CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Service Tax Appeal No.70845 of 2018-Division Bench

(Arising out of Order-in-Appeal No.191/CE/Appeal/Audit-LKO/2018 dated 27/03/2018 passed by Commissioner (Audit) Central Goods & Services Tax & Central Excise, Lucknow)

M/s Palace Art **.....Appellant**

(126/31, Avadh Plaza, B.N. Road, Beside Shalimar Esquare

Lucknow-226001)

VERSUS

Commissioner of Central Excise

& Service Tax, Lucknow **....Respondent**

(7-A, Ashok Marg, Lucknow)

APPEARANCE:

Shri T.K. Srivastava, Advocate & Shri Anuj Shukla, Advocate for the Appellant
Shri Shiv Pratap Singh, Authorised Representative for the Respondent

CORAM:

HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. - 71622 / 2019

Date of Hearing : 21 August, 2019
Date of Decision : 21 August, 2019

PER: ARCHANA WADHWA

After hearing both the sides duly represented by Shri T.K. Srivastava learned advocate appearing for the appellant and Shri Shiv Pratap Singh learned A.R. appearing for the Revenue, we find that the appellant was registered with the Service Tax Department under the category of 'Event Management & Advertising Services' and were discharging their tax liability accordingly.

2. The dispute in the present appeal revolves to the issue as to whether the reimbursable expenses would form the part of

the value of the services or not. The Lower Authorities by invoking the provisions of Rule 5 of Service Tax (Determination of Value) Rules, 2006 have held that these reimbursable expenses would also become part of the value of the Event Management Services.

3. On the other hand the assessee's contention is that in terms of the contract itself, they were acting as pure agent with their customers as regards the procurement of various items etc. as also for undertaking certain expenses on behalf of their clients. As such these expenses cannot be included in the assessable value. In any case, we find provision of Rule 5 have been held to be *ultra vires* by the Hon'ble Delhi High Court in the case of Intercontinental Consultants & Technocrats Pvt. Ltd. 2013 (29) S.T.R. 9 (Del.). The said decision of the Hon'ble High Court stands upheld by the Hon'ble Supreme Court when the appeal filed by the Revenue was rejected reported as Union of India vs. Intercontinental Consultants & Technocrats Pvt. Ltd. 2018 (10) G.S.T.L. 401 (S.C.). It stands held by the Hon'ble Supreme Court that any other amount which is collected not for providing such taxable services, cannot be part of the value. Value of tax service cannot be anything more or less within consideration paid as *quid pro qua* for rendering such services.

4. Inasmuch as the issue stands decided upto the Hon'ble Supreme Court, we find no reasons to uphold the impugned order. Accordingly, the same are set aside and appeal is allowed with consequential relief to the appellant.

(Dictated and pronounced in open court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Lks