CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. I

Service Tax Appeal Nos. 41026 & 41027 of 2015

(Arising out of Orders-in-Appeal Nos. 63&64/2015 (STA-II) dated 17.02.2015 passed by Commissioner of Service Tax (Appeals-II), No. 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

M/s. Rane Holdings Limited **...Appellant**
Maithri, 132, Cathedral Road,
Gopalapuram,
Chennai – 600 086.

Versus

Commissioner of GST and Central Excise **...Respondent**
Chennai II Commissionerate,
Newry Towers, No. 2054-I,
II Avenue, 12th Main Road,
Anna Nagar,
Chennai – 600 040.

APPEARANCE:

For the Appellant : Mr. M. Karthikeyan, Advocate
For the Respondent : Mr. N. Satyanarayana, Authorised Representative

CORAM:
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER Nos. 40496-40497 / 2025

DATE OF HEARING : 03.04.2025
DATE OF DECISION : 05.05.2025

Per Mr. VASA SESHAGIRI RAO

Service Tax No. ST/41026-41027/2015 have been filed by M/s. Rane Holdings Limited, Chennai (hereinafter referred to as 'Appellant') assailing the Order-in-Appeal Nos. 63&64/2015 (STA-II) dated 17.02.2015 by the

Commissioner of Service Tax (Appeals-II), Chennai who have upheld the Orders-in-Original No. 28/2010 dated 01.12.2010 and No. 15/2011 dated 27.12.2011. The Assistant Commissioner of Service Tax *vide* in his Order-in-Original dated 01.12.2010 has confirmed the demand of service tax of Rs.1,52,640/- along with interest and imposed equivalent penalty under Section 78 of the Finance Act, 1994. Further, the Deputy Commissioner of Service Tax *vide* in his Order-in-Original dated 27.12.2011 has confirmed the demand of service tax of Rs.52,363/- along with interest and also imposed a penalty under Section 76 of the Finance Act, 1994.

2.1 Brief facts of the case are that the Appellant has taken the Service Tax Registration for payment of service tax in respect of various services including 'Management Consultancy Services'. During the disputed period, the Appellant and few other companies *viz.,* M/s. Lucas Indian Service Ltd., M/s. Lucas TVS Ltd., and M/s. Mahindra Institute of Quality for procuring the consultancy service from Prof. Y. Washio, a Japanese National (Service Provider). The Appellant appears to be duly discharging their service tax liability on the said services under Reverse Charge Mechanism under Section 66A of the Finance Act, 1944.

2.2 The Appellant booked air tickets for the service provider's travel from Japan to India and paid these travel fares to the travel agents on behalf of all the service recipients. The Appellant raised debit notes on other service recipients *viz.,* M/s. Lucas Indian Service Ltd., M/s. Lucas TVS Ltd., and M/s. Mahindra Institute of Quality to claim the share of air fare which pertains to the said recipients as reimbursement.

2.3 Whereas consequent to the audit of the Appellant, it was alleged that the cost of air travel expenses borne by the Appellant would be a consideration in the hands of the service provider so, the Appellant is liable to pay service tax on the said air travel expenses under Rule 5(1) of the Service Tax (Determination of value) Rules, 2006. Consequently, two Show Cause Notices dated 26.08.2010 and 14.09.2011 were issued respectively, invoking both normal and extended period of limitation demanding tax along with applicable interest and for imposition of penalty.

2.4 On adjudication of these two Show Cause Notices, the Original Adjudicating Authorities have passed the Orders-in-Original dated 01.12.2010 and 27.12.2011 confirming the demand of tax plus interest and also imposed penalty.

2.5 When the Appellant filed appeals against these Orders-in-Original, the Ld. Commissioner (Appeals) has upheld the orders of the Original Adjudicating Authority. Being aggrieved, the Appellant came on appeal before this Tribunal.

3.1 The Ld. Advocate Mr. M. Karthikeyan representing the Appellant has submitted that it was incorrectly recorded at Paragraph 11 of the impugned Order-in-Appeal Nos. 63&64/2015 (STA-II) dated 17.02.2015 that *"In the present case, charges towards air travel tickets were first incurred by the service provider and then reimbursed by the Appellant to the service provider".*

3.2 It was further submitted that the air travel tickets were booked by the Appellant through the travel agent and duly discharged the tax liability. The air travel expenditure cannot be treated as a consideration for the service provided as the travel cost was neither paid nor payable to the service provider and therefore shall not form a part of the value of the taxable services rendered by them. There is no question of reimbursement in the present case except for the share claimed from the other recipients *viz*., M/s. Lucas Indian Service Ltd., M/s. Lucas TVS Ltd. and M/s. Mahindra Institute of Quality.

3.3 Relying on Rule 7 of the Service Tax (Determination of Value) Rules, 2006, the Ld. Counsel has submitted that the value of services shall be the value charged by the service provider and the Appellant duly discharged the service tax on the value charged by the service provider which is not in dispute.

3.4 Relying upon the decisions of the co-ordinate Benches of the Tribunal as given below, it is submitted that in terms of Rule 7, the value of services taxable under Section 66A shall be the actual consideration charged by the service provider.

i. *Magarpatta Township Dev. [2016 (43) STR 132 (Tri.-Mumbai)]*
ii. *Kalpataru Power Transmission Ltd. [2023 (69) GSTL 54 (Tri.-Ahmd.)]*
iii. *T.V.S. Motor Co. Ltd. [2012 (28) STR 150 (Tri.-Chennai)]*
iv. *T.V.S. Motor Co. Ltd. [2021 (9) TMI 81 – CESTAT CHENNAI)]*
v. *Toyota Kirloskar Auto Parts (P) Ltd. [2011 (21) STR 583 (Tri.-Bang.)]*

3.5 It is further submitted that even if the air ticket charges are added to the taxable value, the Appellant would be eligible to take credit of the entire tax paid and as such, the question of suppression or any manner of intentional evasion would not arise. As there is no revenue loss to the Government Exchequer, the demand raised invoking extended period is not sustainable.

4. The Ld. Authorized Representative Mr. Harendra Singh Pal representing the Department has supported the findings in the impugned order dated 17.02.2015. He has submitted that an expenditure of Rs.18,13,925/- towards air travel was spent by the Appellant during the period from 2006-07 to 2010-11 but did not include the same in the taxable value for payment of service tax. He has further submitted that as travelling becomes an integral part in providing the service, the cost of travel incurred is includible in the value of the taxable services.

5. We have heard both sides and perused the records.

6. The only issue that is required to be decided in this appeal is relating to includability of expenditure incurred towards air travel of the service provider i.e., Prof. Y. Washio, Japanese who provided Management Consultancy Service to the Appellant and other companies *viz.,* M/s. Lucas Indian Service Ltd., M/s. Lucas TVS Ltd., and M/s. Mahindra Institute of Quality.

7. The Appellant along with other companies have availed the services which are classifiable under Management Consultancy Service from Prof. Y. Washio, Japan and have duly discharged service tax on Reverse Charge Mechanism in terms of Section 66A of the Finance Act, 1994. The allegation against the Appellant is non-inclusion of the air travel expenditure incurred for the visit of Prof. Y. Washio to render his services to the Appellant and others as it constitutes the consideration for the services rendered. However, the Ld. Advocate representing the Appellant has argued that the Appellant had purchased the air tickets from the air travel agent and expenditure was shared by the service recipients and this expenditure having not been paid to the service provider cannot constitute the consideration and so, no tax is payable. Rule 7 of Service Tax (Determination of Value) Rules, 2006 is required to be referred to in order to arrive at the correct value of taxable services provided from outside India and the relevant Rule is reproduced below: -

> ***"7. Actual consideration to be the value of taxable service provided from outside India***
>
> *(1) The value of taxable service received under the provisions of Section 66A, shall be such amount as is equal to the actual consideration charged for the services provided or to be provided.*

> *(2) Notwithstanding anything contained in sub-rule (1), the value of taxable services specified in clause (ii) of rule 3 of Taxation of Services (Provided from Outside India and Received in India) Rules, 2006, as are partly performed in India, shall be the total consideration paid by the recipient for such services including the value of service partly performed outside India."*

It can be seen from the above reproduced Rule that for the purpose of discharge of Service Tax for the service provided from outside India, the value is equal to the actual consideration charged for the services provided or to be provided. Theres is no dispute in this appeal that the Appellant has discharged appropriate service tax for the consideration paid to Prof. Y. Washio, Japan for his Management Consultancy Service rendered. Even if the air travel expenditure is borne by the service provider and being reimbursable expenditure, the value of which is not includible for computation of the service tax paid.

8. The Ld. Advocate has relied upon the decision in the case of *Kalpataru Power Transmission Ltd. [2023 (69) GSTL 54 (Tri. – Ahmd.)]* wherein the Tribunal Ahmedabad has held as follows: -

> *"5.13 We observed that the CESTAT in the matter of Geno Pharmaceuticals Ltd. v. Commissioner of Central*

Excise, Goa, 2017 (47) S.T.R. 264 (Tri. - Mumbai) held that : -

> *"2. Heard both sides and perused the records.*
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> *3. The appellant herein appointed an agent named Shri S. Gupta by an agreement dated 3-3-2006. The said agreement provided that the agent shall provide services of promoting and marketing of the product sold to M/s. Nebula Trading Co. in the interior parts of Myanmar and the expenses to be incurred for travelling tickets, telephone charges, postage, hotel accommodation, fooding, etc.; appellant reimbursed the expenses incurred by Shri S. Gupta on the actuals as per the bills raised by Shri S. Gupta. It is the case of the Revenue that the appellant is liable to pay service tax under the reversecharge mechanism under the category of 'business auxiliary services' as it is undisputed that Shri S. Gupta has rendered services of promoting and marketing of the appellant's goods.*
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> *4. The learned counsel brings to our notice the factual matrix of the case and takes us to the e-mails which have been sent by Shri S. Gupta to the appellant. It is his submission that these e-mails indicate that they were actually reimbursable expenses. It is his further submission that the Hon'ble High Court of Delhi in the case of Intercontinental Consultants &Technocrafts Pvt. Ltd. reported in 2013 (29) S.T.R. 9 (Del.), has struck down the provisions of Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006, which mandated for inclusion of reimbursable expenses, also for paying the service tax liability.*
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> *5. The learned departmental representative reiterates the findings of the lower authorities.*
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> *6. In our considered view, the Revenue has no case on merits for more than one reason. Firstly, on perusal of the various e-mails sent by Shri S. Gupta to the appellant they clearly indicate that the said Shri Gupta has claimed tour expenses monthly and it indicates only the air fare, car hire, hotel charges and petrol charges incurred by him for a particular month. The said e-mails or the expenses statement seem to have been accepted by the Revenue authorities as they are claiming service tax on the amount claimed as reimbursement by Shri S. Gupta.*

> *7. If the amounts which are claimed by Shri S. Gupta, are actual expenses, we find that the said amounts cannot be considered as taxable under 'business auxiliary services', as under the category of BAS, the amount can be taxed as a commission paid by the appellant, if any, to Shri S. Gupta. On perusal of the agreement entered into by the appellant with Shri S. Gupta, we find that there is no mention of any commission payable to Shri S. Gupta by the appellant. If the appellant has not paid any commission and has only reimbursed the actual expenses incurred, in our view, the judgment of the Hon'ble High Court of Delhi in the case of Intercontinental Consultants & Technocrafts Pvt. Ltd. (supra) will directly apply and the said expenses cannot be taxed under 'business auxiliary service'.*
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> *8. In view of the foregoing, we hold that the impugned order is unsustainable and liable to be set aside and we do so.*

5.14 We also find that provisions of Rule 7(1) of the Service Tax (Determination of Value) Rules, 2006 would apply to this case. The said Rule 7(1) is reproduced below :

> *"7. Actual consideration to be the value of taxable service provided from outside India. - (1) The value of taxable service received under the provisions of Section 66A, shall be such amount as is equal to the actual consideration charged for the services provided or to be provided."*

It can be seen from the above reproduced Rule 7, as this rule is specifically applicable for reverse mechanism under Section 66A and for the purpose of discharge of Service Tax for the service provided from outside India, the value is equal to the actual consideration charged for the services provided or to be provided. In the impugned matter it is on records that in case of fees/remunerations paid to overseas technicians Appellant have paid the service tax. Since the alleged amount was not paid for services but paid for travelling expense, accommodation charges etc. clearly said expenses cannot be considered as value of taxable service. Hence, demand of service tax not sustainable on said expenses."

Even if the air travel expenditure is treated as consideration for receipt of Management Consultancy Service, then whatever the tax payable or paid is eligible for the Appellant to take as CENVAT credit. As the issue is revenue neutral, there is no justification for invoking the extended period.

9. In view of the above, the Orders-in-Appeal Nos. 63&64/2015 (STA-II) dated 17.02.2015 cannot be sustained and so, ordered to be set aside completely. Thus, appeals are allowed with consequential relief, if any, as per the law.

(Order pronounced in open court on 05.05.2025)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

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