CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 51357 of 2014

[Arising out of Order-in-Original No. 81/ST/CHD-II/2013 dated 04.12.2013 passed by the Commissioner of Central Excise-II, Chandigarh]

M/s National Institute of Electronics and Information Technology ……**Appellant**
SCO-114-116, Sector-17B, Chandigarh

VERSUS

Commissioner of Central Excise and Service Tax, Chandigarh-II ……**Respondent**
Plot No.19, Central Revenue Building, Sector-17,
Chandigarh-160017

APPEARANCE:

Ms. Krati Singh and Shri Monarch Mittal, Advocates for the Appellant
Shri Anurag Kumar and Shri Harish Kapoor, Authorized Representatives for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.60359/2025

DATE OF HEARING: 03.03.2025
DATE OF DECISION: 03.03.2025

PER: P. ANJANI KUAMR:

Heard both sides and perused the records of the case.

2. The appellants are an autonomous body of Central Government working under the Ministry of Communications and IT,

engaged in Data Processing Services to State Electricity Boards such as Punjab State Power Corporation, Dakshin Haryana Bijli Vitran Nigam, Uttar Haryana Bijli Vitran Nigam, U.T Chandigarh. In terms of the Agreements, the appellant was engaged in printing the electricity bills for the electricity authorities at the rates agreed for at the rate of 9% over the expenses and service tax. Stationary was either supplied by the authorities or the expenses incurred for the same was reimbursed to the appellant; the Revenue issued a show cause notice dated 04.04.2012 covering the period 01.10.2006 to 31.12.2011 alleging that the expenses incurred for the stationary, reimbursed by the electricity authorities, should be included in the assessable value of the service tax payable by the appellants. The show cause notice was adjudicated vide impugned order dated 04.04.2012 confirming the service tax of Rs.83,92,094/- along with interest and equal penalty under Section 78 of the Finance Act. Hence, this appeal.

3. Ms. Krati Singh, learned Counsel for the appellants submits that the issue is no longer *res integra*; the issue of includability of the cost of stationary reimbursed in the assessable value as per Section 67 of the Finance Act, 1994 read with Rule 5 of Valuation Rules is settled by a catena of judgments. It was held in those cases that prior to amendment w.e.f. 14.05.2005; the reimbursement of the expenses does not form part of the assessable value. Learned Counsel also submits that the impugned order is vague and does not specify the sub-clause of Business Auxiliary Service under which the services rendered by the appellant falls. The services rendered by

the appellant do not fall under any of the categories of Business Auxiliary Service. She also submits that service of providing computerized energy bills to electricity distribution authorities is exempt by virtue of Notification No.45/2010-ST dated 20.07.2010; the appellant's services are only to the extent of administrative charges and therefore are exempt; the sale of computer stationary is also exempt. She further submits that extended period is not invocable as the appellants were under the bona fide belief that the reimbursed stationary charges are not subject to service tax. She fairly submits that though the appellants have paid service tax under a mistaken notion, they are not agitating the issue on the taxability. As the tax itself was not payable, any addition to the same has no relevance. She relies on the following cases:

- Intercontinental Consultants & Technocrats Pvt. Ltd. vs. Union of India 2013 (29) S.T.R. 9 (Del.) [affirmed by Supreme Court in Union of India and Anr. vs. M/s. Intercontinental Consultants and Technocrats Pvt. Ltd. 2018 (10) G.S.T.L. 401 (S.C.)].
- Commissioner of CGST, Delhi South vs. Boeing India Defense Pvt. Ltd., 2024 (388) E.L.T. 37 (S.C.)
- Coca Cola India Inc vs. Commissioner of Service Tax, Delhi, Final Order No. 60586/2024 dated 18.10.2024- CESTAT Chandigarh.
- M/s Coforge Smartserve Limited (formerly known as NIIT Smartserve Ltd.) vs. Commissioner of Service Tax, New Delhi, Final Order No. A/60013/2024 dated 12.01.2024 - CESTAT Chandigarh
- Joshi Auto Zone Pvt. Ltd. vs. Commissioner of Service Tax, Chandigarh (Vice-Versa), Final Order No. A/60716-60717/2023 dated 20.12.2023 - CESTAT Chandigarh
- Dr. Jagjeet Singh Parwana vs. Commissioner of Central Excise and Service Tax, Chandigarh-II,

Final Order No. 60243/2023 dated 07.08.2023 CESTAT Chandigarh

- M/s Atlas Documentary Facilitators Company Pvt. Ltd. vs. Commissioner of Service Tax, Mumbai-I, 2017 (50) S.T.R. 22 (Tri.-Mumbai)
- Syndicate Bank v. CCE 2010 (19) S.T.R. 578 (Tri.-Bang.)
- RPG Transmission Limited and M/s KEC International Ltd vs. Commissioner of Service Tax, Delhi and Commissioner of Service Tax, Delhi-IV, Final Order No. 60092-60093/2025, dated 17.01.2025 - CESTAT Chandigarh
- M/s KEC International Ltd. vs. Commissioner of CGST, Gurgaon and Commissioner of S.T., Delhi, Final Order No. 60120-60121/2022, dated 23.08.2022-CESTAT Chandigarh
- M/s Kailash Devbuild India Pvt Ltd vs. The Commissioner of Central Excise, Jabalpur, Madhya Pradesh, Final Order No. 51681/2023, dated 22.12.2023 CESTAT New Delhi
- Kedar Constructions vs. Commissioner of C. Ex., Kolhapur, 2015 (37) S.T.R. 631 (Tri. - Mumbai)
- Tamilnadu Electricity Board vs. Commissioner of GST and Central Excise, Final Order No. 40963/2023, dated 30.10.2023 - CESTAT Chennai
- M/s S.K. Shah vs. CCE & ST, Kolhapur, Final Order No. A/88250/2018, dated 20.12.2018-CESTAT Mumbai
- Commissioner of Service Tax v Bhayana Builders Pvt. Ltd. 2018(10) G.S.T.L 118 (SC)
- Wipro Ge Medical Systems Pvt. Ltd. vs. Commr. Of S.T. Bangalore, 2009 (14) S.T.R. 43 (Tri.-Bang.) upheld by the Supreme Court in 2012 (28) S.T.R. J44 (S.C).
- Safety Retreading Company (P) Ltd. vs. Commissioner of Central Excise, Salem, M/s Tyresoles India Private Limited vs. The Commissioner of Central Excise, Goa and M/s Laxmi Tyres vs. Commissioner of Central Excise, Pune, 2017 (48) S.T.R. 97 (SC)
- State of Gujarat vs. Bharat Pest Control, 2018 (13) G.S.T.L. 401 (S.C.)
- Agrawal Colour Advance Photo System vs. Commissioner of Central Excise, 2020 (38) G. S. T. L. 298 (M.P.)
- M/s Waidhan Engineering and Industries Pvt. Ltd. vs. The Commissioner Customs, Central Excise and Service Tax, CEA No. 8/2014 (HC-Madhya Pradesh, Jabalpur)

- Commissioner of CE&ST, Kutch (Gandhidham) vs. Vidyut Transformers Pvt Limited, Final Order No. 11286-11287/2024, dated 12.06.2024 CESTAT Ahmedabad
- M/s Kashi Hospital vs. Commissioner of Central Excise & CGST, Varanasi, Final Order No. 70214/2024, dated 02.05.2024-CESTAT Allahabad
- Foto Flash vs. C.C.E & C.S.T. - Bangalore Service Tax-l, Final Order No. 20143/2022, dated 29.03.2022-CESTAT Bangalore
- M/s DOEACC Centre vs. CCE, Chandigarh, Final Order No. ST/A/58/12-Cus. dated 10.01.2012
- The Commissioner, Central Excise and Customs and Anr. v. M/s. Reliance Industries Ltd. and Commissioner of Central Excise and Service Tax v. M/s. Reliance Industries Ltd., 2023-TIOL-94-SC-CX

4. We find that the issue of includability of reimbursed expenses, incurred in the course of provision of service, has been decided by the Hon'ble Apex Court in the case of Intercontinental Consultants & Technocrats Pvt. Ltd. (supra). Hon'ble Apex Court held that:

> **21.** Undoubtedly, Rule 5 of the Rules, 2006 brings within its sweep the expenses which are incurred while rendering the service and are reimbursed, that is, for which the service receiver has made the payments to the assessees. As per these Rules, these reimbursable expenses also form part of 'gross amount charged'. Therefore, the core issue is as to whether Section 67 of the Act permits the subordinate legislation to be enacted in the said manner, as done by Rule 5. As noted above, prior to April 19, 2006, i.e., in the absence of any such Rule, the valuation was to be done as per the provisions of Section 67 of the Act.
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> **22.** Section 66 of the Act is the charging Section which reads as under:
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> "there shall be levy of tax (hereinafter referred to as the service tax) @ 12% of the value of taxable services referred to in sub-clauses of Section 65 and collected in such manner as may be prescribed."

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

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 qua* 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.

5. In view of the above, we have no doubt, whatsoever, that the issue is squarely covered in favour of the appellants. Further, as the appellants are not agitating the taxability of the service, we are not going into the exigibility of the service. We hold that there was no infirmity in the non-inclusion of the value of the stationary reimbursed by the electricity authorities. We also find that Department has not made out any case for invocation of extended period. In view of the same, we find that the issue is settled in favour of the appellants.

6. In the result, the appeal is allowed with consequential relief, if any, as per law.

(Operative part of the order pronounced in the open court)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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