

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 60670 of 2017

[Arising out of Order-in-Appeal No. 30-ST-Appeal-II-MK-GGN-2017 dated 27.02.2017 passed by the Commissioner (Appeals), Central Excise, Delhi-III, Gurgaon]

M/s Sea Hawk Tour & Travels Pvt Ltd

.....Appellant

303, Office Block, Sun City
Arcade Sector 54, Gurgaon Haryana

VERSUS

Commissioner of CE & CGST, Gurugram

.....Respondent

GST Bhavan, Plot No.36-37, Sector 32
Gurugram, Haryana 122001

APPEARANCE:

Shri Naveen Bindal and Shri Bharat Jain, Advocates for the Appellant

Shri Goverdhan Dass Bansal, Authorized Representative for the

Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 61763/2025

DATE OF HEARING: 15.12.2025

DATE OF DECISION: 15.12.2025

S.S.GARG:

The present appeal is directed against the impugned order dated 27.02.2017 passed by the Commissioner (Appeals), Gurgaon, whereby, the Ld. Commissioner (Appeals) has confirmed the demand under Rule 5 of Service Tax (Determination of Value) Rules 2006 and thereafter only for quantification has remanded, whereas

the appellant in the present appeal has challenged the confirmation of demand under Rule 5 itself.

2. Briefly the facts of the present case are that the appellant is engaged in the services of 'Rent-a-cab' and 'Tour Operator Services' under Chapter 5 of the Finance Act, 1994. During the course of audit of the record of the appellant covering the period 2003-04 to 2007-08, it was observed that the party has collected Rs. 7,33,745/- as toll tax and Rs. 63,61,239/- as UP permit tax (Total Rs. 70,94,984/-) levied by the State Government from client during 2007-08. It was also observed that out of total amount, they had deposited with the state authorities only Rs. 52,99,957/-. The audit group held the view that the amount received by the party was not excludible for arriving at gross amount charged for services provided for the levy of service tax and that the appellant were liable to pay service tax on full amount of Rs. 70,94,984/- as the appellant did not conform to the definition of pure agent under sub-Rule 5 of Service Tax (Determination of Value) Rules 2006 in as much as they had not received the actual amount to be paid to the state authorities and therefore, reimbursement of the amount paid to the authorities from the total amount received from the customers towards provision of Rent-a-Cab Services. On being pointed out by the audit group, the party deposited an amount of Rs. 88,750/- plus interest of Rs. 13,460/- on amount of Rs. 17,95,098/- charged from the Customers over and above the toll tax and U.P. permit tax paid to the state authorities by the appellant. On the basis of the audit, the show cause notice dated 25.02.2010 was issued and the

appellant filed reply to the show cause notice and the Joint Commissioner after following the due process vide Order-in-Original dated 23.08.2011 set aside the demand. Aggrieved by the said order, the revenue filed the appeal before the Commissioner (Appeals) and the Ld. Commissioner (Appeals) allowed the appeal of the revenue and set aside the Order-in-Original; thereafter on the basis of the same audit report, the Department had issued five show cause notices raising the demand of service tax on similar ground as show cause notice dated 25.02.2010. The appellant filed reply the show cause notice and after following the due process, the adjudicating authority confirmed the demand vide Order-in-Original dated 29.02.2016. Aggrieved by the said order, the appellant filed the appeal before the Commissioner (Appeals) on the basis that the demand has been confirmed by invoking the Rule 5 Service Tax (Determination of Value) Rules 2006; which has been declared ultra vires of Section 67 by the decision of M/s Inter Continental Consultant and Technocrate Pvt. Ltd. 2013 (29) STR Delhi and they have also raised the issue of discrepancies qua the figure pertaining to year 2011-2012. The learned Commissioner partly allowed the appeal of the appellant by way of remand for re-examination and re-quantification of the demand. However, held that the appellant is liable to pay service tax. Aggrieved by the said order, the appellant is before us.

3. Heard both the parties and perusal of the material on record.
4. Learned counsel for the appellant submits that in the present case the respondent has confirmed the demand on the ground that

the appellant received the reimbursement of toll tax and U.P. permit Tax which is to be included in transaction value as per Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006. He further submits that cost on account of toll tax and U.P. permit tax cannot be included in taxable value and cannot be formed part of the assessable value in view of Section 5(1) of the Valuation Rules, 2006. He further submits that this issue is no more *res integra* and has been decided by Hon'ble Delhi High Court in the case of ***M/s Intercontinental Consultants & Technocrats Pvt. Ltd. Vs Union of India reported as 2013 (29) STR 9 (Del.)***, which stands upheld by Hon'ble Supreme Court in case of ***Union of India Versus M/s Intercontinental Consultants & Technocrats Pvt. Ltd. 2018 (10) GSTL 401 (SC)***.

4.2 He further submits that in the judgment passed by the Hon'ble Apex Court cited (Supra), it has been held that in Section 67 which deals with Valuation of taxable Services does not include reimbursable expenses for providing such service, the Legislature amended Finance Act, 2015 with effect from May 14, 2015, whereby, Clause (a) which deals with 'consideration' is suitably amended to include reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service. He further submits that only with effect from October, 09 to March, 2014, by virtue of provisions of Section 67 itself, such reimbursable expenditure or cost would also form part of valuation of taxable service for charging service tax. Whereas, the period involved in the present case is 2007-2008

to 30.09.2009, therefore, the demand along with interest and penalty cannot be sustained. He further submits that this Tribunal while relying upon the judgment of the Hon'ble Apex Court cited (Supra) dropped the demand in the following cases:

- ***SAAS Manpower vs. Commissioner of Central Excise and Service Tax, Chandigarh-II, Service Tax Appeal No. 52033 of 2015 decided on 19.09.2025***

- ***M/s National Institute of Electronics and Informational Technology vs. Commissioner of Central Excise decided on 03.03.2025.***

- ***Coca Cola India Inc. vs. Commissioner of Service Tax, Delhi decided on 18.10.2024***

5. On the other hand, learned AR, reiterated the findings of the impugned order.

6. After considering the submissions of both the parties and perusal of the material on record, we find that during the relevant period, it has been held by the Hon'ble Apex Court that reimbursement expenses cannot be included in the value of taxable services. Further, we find that subsequently with effect from May 14, 2015, whereby Clause (a) was amended and thereafter, it was provided that such reimbursable expenditure or cost is includable in taxable service for charging service tax. As the period involved in the present case is before 14.05.2015, hence covered by the decision of the Hon'ble Apex Court cited (Supra).

7. By following the ratio of the following decisions cited (Supra), we are of the considered view that the impugned order is not sustainable in law and therefore, we set aside the same by allowing the appeal of the appellant with consequential relief, if any as per law.

(Operative part of the order pronounced in the open court)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)