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

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.77175 of 2019

(Arising out of Order-in-Appeal No.76/KOL-South/19 dated 30.05.2019 passed by Commissioner of CGST & CX, (Appeal-I), Kolkata.)

M/s. Belle Vue Clinic
(Dr. U.N. Brahmachari Street, Kolkata-700071.)

...Appellant

VERSUS

Commissioner, CGST & CX, Kolkata South Commissinerate
.....Respondent
(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

APPEARANCE

Shri Pulak Saha & Shri Shivam Arora, both FCA for the Appellant
Shri S.Dutta, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

FINAL ORDER NO. 76194/2026

DATE OF HEARING :03.09.2026
DATE OF DECISION : 22.09.2026

Per : R. MURALIDHAR :

The Appellant is registered with the jurisdictional Service Tax Department and has regularly discharged the Service Tax liability and filed its periodical statutory returns. The Appellant, in furtherance of its philanthropic objective of expanding ophthalmic care, joined hands with M.P. Birla Netralaya ("MPBN"), another charitable institution created by the M.P. Birla Group, for running and maintaining an eye care centre under the name Priyamvada Birla Aravind Eye Hospital (PBAEH). For this purpose, an area of approximately 35,000 sq. ft. in the Appellant's premises was allotted for operation of the Eye Hospital under a **Memorandum dated 01.06.2006**.The Appellant incurred common expenditure in relation to the premises such as maintenance charges, electricity charges, municipal taxes and other outgoings. The agreed mechanism as per Clause 6 of the Memorandum was merely to recover from MPBN its proportionate share of such common expenditure, based on the area allotted and expected utilization of the common facilities.During departmental audit in 2016, an objection was raised that the amount recovered from MPBN as reimbursement of expenses should be included in taxable value under Section 67 of the Finance Act, 1994 read with Rule 5 of the Service Tax (Determination of Value) Rules, 2006. The Appellant disputed the audit objection by its reply dated 22.03.2016.Thereafter, Show Cause Notice dated 08.04.2016 was issued proposing recovery of Service Tax amounting to Rs. 42,78,828/- along with interest and penalty, principally on the allegation that the said arrangement constituted "Renting of Immovable Property" and that the reimbursements represented consideration for the same and therefore the money collected should be treated as taxable in terms of Section 67 of the Finance Act, 1994 read with Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006.The Ld. Adjudicating Authority confirmed the demand of Rs. 42,78,828/- with interest and equal penalty. On appeal, the Commissioner (Appeals) dismissed the appeal filed by the appellant. Hence, the appellant is before the Tribunal.

2. The Ld Consultant appearing on behalf of the appellant, makes the following submissions:

2.1 The space has been provided for the Eye Hospital. The terms and conditions are as per the Memorandum entered into between the appellant and MPBN. The relevant portion of the Memorandum dated 1.6.2006 are as under:

2.2 The arrangement under the Memorandum is collaborative in nature-

Clause 1 records that the Eye Hospital would be maintained and run by MPBN in the allotted area.

Clause 2 records that the parties had collaborated for creation of the facilities of the Eye Hospital and

Clause 6 expressly provides that the common expenditure incurred or paid by the Appellant in respect of the area allotted to the Eye Hospital would be reimbursed by MPBN and, further, that the Appellant "***will not charge any rent from MPBN for the ear-marked area***".

Clause 15 specifically records that no transfer of any right, title or interest whatsoever in the allotted area was intended or given in favour of MPBN.

2.3 The Appellant incurred common expenditure in relation to the premises such as maintenance charges, electricity charges, municipal and taxes and other outgoings. The agreed mechanism as per Clause 6 of the Memorandum was merely to recover from MPBN its proportionate share of such common expenditure, based on the area allotted and expected utilization of the common facilities. Extracts of the share of expenses between BVC and PBAEH regarding various expenses which has to be collected proportionately have been furnished below:

Details of Realisable	**Share of PBAEH**
Electricity bill of no. 9 Loudon Street	7% of total bill
Electricity bill of no. 10 Loudon Street	30% of total bill
Corporation Tax of no. 10 Loudon Street	44.10% of total bill

Water Tax / charge of no. 10 Loudon Street	20% of total bill
HSD Consumption for Generator of no. 10 Loudon Street	35% of total bill
AMC for Fire Detection & Fighting System of no. 10 Loudon Street	44.10% of total bill
UPS AMC	44.10% of total bill
AMC of AC plant	22% of total bill
CMC of 4 Lifts of no. 10 Loudon Street	44.10% of total bill
CMC of Telephone EPABX of no. 10 Loudon Street	45.87% of total bill
Fire Insurance of no. 10 Loudon Street	44.10% of total bill
Others of miscellaneous nature having common interest	50% of total expenses
Payable :	
Car Parking payable to PBAEH	50% of total receipt

2.4 The Appellant states that acting on a *bona fide* understanding that a mere recovery of proportionate common expenses did not constitute consideration for any taxable service, and accordingly the Appellant did not collect Service Tax from MPBN on such reimbursements and did not discharge Service Tax on the same.

2.5 The Ld. Adjudicating Authority confirmed the demand of Rs. 42,78,828/- with interest and equal penalty. While doing so, the authority himself recorded the contractual stipulation that the Appellant would not charge any rent from MPBN, but nevertheless treated the reimbursements of maintenance, electricity, municipal taxes and other outgoings as consideration by applying Section 67 read with Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006.

2.6 The Appellant states that the impugned conclusion proceeds on a fundamental error. Even assuming, without admitting, that the arrangement could be characterized as "renting of immovable property", the levy cannot survive because the agreed rent is expressly nil and the only amounts received are reimbursements which, for the entire disputed period, could not form part of taxable consideration under Section 67.

2.7 The Appellant states that Clause 6 of the Memorandum is categorical and leaves no ambiguity-

> *"The monthly maintenance charges, electricity charges, municipal rates and taxes and other outgoings in respect of the area allocated to Eye Hospital incurred and/or paid by BVC shall be reimbursed to it by MPBN.* ***BVC, for the time being, will not charge any rent from MPBN for the ear-marked area****."*

Thus, the Memorandum itself states that only common expenditures are to be reimbursed proportionately and no rent will be charged for the ear-marked area.

2.8 The Appellant submits that during the disputed period Section 67 did not include reimbursable expenditure or cost within the scope of consideration. It was only by virtue of the amendment made by the Finance Act, 2015 that the expression "consideration" was expanded 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.

2.9 The Appellant further submits that, prior to **14.05.2015**, Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 travelled beyond the mandate of Section 67 of the Finance Act, 1994. While Rule 5(1) purported to treat all expenditure or costs incurred by a service provider in the course of providing a taxable service as consideration and include the same in the taxable value, the pre-amended Section 67 did not recognise reimbursable expenditure or cost as part of "consideration". Therefore, Rule 5(1), being a subordinate legislation, could not enlarge the scope of Section 67 by bringing within the taxable value an amount which the substantive provision itself did not authorise.

2.10 The Appellant submits that the aforesaid issue stands directly answered by the Hon’ble Supreme Court in ***Union of India &Anr. v. Intercontinental Consultants and Technocrats Pvt. Ltd., [reported in 2018 (3) TMI 357 – Supreme Court or (2018) 91 taxmann.com 67 (SC)]***. In paragraph 29 of the judgment, the Hon’ble Supreme Court specifically noticed that Section 67, as it stood prior to 14.05.2015, did not include reimbursable expenditure or cost within the scope of consideration. It was only by virtue of the amendment made by the Finance Act, 2015 with effect from 14.05.2015 that the expression “consideration” was expanded so as 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.

2.11 The Appellant submits that the Hon’ble Supreme Court further held that the amendment brought about with effect from 14.05.2015 was a substantive change and, therefore, was prospective in operation. Thus, reimbursable expenditure or cost became includible in the valuation of taxable services only from 14.05.2015 and not for any period prior thereto.

2.12 The Appellant submits that the reimbursements received by the Appellant towards common maintenance, electricity, municipal taxes and other outgoings cannot be included in the value of the alleged renting service for the disputed period. The impugned demand, being computed entirely on such reimbursements, is unsustainable on this ground alone.

2.13 The Appellant submits that the proviso to Section 73(1) can be invoked only in situations where any Service Tax has not been levied or paid or has been short levied or short paid or erroneously refunded by reasons of fraud, collusion, willful misstatement, suppression of facts or contravention of any of the provisions of the Act or of the rules made thereunder with an intention to evade payment of Service Tax.

2.14 The Appellant submits that it acted under a *bona fide* belief, founded upon a rational interpretation of the statutory scheme, that reimbursement of proportionate common expenses did not constitute taxable consideration. The inclusion of reimbursable expenditure in the value of taxable services remained a subject of prolonged litigation and was ultimately settled by the Hon'ble Supreme Court in ***Union of India v. Intercontinental Consultants and Technocrats Pvt. Ltd. (supra.)***, wherein it was held that such expenditure became includible under Section 67 only prospectively with effect from 14.05.2015. This itself demonstrates that the issue was interpretational during the disputed period. An interpretation sufficiently tenable to be ultimately accepted by the Hon'ble Supreme Court cannot be characterised as a deliberate device adopted by the Appellant with intent to evade payment of Service Tax.

3. In view of the above submissions, the Ld Consultant prays that the impugned order may be set aside and the appeal may be allowed.

4. The Ld. AR, appearing for the Revenue submits that even though the appellant is not collecting any Rent as such from MPBN, they are charging same in the guise of reimbursement on account of various expenses incurred by the appellant in respect of Electricity Charges, Water Charges, Corporation Tax, AMC charges etc. These are nothing but the consideration received by the appellant. In terms of Section 67 of the Finance Act 1994, the appellant is required to pay the Service Tax on the same. Since the appellant has not declared the income derived on these counts in their Returns, the Department had

undertaken detailed Audit and verification of the unit, wherein the contravention came to light. Therefore, he justifies the confirmed demand. He prays that the appeal may be dismissed.

5. Heard both the sides. Perused the appeal papers and further submissions made.

6. Admittedly, the appellant has given part of their premises to the Eye Care unit [MPBN], without charging any Rent as such for the accommodation provided. For providing the space of this purpose, the parties have entered into a Memorandum dated 1.6.2006. The relevant portion of this Memorandum is reproduced below:

> **Clause 1** records that the Eye Hospital would be maintained and run by MPBN in the allotted area.
>
> **Clause 2** records that the parties had collaborated for creation of the facilities of the Eye Hospital and
>
> **Clause 6**"*The monthly maintenance charges, electricity charges, municipal rates and taxes and other outgoings in respect of the area allocated to Eye Hospital incurred and/or paid by BVC shall be reimbursed to it by MPBN.* ***BVC, for the time being, will not charge any rent from MPBN for the ear-marked area****."*
>
> **Clause 15** specifically records that no transfer of any right, title or interest whatsoever in the allotted area was intended or given in favour of MPBN.

The amount to be reimbursed by MPBN is as per the following Table:

Details of Realisable	Share of PBAEH
Electricity bill of no. 9 Loudon Street	7% of total bill

Electricity bill of no. 10 Loudon Street	30% of total bill
Corporation Tax of no. 10 Loudon Street	44.10% of total bill
Water Tax / charge of no. 10 Loudon Street	20% of total bill
HSD Consumption for Generator of no. 10 Loudon Street	35% of total bill
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CMC of Telephone EPABX of no. 10 Loudon Street	45.87% of total bill
Fire Insurance of no. 10 Loudon Street	44.10% of total bill
Others of miscellaneous nature having common interest	50% of total expenses
Payable :	
Car Parking payable to PBAEH	50% of total receipt

7. A harmonious reading of the Clauses of the Memorandum and the Expenses Sharing details given in the above Table, clarifies that no amount is being charged on MPBN towards 'Rent'. The total expenditure being incurred the appellant on account of various utilities like Electricity Charges, Water Charges, Municipal Taxes, AMC for various capital goods etc. are being shared between both the parties.

8. In the present case, the amounts received by the appellant on account of such reimbursements is for the period October 2010 to March 2015. During this period, the reimbursements were sought to be added to the value by Revenue in view of the Rule 5 (1) of the Service Tax Valuation Rules, which reads as under:

5. Inclusion in or exclusion from value of certain expenditure or costs.-

> ***(1)*** *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.*

9. The issue, as to whether the reimbursements could be added to the value of consideration for demanding Service, reached the High Court and the Hon'ble Supreme Court. The Hon'ble Supreme Court in the case of ***Union of India &Anr. v. Intercontinental Consultants and Technocrats Pvt. Ltd.- 2018 (3) TMI 357 – Supreme Court,*** wherein the Hon'ble Supreme Court, affirming the decision of the High Court, has held as under:

> *"24) In this hue, the expression 'such' occurring in Section 67 of the Act assumes importance. <u>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</u>.*
>
> *As a fortiori, any other amount which is calculated not for providing such taxable service cannot a part ofthat 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 toMay 01, 2006) or after its amendment, with effect from, May 01, 2006. Once this interpretation is to begiven to Section 67, <u>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</u>*

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."

10. The Rule 5(1) has been held to be *ultra vires* vis-à-vis Section 67 as it was prevailing during the period under dispute. In the present case, since the period under consideration for the period 2010 till 31.3.2015, the cited decision of the Hon'ble Supreme Court is squarely applicable. Therefore, on this ground itself we set aside the impugned order and allow the appeal on merits.

11. The lower authorities have cited the amended Section 67 provisions extracted below, which came into effect from 14.05.2015:

67. Valuation of taxable services for charging service tax

(1) Subject to the provisions of this Chapter, service tax chargeable on any taxable service with reference to its value shall,-

(i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him*;*

(ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money, with the addition of service tax charged, is equivalent to the consideration;

(iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.

(2) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

(3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.

(4) Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed

Explanation.-*For the purposes of this section,-*

*****(a) "***consideration***" *includes-*

(i) any amount that is payable for the taxable services provided or to be provided;

(ii) any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed;

(iii) any amount retained by the lottery distributor or selling agent from gross sale amount of lottery ticket in addition to the fee or commission, if any, or, as the case may be, the discount received, that is to say, the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such ticket.]

******Substituted vide THE FINANCE ACT, 2015 w.e.f. 14th May 2015, before it was read as, "(a) "consideration" includes any* *amount that is payable for the taxable services provided or to be provided;"*

12. As to whetherthis amendment brought in would have retrospective / prospective effect, was also considered by the Hon'ble Supreme Court in the case of cited decision of Intercontinental, which has held as under:

> *"29) Realising that Section 67, dealing with valuation of taxable services, does not includereimbursable expenses for providing such service, the Legislature amended by Finance Act, 2015 witheffect from May 14, 2015, whereby Clause (a) which deals with 'consideration' is suitably amended toinclude reimbursable expenditure or cost incurred by the service provider and charged, in the course ofproviding or agreeing to provide a taxable service.* ***<u>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.</u>*** *Though, it was not argued by the learned counsel for theDepartment that Section 67 is a declaratory provision, nor could it be argued so, as we find that this is asubstantive change brought about with the amendment to Section 67 and, therefore, has to be prospectivein nature………."*

13. Therefore, the lower authorities are in error in citing the amended Section 67 to hold that even in case of reimbursement of the shared expenditure, the same would part of the consideration of the appellant.

14. In view of the foregoing, we set aside the confirmed demand on merits.

15. We also find that the appellant has given clear demarcation of the sharing of expenditure between both the parties. The Revenue has not brought in any evidence to the effect that the appellant has realized any higher amount other than what has been shown in the expenses sharing table discussed above. Since the accommodation has been given free of charge, the appellant is getting the common expenditure defrayed with the MPBN. Since the same was being treated as reimbursement, the appellant could have carried *bonafide*belief that reimbursement is not required to be added to the value for Service Tax payment . There is nothing to indicate that the appellant has realized the Service Tax from MPBN and not paid the same to the Department. Further, the appellant is a Service Tax paying assessee and has been filing their Returns. Therefore, we hold that the Revenue has not made any case of suppression with an intent to evade Service Tax payment against the appellant. Hence, we set aside the confirmed demand in respect of the extended period on account of time bar also.

16. As a result, the appeal is allowed on merits and on account of time bar [to extent of extended period]. The appellant would be eligible for consequential relief, if any as per law.

(Order pronounced in the open court on 22.09.2026.)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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