CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Application(s) Involved:

ST/CROSS/97/2009 in ST/93/2009-DB

Appeal(s) Involved:

ST/93/2009-DB

[Arising out of Order-in-Appeal No. 234/2008 dated 10/11/2008 passed by the Commissioner of Central Excise, Mangalore]

Commissioner of Central Excise,
Customs and Service Tax,
Belgaum
No. 71, Club Road,
Central Excise Building,
Belgaum - 590 001
Karnataka

Appellant(s)

Versus

Amar Enterprises
CITB, Plot No.31, Ravinagar Cross,
Gokul Road, Hubli

Respondent(s)

Appearance:

Mrs. Kavitha Poduwal, Superintendent (AR)	For the Appellant
Mr. Pradyumna G.H, Advocate	For the Respondent

Date of Hearing: 23/07/2018
Date of Decision: 23/07/2018

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 20977 / 2018

Per: P. ANJANI KUMAR

Respondents are holders of Service Tax registration under the category of “Clearing and Forwarding Agent” services. In terms of various agreements entered, the respondents were reimbursed by principal certain expenses which were incurred by them on behalf of the principal. The Department contended that these are includible for the purposes of calculation of service tax. The Department issued four show-cause notices covering the period September 1999 to March 2006 for a total amount of Rs. 54,51,935/- (Rupees Fifty Four Lakhs Fifty One Thousand Nine Hundred and Thirty Five only) to the respondents. The Additional Commissioner of Service Tax, Belgaum vide Order-in-Original 31/2007 dated 05.10.2007 has confirmed the service tax amount of Rs. 23,37,657/- (Rupees Twenty Three Lakhs Thirty Seven Thousand Six Hundred and Fifty Seven only). Aggrieved by the same the respondents preferred an appeal before the Commissioner (Appeals) who vide Order No. 234/2008 dated 10.11.208 allowed the appeal holding that the reimbursable expenses cannot be said to levy of service tax.

2. Aggrieved by this order, the Department has preferred an appeal before this Bench on the ground that the Commissioner (Appeals) vide Order No. 301/2006 dated 17.10.2006 against the very same respondents passed an order for earlier period and remanded the matter to the original authority to verify the amounts actually reimbursed and therefore the present order was contrary to his own order earlier; the order demanding service tax on the respondents was preferred and tenable. The Departmental representative has reiterated the findings in the Order-in-Original and grounds of appeal.

3. The learned counsel for the respondents submitted that the issue is no longer *res integra* and stands covered by the judgment of Hon’ble Supreme

Court in the case of *Intercontinental Consultants and Technocrats Pvt. Ltd. – 2018 (10) G.S.T.L. 401 (S.C)* wherein it was held by the Apex Court that under Section 67 of the Finance Act 1994 amount which is not calculated for providing taxable service cannot be part of the valuation of service tax and hence Rule 5 of Service Tax Rules 2006 insofar as it provided for inclusion of reimbursable expenses was *ultra virus* of Section 67 of the Finance Act. He also submitted that CESTAT vide Final Order No. 21358/2017 dated 07.08.2017 in their own case have held that the decision of Commissioner (Appeals) on excludability of actual reimbursement expenses from the taxable value was correct and that the Bench finds no reason to interfere with the said findings.

4. Heard both the sides and perused the records. We find that the appellant’s case is squarely covered by the judgment of the Hon’ble Supreme Court cited supra also following the findings of this very Bench in the case cited supra, we find that the expenses borne by the respondents in the course of rendering of the service and later reimbursed by their principals are not includible for the purposes of calculating the service tax.

5. In view of the above, the appeal of Revenue is dismissed.

(Operative portion of the order was pronounced
in Open Court on **23/07/2018**)

(P. ANJANI KUMAR)
TECHNICAL MEMBER

(S.S GARG)
JUDICIAL MEMBER

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