CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70040 of 2024

(Arising out of Order-in-Appeal No.GZB-EXCUS-000-APPL-MRT-29-2023-24 dated 27.04.2023 passed by Commissioner (Appeals) CGST & Central Excise, Meerut)

M/s Jainson Generators, **.....Appellant**
(MMIG-136, Ramganga Vihar,
Phase-I, Moradabad-244001)

VERSUS

Commissioner of Central Goods & Services Tax, Meerut **....Respondent**
(Ramgarhi, Meerut, U.P.-250004)

WITH

Service Tax Appeal No.70012 of 2024

(Arising out of Order-in-Appeal No.GZB-EXCUS-000-APPL-MRT-28-2023-24 dated 27.04.2023 passed by Commissioner (Appeals) CGST & Central Excise, Meerut)

M/s Anju Jain Generator Contractor, **.....Appellant**
(D-28, Ramganga Vihar,
Phase-II, Moradabad-244001)

VERSUS

Commissioner of Central Goods & Services Tax, Meerut **....Respondent**
(Ramgarhi, Meerut, U.P.-250004)

APPEARANCE:

Shri Pradeep Singh Rawat, Advocate for the Appellant
Shri A. K. Choudhary, Authorized Representative for the Respondent

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

FINAL ORDER NOs.- 70701-70702/2025

DATE OF HEARING : 29.09.2025
DATE OF PRONOUNCEMENT : 30.09.2025

Since the dispute in both the appeals is common, therefore both the appeals are taken up together for hearing and disposal.

2. Briefly stated the facts of the case are that the Appellants are engaged in providing taxable service falling under category of 'Supply of Tangible Goods', wherein the Appellants were providing Generator on Hire/Rent basis to various Banks. The cost of diesel incurred in running of the generators was reimbursed to the Appellants by their customers. The Appellants have reported the entire receipts from the customers as "Operations from Revenue" and the same has been reported in the Income Tax Return[1] as well.

3. The common issue in both the appeals is that the cost of diesel reimbursable to them has been considered as part of the cost of service in terms of Rule 5 of Service Tax (Determination of Value) Rules, 2006. Ld. Counsel for the Appellants submitted that the said Rule has been held *ultra vires* Section 67 of the Act by the Hon'ble Supreme Court in the matters of Union of India Vs. International Consultants And Technocrats Pvt. Ltd. reported at 2018 (10) G.S.T.L. 401 (S.C.). He further stated that the issue has been decided by the Coordinate Bench of this Tribunal in the matters of the Principal Commissioner, Central Goods & Service Tax, Meerut vs. M/s Jaina Generator (Service Tax Appeal No.70578 of 2019) relying on the decision of the Principal Bench at New Delhi in the matters of M/s Ganapati Associates Vs. Commr. of C.EX. & S.T., Jaipur-I reported at 2015 (38) S.T.R. 493 (Tri.-Del.). The Ld. Counsel would further submit that since the demand in the Show Cause Notice[2] is based on the revenue figures reported in their ITR, the same is contrary to the provisions of Section 68 of the Finance Act, 1994 read with the provisions of Rule 6 of the Service Tax Rules. He relied on the judgement of Hon'ble Bombay High Court in Amrish Rameshchandra Shah Vs. Union of India and decisions of the Coordinate Bench of this Tribunal in the matters of M/s Sharma Fabricators & Erectors Pvt. Ltd. Vs. Commissioner of Central Excise, Allahabad and M/s Lord Krishna Real Infra Private Ltd. Vs. Commissioner of Customs, C.E. & S.T., Noida.

[1] ITR
[2] SCN

4. The Ld. Counsel further argued that the SCN dated 15.12.2020 is barred by limitation, as the same could not have been issued invoking extended period of limitation under proviso to sub Section (1) to Section 73 of the Act, as they had filed their ST-3 Returns within the statutory due dates, additionally the facts about the nature of services provided by the Appellants and that the diesel expenses are reimbursed to the them by their service recipient was known to the Department. Accordingly, they contended that in such a case, penalty under Section 78 of the Act does not survive.

5. Ld. Departmental Authorized Representative on the other hand strenuously argued that as per the provisions of sub-rule (1) of Rule 5 of the Service Tax (Determination of Value) Rules, 2006 and Explanation-2 appended to sub-rule (2) of Rule 5 *ibid*, supported the findings of the Ld. Commissioner (Appeals), Meerut and prayed that the appeals filed by the Appellants being devoid of any merits may be dismissed.

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

7. On perusal of the contract, I find that the diesel cost were to be paid extra to the Appellants, the Appellants were raising tax invoice with Service Tax for the Generator Rent and a separate bill of the Diesel cost to be reimbursed by the customer, no Service Tax was charged on the same, however a consolidated payment for the both the bills was made by the customer, TDS accordingly was deducted on such consolidated payment, further on perusal of the Service Tax Returns, would show that only the value of the taxable services for generator rent was reported and Service Tax paid on the same. It is evident that the diesel was procured by the Appellants on behalf of their customers, which was reimbursed to them, the same has nothing to do with the services provided *viz.* supply of tangible goods (generators on hire) by the Appellants. The issue of inclusion of reimbursable expenses in the value of the taxable services has been discussed at length by the **Hon'ble Supreme Court in the matters of Union of India Vs. Intercontinental Consultants and Technocrats Pvt. Ltd. [2018 (3) TMI 357 - Supreme**

Court], wherein Rule 5 of Service Tax (Determination of Value) Rules, 2006 was held to be *ultra vires* Section 67 of the Act. Further, the amendment in Section 67 of the Act was brought into effect from May 14, 2015, to include reimbursable expenditure or cost incurred by the service provider and charged, the course of providing or agreeing to provide a taxable service, thus, only with effect from May 14, 2015, such reimbursable expenditure or cost would also form part of valuation of taxable services for charging Service Tax.

8. I find that the Coordinate Bench of the Tribunal in the matter of **the Principal Commissioner, Central Goods & Service Tax, Meerut vs. M/s Jaina Generator (Service Tax Appeal No.70578 of 2019)** while considering the decision of the Hon'ble Supreme Court and relying on the decision of the Principal Bench at New Delhi in the matter of **M/s Ganapati Associates Vs. Commr. of C.EX. & S.T., Jaipur-I-2015 (38) S.T.R. 493 (Tri.-Del.)**, has held that cost of diesel is not includable in the cost of the rental DG Sets.

9. Therefore, following the ratio of the decision in **Intercontinental Consultants and Technocrats Pvt. Ltd.(Supra)** and the decision of the Coordinate Bench in M/s Jaina Generator, the value of the diesel cost cannot be included in the value of services provided by the Appellants, demands raised against the Appellants cannot sustain. As regards, the issue of invoking extended period of limitation under proviso to sub Section (1) of Section 73 of the Act, the Department has already accepted the similar nature of receipts as Reimbursement of expenses for F.Y. 2015-16 before the issuance of covered under this appeal, therefore it cannot be the case of the Department that this fact was known to them only after they received the data from the Income Tax Department, further, the Appellants have filed their Service Tax Returns, entire value of receipts were recorded in the Books of Accounts and the ITR, mere non reporting of reimbursement of diesel cost in the Service Tax Returns, would not amount to non-payment/short-payment of tax by reason of either fraud or

collusion or wilful misstatement or suppression of facts or contravention of any of the provisions of the Act or Rules made thereunder, with intent to evade payment of duty.

10. I further find that the Coordinate Bench of the Tribunal in the matter of **Mega Trends Advertising Ltd. Vs. Commr. of Central Excise & Service Tax, Lucknow (2019 (5) TMI 1027)** relying on the decision of Hon'ble High Court of Allahabad in the matter of **Commissioner of Central Tax vs. Zee Media Corporation Ltd. [2018 (18) G.S.T.L. 32 (All.)]**, held that SCN itself shows that every detail was maintained by the assessee in usual course of business, the ingredients of proviso to Section 73(1) of the Finance Act, 1994, establishing any suppression of facts to evade payment of tax cannot be held to be present and invocation of extended period of limitation was not correct on the part of the Revenue. In another decision by the Coordinate Bench of the Tribunal in **M/s T.S. Motors India Private Ltd. vs. Commissioner of CGST & Central Excise, Lucknow (Service Tax Appeal No.70377 of 2018)** relying on the decision of the **Hon'ble Supreme Court in Pushpam Pharmaceutical Co. vs. Commissioner of Central Excise Bombay and Anand Nishikawa Company Ltd. vs. Commissioner of Central Excise**, held that *"the extended period of limitation can be evoked only when 'suppression' is shown to be wilful with intent to evade the payment of service tax."*

11. Also, the Coordinate Bench in the matter of **Sarosh Homi Forbes vs. Commissioner of Central Goods and Services Tax-Mumbai South (Service Tax Appeal No.85287 of 2024)** held that, *"Information derived from the income-tax returns solely cannot be made the basis to confirm the demand of service tax herein by invoking the extended period of limitation…"*

12. Therefore, in view of the above, the demand cannot sustain on ground of extended period of limitation also. In view of the above discussions, the impugned orders are set aside.

Both the appeals filed by the Appellants are allowed with consequential relief, as per law.

(Order pronounced in open court on - **30.09.2025**)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

LKS