CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70006 of 2024

(Arising out of Order-in-Appeal No.1160 & 1161-ST/APPL/LKO/2022 dated 15.12.2022 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Lucknow)

Shri Rakesh Kumar Agarwal, **.....Appellant**
(C/o M/s R.K. Associates, Sinzai Chwok,
Shahjahanpur, U.P.)

VERSUS

Commissioner of Central Excise &
CGST, Lucknow **....Respondent**
(7-A, Ashok Marg, Lucknow)

WITH

Service Tax Appeal No.70088 of 2024

(Arising out of Order-in-Appeal No.1160 & 1161-ST/APPL/LKO/2022 dated 15.12.2022 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Lucknow)

Shri Rakesh Kumar Agarwal, **.....Appellant**
(C/o M/s R.K. Associates, Sinzai Chwok,
Shahjahanpur, U.P.)

VERSUS

Commissioner of Central Excise &
CGST, Lucknow **....Respondent**
(7-A, Ashok Marg, Lucknow)

APPEARANCE:

Shri Subodh Kumar Srivastava, Advocate for the Appellant
Shri Manish Raj, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NOs.- 70277-70278/2025

DATE OF HEARING : 11.04.2025
DATE OF PRONOUNCEMENT : 15.05.2025

Both the appeals have been filed by the Appellant assailing the Order-in-Appeal No.1160 & 1161-ST/APPL/LKO/2022 dated

15.12.2022 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Lucknow.

2. The facts of the case in brief are that on the basis of third party information received from the Income Tax Department[1] for the Financial Year 2015-16 to 2016-17, it was noticed by the Service Tax Department that the assessee had received an amount of Rs.34,67,283/- and Rs.26,67,360/- respectively but no service tax was paid on the said amounts. It is the case of the Department that they had sought for the Balance Sheets, Service Tax Returns, Ledger etc., from the assessee for verification of their service tax liability but there was no response to any of their correspondences and it has been mentioned that in the absence of any required documents, the whole amounts shown in the data provided by the ITD was considered as the taxable value and assessed the liability of short paid service tax amounting to Rs.5,02,756/- and Rs.4,00,104/- respectively. Subsequently, two show cause notices[2] were issued proposing the demand of service tax under Section 73(1) of the Finance Act, 1994 read with Section 142, 173 & 174 of the CGST Act, 2017. The Adjudicating Authority vide two separate Orders-in-Original of even date i.e. 31.12.2021 confirmed the demand as proposed in the SCN and also imposed penalty of equal amount under Section 78 and penalty of Rs.10,000/- each under Section 77(1)(b), 77(1)(c), 77(1)(d) and 77(2) and late fee under Section 70 of the Finance Act, 1994. The Appellants preferred appeal before the first Appellate Authority against both the Orders-in-Original and vide the impugned Orders-in-Appeal, learned Commissioner (Appeals) upheld both the Orders-in-Original. Hence, the present appeals before the Tribunal.

3. The learned Advocate appearing on behalf of the Appellant submits that the Appellant Shri Rakesh Kumar Agarwal is an approved land/property valuer involved in tendering land/property valuation services to designated Banks and other

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[1] ITD
[2] SCN

institutions, who provide loan to the needy persons. As per requirement of the Bank and other institutions, the Appellant got himself registered with the Service Tax Department though the taxable value of the Appellant was much below the threshold limit as provided by Notification No.33/2012-ST dated 20.06.2012. Since the services provided to the Bank and other institutions, involved some amount of pocket expenses in order to have verification details of the land/property from various district offices and other associated service providers like legal report, legal status, counsel report, Tehsildaar report, cost valuer report of the property, site map, map survey from the Revenue records, legal survey of the documents (Khasra, Khatauni), Stationery and civil instruments. Therefore, the Appellant used to charge the clients with the service charges alongwith reimbursement of expenses which were incurred by the Appellant on behalf of his clients in order to get various reports from the concerned district offices. The Appellant charged his professional fee/charges provided to the service recipients alongwith the reimbursable expenses incurred by the Appellant at various district offices in or in relation to complete the work assigned to him by the Bank and other institutions. The Banks have also issued the certificate certifying the payment of professional charges and reimbursable expenses. Since the total turnover with regard to professional fees in the Financial Year 2015-16 and 2016-17 was below the threshold limit and therefore no service tax was charged in the invoice/or collected from the clients.

A	**B**	**C**	**D**
Financial Year	Gross Receipts as per ITR/Balance Sheet	Value of reimbursable expenses	Taxable Value (B-C)
2015-16	34,67,283/-	26,06,623/-	8,60,660/-
2016-17	26,67,360/-	20,75,520/-	5,91,840/-

4. The learned Advocate further submitted that service tax has been demanded on gross receipts without considering the value of reimbursable expenses which is verifiable from the Profit & Loss Account and other financial statements of the Appellant.

5. Learned departmental Authorized Representative justified the impugned order and prayed that the appeals filed by the Appellant being devoid of merits may be dismissed.

6. Heard both the sides and perused the appeal records.

7. I find that the Appellant provided services of "immovable property valuer" to various nationalized Banks. Further as far as the claim of the Appellant regarding eligibility of pure agent is concerned, I find that Rule 5 of the Service Tax (Determination of Value) Rules, 2006 states as under:-

> ***"RULE 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.*
>
> *[**Explanation**.- For the removal of doubts, it is hereby clarified that for the [the value of the telecommunication service shall be the gross amount paid by the person to whom telecommunication service is actually provided].]*
>
> *(2) Subject to the provisions of sub-rule (1), the expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely :-*
>
> *(i) the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured;*
>
> *(ii) the recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;*
>
> *(iii) the recipient of service is liable to make payment to the third party;*
>
> *(iv) the recipient of service authorises the service provider to make payment on his behalf;*
>
> *(v) the recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party;*

(vi) the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;

(vii) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and

(viii) the goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.

Explanation 1. *- For the purposes of sub-rule (2), "pure agent" means a person who -*

(a) enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;

(b) neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service;

(c) does not use such goods or services so procured; and

(d) receives only the actual amount incurred to procure such goods or services.

Explanation 2. *- For the removal of doubts it is clarified that the value of the taxable service is the total amount of consideration consisting of all components of the taxable service and it is immaterial that the details of individual components of the total consideration is indicated separately in the invoice.*

Illustration 1. - X contracts with Y, a real estate agent to sell his house and thereupon Y gives an advertisement in television. Y billed X including charges for television advertisement and paid service tax on the total consideration billed. In such a case, consideration for the service provided is what X pays to Y. Y does not act as an agent behalf of X when obtaining the television advertisement even if the cost of television advertisement is mentioned separately in the invoice issued by X. Advertising service is an input service for the estate agent in order to enable or facilitate him to perform his services as an estate agent.

Illustration 2. - In the course of providing a taxable service, a service provider incurs costs such as travelling expenses, postage, telephone, etc., and may indicate these items separately on the invoice issued to the recipient of service. In such a case, the service provider is not acting as an agent of the recipient of service but procures such inputs or input service on his own account for providing the taxable service. Such expenses do not become reimbursable expenditure merely because they are

> *indicated separately in the invoice issued by the service provider to the recipient of service.*
>
> *Illustration 3. - A contracts with B, an architect for building a house. During the course of providing the taxable service, B incurs expenses such as telephone charges, air travel tickets, hotel accommodation, etc., to enable him to effectively perform the provision of services to A. In such a case, in whatever form B recovers such expenditure from A, whether as a separately itemised expense or as part of an inclusive overall fee, service tax is payable on the total amount charged by B. Value of the taxable service for charging service tax is what A pays to B.*
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> *Illustration 4. - Company X provides a taxable service of rent-a-cab by providing chauffeur-driven cars for overseas visitors. The chauffeur is given a lump sum amount to cover his food and overnight accommodation and any other incidental expenses such as parking fees by the Company X during the tour. At the end of the tour, the chauffeur returns the balance of the amount with a statement of his expenses and the relevant bills. Company X charges these amounts from the recipients of service. The cost incurred by the chauffeur and billed to the recipient of service constitutes part of gross amount charged for the provision of services by the Company X."*

8. Further, I also find that the Hon'ble Supreme Court in the case of Intercontinental Consultants & Technocrats Pvt. Ltd. vs. Union of India 2018 (10) G.S.T.L. 401 (SC) held that "the value of taxable service has to be the gross amount charged for the service provided and cannot include reimbursement expenses unless specifically stated." The Hon'ble Supreme Court struck down Rule 5(1) stating that it was *ultra vires* Section 67 of the Finance Act, 1994.

9. I find that the facts of the present appeals are squarely covered by above judgement of the Hon'ble Supreme Court. In view of the above discussion, the impugned orders cannot be sustained and are accordingly set aside. Both the appeals filed by the Appellant are allowed with consequential relief, as per law.

(Order pronounced in open court on -**15.05.2025**)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

LKS