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

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.76453 of 2018

(Arising out of Order-in-AppealNo.16/S.Tax-II/Kol/2018 dated23.01.2018 passed by Commissioner of CGST & CX, (Appeal-I), Kolkata.)

M/s.Indo Nabin Projects Limited
(7th Floor, South End Conclave, 1582, Rajdanga Main Road, Kolkata-700107.)

...Appellant

VERSUS

Commissioner, CGST & CX, Kolkata South Commissionerate

.....Respondent

(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

APPEARANCE
Shri N.K.Chowdhury, Advocate for the Appellant (s)

Shri S.K.Jha, Authorized Representative for the Revenue

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

FINAL ORDER NO. 76191/2026

DATE OF HEARING :15.09.2026
DATE OF DECISION :15.09.2026

Per :R. MURALIDHAR :

The Appellant is providing 'Erection, Commissioning and Installation' services. They are also undertaking the 'Transportation of Goods by Road'. On the ground that the Appellant has charged the freight charges and insurance on their clients and the value of such freight and insurance was not added to the value of service provided, a

Show Cause Notice came to be issued on 21.03.2016 for the transactions pertaining to the year 2014-15. After due process, the lower authorities have confirmed the demand. Being aggrieved, the Appellant is before the Tribunal.

2. The Ld.Counsel, appearing on behalf of the Appellant submits that admittedly the Appellant is providing the service under 'Erection, Commissioning' category. For all the amounts received as consideration towards erection and commissioning, they have been discharging the Service Tax liability. Apart from this service, based on the requirements of the clients, they engage independent Goods Transporter's services for which initial freight charges are paid by the Appellant. Since the Service Tax is payable on RCM basis by the consignor who pays the freight charges, the Appellant has discharged their Service Tax liability on GTA services also. The Appellant raised two invoices. One invoice is for 'Erection and Commissioning' services on which Service Tax is shown and collected from the client which is in turn paid to the Revenue Department. In respect of transportation and insurance charges, the Appellant raised separate invoices on which they do not charge any Service Tax. These amounts given by the clients are purely on account of re-imbursement.

3. He relies on the case law of **Intercontinental Consultants & Technocrats Pvt.Ltd. v. Union of India [2013 (29) STR 9 (Del.)]** wherein it has been made clear that when the amount is received on account of re-imbursement, the same will not form part of the Assessable Value for paying the Service Tax. He also submits that on identical matter a Show Cause Notice was issued for the period 2007-08 to 2011-12 demanding Service Tax of Rs.37,02,056/-. The Commissioner(Appeals) set aside the confirmed demand vide Order-in-Appeal No.34/ST-II/KOL/2017-18 dated 17.05.2017. This order of the Commissioner(Appeals) was accepted by the jurisdictional

Commissionerate and no further Appeal was filed against this Order-in-Appeal. Therefore, the issue has reached finality.

4. In view of the above submission, the Ld.Counsel prays that the Appeal may be allowed.

5. The Ld.AR for the department reiterates the findings of the lower authority. He submits that the Appellant has collected the insurance and freight charges from the clients on which Service Tax has not been discharged by them. Accordingly, he justified the confirmed demand.

6. Heard the parties and perused the appeal papers.

7. We have gone through a sample of the invoice raised by the Appellant towards insurance and freight charges which is reproduced below:

7/8 (99) 131

INDO POWER PROJECTS LIMITED

C/o Dr. A. C. Sharmah, Rupkonwar complex, Khanamukh Check Gate
West Jhalukbari, Guwahati - 14
18619309164 Assam Composite Regn. No.: 18490032200

The Chief General Manager (RE),
Assam State Electricity Board,
6th Floor, Bijulee Bhawan, Paltan Bazar,
Guwahati - 781 001

INVOICE NO.	01/17/3864
DATE	03.05.2013
R/A BILL NO.	
DATE	
Our JOB NO.	01-O/12-13/386
LR / RR NO. & DATE	As per Enclosure
CHALLAN NO. & DATE	As per Enclosure
MODE	
CUS. S.T NO.	
DOC. THRO'	Direct

ORDER NO.: CGM(RE)/RGGVY/LA-1/Addl. Work/KAM-1(c)/2012-13/E/03 dt. 31.10.2012
AS PER ENCLOSED ANNEXURE
Assam State Electricity Board

Description	Unit	Qty.	Unit Rate	AMOUNT
Inland Transportation, Insurance, Unloading, Handling, Storage at site, Erection, Testing and Commissioning of all equipment & Materials for Rural Electrification works in "RAMPUR & GOROIMARI" Dev. Blocks within Kamrup (R) District of Assam on Turnkey Basis under Rajiv Gandhi Grameen Vidyutikaran Yojana (RGGVY) Package Name: KAM-1(c) covering RAMPUR & GOROIMARI Blocks				
ANNEXURE - I: Freight & Insurance				22100.00
AS PER ENCLOSED ANNEXURE				22100.00
100% Value of this Invoice				22100.00
100% Amount Payable now as per clause no.7.2 of Condition of Contract				22100.00
Rounded Off				22100.00
			TOTAL AMOUNT	22100.00
			S.T	
			C.S.T	

RUPEES: TWENTY TWO THOUSAND ONE HUNDRED ONLY

for INDO POWER PROJECTS LTD

Indo Power Projects Ltd Guwahati

8. From this invoice, we find that theinvoice raisedon the client is purely on account of re-imbursement of freight charges and insurance.It is also seen that Appellant has not charged any Service Tax on this invoice.

9. Admittedly, the Appellant has paid the Service Tax on the 'Erection and Commissioning' charges and he has also been filing the Service Tax Returns. It is also not disputed that the Appellant has paid the freight charges to the GTAand he has discharged the Service Tax liability on RCM basis.

10. In the case of **Intercontinental Consultants & Technocrats Pvt.Ltd. v. Union of India**, referred supra, it has been held by the Hon'ble High Court as under:

> ***"18.*** *Section 66 levies service tax at a particular rate on the value of taxable services. Section 67(1) makes the provisions of the section subject to the provisions of Chapter V, which includes Section 66. <u>This is a clear mandate that the value of taxable services for charging service tax has to be in consonance with Section 66 which levies a tax only on the taxable service and nothing else. There is thus inbuilt mechanism to ensure that only the taxable service shall be evaluated under the provisions of 67. Clause (i) of sub-section (1) of Section 67 provides that the value of the taxable service shall be the gross amount charged by the service provider "for such service</u>". Reading Section 66 and Section 67(1)(i) together and harmoniously, it seems clear to us that in the valuation of the taxable service, nothing more and nothing less than the consideration paid as quid pro quo for the service can be brought to charge. Sub-section (4) of Section 67 which enables the determination of the value of the taxable service "in such manner as may be prescribed" is expressly made subject to the provisions of sub-section (1). The thread which runs through Sections 66, 67 and Section 94, which empowers the Central Government to*

make rules for carrying out the provisions of Chapter V of the Act is manifest, in the sense that only the service actually provided by the service provider can be valued and assessed to service tax. We are, therefore, undoubtedly of the opinion that Rule 5(1) of the Rules runs counter and is repugnant to Sections 66 and 67 of the Act and to that extent it is ultra vires. <u>It purports to tax not what is due from the service provider under the charging Section, but it seeks to extract something more from him by including in the valuation of the taxable service the other expenditure and costs which are incurred by the service provider "in the course of providing taxable service</u>". What is brought to charge under the relevant Sections is only the consideration for the taxable service. By including the expenditure and costs, Rule 5(1) goes far beyond the charging provisions and cannot be upheld. It is no answer to say that under sub-section (4) of Section 94 of the Act, every rule framed by the Central Government shall be laid before each House of Parliament and that the House has the power to modify the rule. As pointed out by the Supreme Court in Hukam Chand v. Union of India, AIR 1972 SC 2427 :-

> *"The fact that the rules framed under the Act have to be laid before each House of Parliament would not confer validity on a rule if it is made not in conformity with Section 40 of the Act."*

Thus Section 94(4) does not add any greater force to the Rules than what they ordinarily have as species of subordinate legislation."

11. In the present case, the Revenue has not come out with any positive documentary evidence to the effect that the Appellant has been collecting any higher amount than what was being paid to the transporter and the insurance companies. We find that the ratio laid down by the Hon'ble Supreme Court in the above case law is squarely applicable.

12. Consequently, we set aside the impugned order and allow the Appeal. The Appellant would be eligible for consequential benefit, if any, as per law.

(Dictated and pronounced in the open Court.)

Sd/

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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