IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Service Tax Appeal No. 42089 of 2016

(Arising out of Order-in-Appeal No. 345/2016 (STA – I) dated 13.6.2016 passed by the Commissioner of Service Tax (Appeals – I), Chennai)

And

Service Tax Appeal No. 42122 of 2016

(Arising out of Order-in-Appeal No. 453/2016 (STA – I) dated 29.7.2016 passed by the Commissioner of Service Tax (Appeals – I), Chennai)

National Small Industries Corporation Ltd. **Appellant**
B24, Software Technology Park
Guindy Industrial Estate
Chennai – 600 032.

Vs.

Commissioner of GST & Central Excise **Respondent**
Chennai South Commissionerate
MHU Complex, No. 692, Anna Salai
Nandhanam, Chennai – 600 035.

APPEARANCE:

Shri Vijay Anand, Chartered Accountant for the Appellant
Smt. G. Krupa, Authorised Representative for the Respondent

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Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

FINAL ORDER NOS.41220 & 41221/2026

Date of Hearing: 02.06.2026
Date of Decision: 26.11.2026

Per M. Ajit Kumar,

These appeals are filed by the appellant against Order-in-Appeal No. 345/2016 (STA–I) dated 13.6.2016 and Order in Appeal No.453/2016 (STA–I) dated 29.7.2016 both passed by the Commissioner of Service Tax (Appeals – I), Chennai.

Factual Matrix

2. The brief facts of the case are that the appellant is engaged in providing Renting of Immovable Property Service and is registered with the Service Tax Department. During the course of audit, it was noticed that the appellant had collected electricity (TNEB) charges, fixed generator charges and housekeeping charges from its tenants. However, electricity and generator charges were not included in the taxable value for payment of service tax, and service tax was not discharged on housekeeping charges, which were considered taxable under 'Maintenance or Repair Service' in terms of Section 65(64) of the Finance Act, 1994. Accordingly, two Show Cause Notices dated 13.09.2010 and 08.04.2011 were issued proposing service tax demands of Rs.32,06,059/- on electricity and generator charges for June 2007 to September 2009, Rs.5,10,737/- on housekeeping charges for June 2005 to May 2007, and Rs.13,72,602/- on electricity and generator charges for October 2009 to September 2010. The Ld. Adjudicating Authority confirmed the demands along with interest but refrained from imposing penalties. The appellant challenged the demand before the Ld. Commissioner (Appeals), while the Department appealed against the non-imposition of penalties under Sections 76 and 78 of the Finance Act, 1994. The Ld. Commissioner (Appeals) rejected the appellant's appeal and allowed the Department's appeal by imposing penalty under Section 78 in respect of the Show Cause Notice dated 13.09.2010 and under Section 76 in respect of the Show Cause Notice dated 08.04.2011. Aggrieved by the impugned order, the appellant has preferred the present appeal before this Tribunal.

3. The Ld. Chartered Accountant Shri V. Vijay Anand appeared for the appellant and Ld. Authorized Representative Smt. G. Krupa appeared for the respondent.

Submissions of the Appellant

3.1 Shri V. Vijay Anand the Ld. Chartered Accountant for the appellant submitted as follows:

A. The entire demand pertains to reimbursement of expenses collected from tenants on an actual basis. The Show Cause Notices proposed the demand by invoking Section 67(1) of the Finance Act, 1994, read with Rule 5 of the Service Tax (Determination of Value) Rules, 2006. It was submitted that the definition of 'consideration' under clause (a) of the Explanation to Section 67 was amended with effect from 14.05.2015 to specifically include reimbursable expenditure or costs incurred by the service provider and charged in the course of providing taxable services. Prior to the said amendment, the definition did not specifically include such reimbursements.

B. In its own case, similar demands for subsequent periods were dropped vide Order-in-Original No. 18-22/2022 dated 16.03.2022, which was upheld by the Commissioner (Appeals) vide Order-in-Appeal No. 190/191/2023 dated 28.04.2023. The Department has not challenged the said orders before the higher appellate forum. It was therefore contended that the Department has accepted the non-taxability of such reimbursements for the period prior to 14.05.2015.

C. Since he Department has not gone on appeal against the dropping of demand for the subsequent year, the department has not disputed the lack of authority to tax reimbursements till 14.05.2015 whereas the entire demand in the instant case is on the collection of reimbursements at actuals for the period prior to 14.05.2015. Hence

the impugned demand is unsustainable and that the appeal deserves to be allowed by setting aside the impugned order and refunding the monies appropriated in the OIO.

Submissions made by Revenue

3.2 Smt. G. Krupa the Ld. AR submitted on behalf of Revenue that:

A. The Appellant had registered with the Service Tax Department in June 2007 for providing Renting of Immovable Property Service and had been collecting rent and discharging service tax thereon. The maintenance charges and housekeeping charges collected from tenants were also taxable, as the definition under Section 65(64) of the Finance Act, 1994 covered management, maintenance and repair of immovable property, including such services brought within its scope with effect from 16.06.2005.

B. All expenditure and costs incurred by the service provider in the course of providing the taxable service, as well as all amounts received towards such service, formed part of the taxable consideration, irrespective of whether individual components were separately indicated in the invoices.

C. The Appellant had obtained an electricity connection from the Tamil Nadu Electricity Board and installed DG sets to provide power facilities to its tenants. The electricity charges collected from tenants were accounted for as 'other income' in the Profit and Loss Account. On this basis, Revenue contended that the electricity and generator charges were liable to be included in the taxable value of Renting of Immovable Property Service.

D. The Ld. A.R. prayed that the appeal may be rejected.

Discussion and Analysis

4. Heard the parties to the dispute and have carefully perused the appeal memorandum. We find that the main issue in the dispute is the inclusion of reimbursements received by the appellant from their tenants in the form of (i) collection of electricity charges and (ii) house keeping service charges. The demand in both the SCN's pertain to the period June 2007 to September 2009.

5. Revenue relied on Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006, which provides for inclusion of expenditure or costs incurred by the service provider in the course of providing a taxable service. Explanation 2 further clarifies that the total consideration includes all components of the taxable service, irrespective of whether they are separately indicated in the invoice. Per contra the Appellant has stated that similar demands for subsequent periods were dropped in the Appellant's own case by Order-in-Original No. 18-22/2022 dated 16.03.2022 and upheld by Order-in-Appeal No. 190/191/2023 dated 28.04.2023, which the Department has not challenged further.

6. Section 66 of the Finance Act, 1994 levies service tax on the value of taxable services, while Section 67, as it stood during the material period, confined the valuation to the gross amount charged for such services. Section 67 was subsequently amended by Section 111 of the Finance Act, 2015, with effect from 14.05.2015, to expressly include reimbursable expenditure or costs incurred by the service provider and charged to the recipient in the course of providing a taxable service. In **Intercontinental Consultants and Technocrats Pvt. Ltd. Vs Union of India** [2013 (29) S.T.R. 9 (Del.)], affirmed by the Hon'ble Supreme Court in [2018 (10) G.S.T.L. 401 (S.C.)], it was

held that Rule 5(1), insofar as it sought to include expenditure or costs which did not constitute consideration for the taxable service, travelled beyond the scope of Section 67 and was ultra vires Sections 66 and 67 of the Finance Act, 1994. The Supreme Court further held that the subsequent amendment to Section 67 was substantive and not merely clarificatory or declaratory and, therefore, operated prospectively. Consequently, for the period prior to 14.05.2015, reimbursable expenditure could not be included in the taxable value merely by invoking Rule 5(1), unless it constituted consideration for the taxable service under the unamended Section 67.

7. Applying the above principle, we find that in the absence of any contractual obligation or agreed consideration towards the reimbursement charges, such amounts cannot be subjected to service tax merely because they were recovered by the Appellant from its tenants. Since the entire period of demand in the present case precedes the amendment to Section 67, the ratio of the above decision squarely applies. The demand on such reimbursements is, therefore, unsustainable, and the consequential demand of interest and penalties is also liable to be set aside.

Conclusion

8. In view of the foregoing discussion and findings, the impugned orders are set aside and the demands of Service Tax, along with interest and penalties, are quashed. The appeals are allowed and disposed of accordingly.

(Order pronounced in open court on 26.11.2026)

Sd/-
(**M. AJIT KUMAR**)
Member (Technical)

Sd/-
(**P. DINESHA**)
Member (Judicial)

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