues. Thereafter, the revenue authority on finding a deficit on the said payment has issued the said show cause notice. Subsection 4A does not provide for a period of limitation in it. It refers to the period of limitation provided subsection (1) of Section 73 to recover the said deficit service tax. The appellant will be covered by the 5 years of limitation since the appellant has suppressed information available to it. The period of 5 years will begin from the relevant date. The relevant date is explained under sub section 6 of Section 73 of the Finance Act, 1994 as follows:-

(6) For the purposes of this section, "**relevant date**" means,-

(i) in the case of taxable service in respect of which service tax has not been levied or paid or has been short-levied or short-paid-

(a) where under the rules made under this Chapter, a periodical return, showing particulars of service tax paid during the period to which the said return relates, is to be filed by an assessee, the date on which such return is so filed,

(b) where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules;

(c) in any other case, the date on which the service tax is to be paid under this Chapter or the rules made thereunder;

72. Service tax for the clearing and forwarding services is to be paid periodically. Sub clause a(i) of sub-section 6 of section 73 is thus attracted. It says that the relevant date for periodical filing of a return is the date on which the same is actually filed. Since on January 29 2004, the said payment was made, the 5-year time period will begin from that date.
73. Thus, the show cause notice was issued in terms of sub section 4A to Section 73. The cause of action under the said sub section 4A arose on January 29, 2004 when the appellant made payments to the past service tax dues. Subsection 4A also provides for the penalty to be imposed on the taxpayer.
74. Sub section 1A and 3 of Section 73 are inapplicable to the appellant firm. Sub-section 1A provides when the past service tax dues has been paid after the issuance of the show cause notice. In the present case, the appellant made the payment towards the past dues before the issuance of the show cause notice. Sub-section 3 is also not applicable since the same is applicable to the payment of past service tax which is to be paid after May, 2004. In the present case the appellant ought to have paid the service tax from September, 1999.
75. We are conscious of the fact that the services of the appellant came under the radar of the authorities, for the first time on April 19, 2002. On that said date, the revenue authority conducted a search and seizure operation in the office premises of the appellant. Indeed, the revenue

authority did not immediately act qua the appellant from the said date of the search and seizure.

76. This Court however cannot ignore the intervening event that took place after the date of search and seizure i.e. 37 days from the said seizure and search operation, the appellant registered itself under the Central Excise Act. The appellant therefore made an attempt to represent itself as a purported honest taxpayer.

77. Indeed, the revenue authority ought to have called upon the appellant to clear all past Service Tax dues as a condition precedent for the said registration. Even otherwise, the revenue authority ought to have issued notice under sec. 73 of the Finance Act to the appellant to clear the service tax dues. The inefficiency and lackadaisical approach of the revenue authority should not however be read to confer an advantage to a tax evader, when the tax dues can be legally recovered.

78. The appellant having paid some amounts towards the past dues of service tax has revived the cause of action. The said payment was voluntary. The cause of action for the show cause notice thus clearly arose on January 29, 2004, when the appellant made payments to the past dues of the service tax.

79. The appellant even otherwise has consciously omitted to file its returns under Section 70. It did not file its return for the period beginning from September 1999 when the appellant started to provide clearing and forwarding services to TISCO and TRL.

80. The first part of the sub clause (a) of Section 73 (1) is thus applicable to the appellant firm. The revenue authority did not have any information from the appellant as regards its business transactions with the TISCO and TRL in Kolkata from September, 1999 till April 19, 2002 when the said search and seizure was carried out in the office premises of the appellant firm.

81. Thus, the limitation period of 5 years applies to the claim of service tax against the appellant. In view of the above, the revenue authority had 5 years to raise a claim against the appellant from the date when it made the payment on January 29, 2004 towards the past service tax dues under sub-section 4A to Section 73 of the Finance Act. Reference in this regard may be made to the decision in ***M/S. Stemcyte India Therapeutics Pvt. Ltd. V. Commissioner Of Central Excise And Service Tax, Ahmedabad – III reported in 2025 INSC 841***, wherein it was held as follows:-

9.3. It is a settled principle of law that, for the department to invoke the extended period of limitation, **there must be an active and deliberate act on the part of the assessee to evade payment of tax.** Mere non-payment of tax, without any element of intent or suppression, is not sufficient to attract the extended limitation period....

9.4. Therefore, in the absence of fraud, collusion, wilful misstatement, or suppression of facts with an intent to evade payment of service tax, the invocation of the extended period of limitation under Section 73 of the Finance Act, 1994 is wholly unwarranted. Mere non-payment of service tax, by itself, does not justify the invocation of the extended limitation period. Accordingly, the show cause notice issued by the department is clearly time-barred. On this ground alone, the impugned order deserves to be set aside.

CONCLUSIONS-

82. In view of the above, it is ruled that the appellant firm has provided clearing and forwarding services to the companies, TISCO and TRL. To that extent, the decision of the first authority and the appellate tribunal is upheld.
83. The claim of service tax for bending and bundling services and stock verification services raised by the revenue authority under the head Clearing and Forwarding services is hereby quashed. The revenue authority will be at liberty to tax the said services in accordance with law.
84. The appellate tribunal has not decided the point of limitation discussed hereinabove. It is evident from the above that the Ld. Tribunal had clear and adequate evidence before it to rule on the point of limitation and the quantum of penalty. This Court notes with anguish, an attitude of “passing the buck” and abdication of responsibility on the part of the Tribunal. The judgment and order dated May 29, 2008 of the Ld. Tribunal to the extent that it that the remanded issue of limitation and imposition of penalty to the first authority is thus set aside.
85. A remand can only be made when the evidence on record is inadequate for the appellate authority to rule upon the point raised. Consequently, the issue is remanded to the first authority for recording of evidence and decision. An order of remand is also made when the first

authority has not decided an issue and the appellate forum to ensure that parties do not lose a forum passes an order of remand.

86. This Court having ruled on the point of limitation and having held that the show cause notice dated September 13, 2004 was not time barred, it is now incumbent upon this Court to decide the point of imposition of penalty.

87. The first authority and appellate tribunal has not considered the application of Section 4A of section 73 of the Finance Act, 1994 to the appellant firm. The same, inter alia, provides for the imposition of penalty. Thus the following is ordered on the quantum of penalty to be imposed:-

A. Under subsection 4A of Section 73, the minimum amount of penalty is 1% of the tax amount and the maximum amount is 25% thereof. The amount of penalty is computed on monthly basis. This Court is of the view that a penalty at the rate of 15% of the tax amount shall be imposed on the appellant firm.

B. The appellant shall therefore pay a 15% penalty on the amount of service tax to be computed on monthly basis from the total service tax of Rs. 49,27,918 (Rupees forty-nine lakhs, twenty seven thousand, and nine hundred and eighty only). The said total amount thus shall be broken up month-

wise. The said service tax is raised for the period September 1st, 1999 to 31st, March, 2002.

C. The appellant shall pay 15% penalty on the on the amount of service tax to be computed on monthly basis from the total service tax of Rs 36,56,555 (thirty-six lakhs, fifty-six thousand and five hundred and fifty- five). The said amount shall be broken up month-wise. The said amount is raised for the period September, 1999- March 2004.

D. The appellant shall finally pay 15% penalty on the amount of service tax to be computed on monthly basis from the total service tax of Rs 48,396 (Forty eight thousand and three hundred and ninety six). The said amount shall be broken up month-wise. The said amount is raised for the period September 27, 2002 to May 10, 2004.

88. Since the appellant has voluntarily registered itself under the Central Excise Act after the search and seizure operation conducted by the revenue authority, the court has leaned in favour of a reduction of penalty. The conduct of the revenue authority in not immediately issuing a show cause for the payment of service tax after the search and seizure operation has also persuaded us to lean in favour of the said reduction. The penalty however has to be imposed in view of the deliberate omission of the appellant firm to pay the service tax from the period September 1999.

89. The appellant and the revenue authority have submitted that the former has deposited security money as a condition precedent for the hearing of the subject appeal with the Registrar, Original Side.
90. Thus, the revenue authority shall raise a fresh demand within 7 days from the date of pronouncement of this judgment as regards the service tax for the clearing and forwarding services upon the appellant strictly in terms of paragraphs nos.39 and 40 of this judgment. The said paragraphs have upheld the amount of service tax levied upon the appellant for clearing and forwarding services. There shall be a simple interest of 10% per annum on the consolidated amount of the service tax to be paid by the appellant under the tax bracket of 'Clearing and Forwarding services'. The said interest shall be computed from the date of filing of this appeal to the date of the actual payment by the appellant.
91. The revenue authority shall also raise a demand for the amount of the penalty strictly in terms of paragraph no. 81(b), 81(c) and 81(d). The demand of service tax and penalty shall be raised at once.
92. The aforesaid demands of the service tax along with interest and the amount of penalty shall be furnished to the appellant and to the Registrar General of this Court. The latter shall ascertain as to whether the security money so deposited by the appellant meets the amount of service tax and penalty raised afresh by the respondent revenue authority as stated above.

93. The Registrar General of this Court, shall thereafter pay the security money to the revenue authority. After such payment by the Registrar General, if the appellant still continues to be liable to pay, it shall pay the rest within 7 days from the date of the payment made by the Registrar General to the revenue authority. The Registrar General shall file a compliance report within 2 months from date.
94. With the aforesaid discussions and directions, CEXA 49 of 2009 stands disposed off.

(RAJASEKHAR MANTHA, J.)

I agree.

(AJAY KUMAR GUPTA, J.)