IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

Appeal No. ST/661/2012

(Arising out of Order-in-Appeal No.174/2012 dated 4.9.2012 passed by the Commissioner of Central Excise (Appeals), Coimbatore)

M/s. Coimbatore Lorry Urimaiyalargal Pothunala Trust — Appellant

Vs.

Commissioner of GST & Central Excise Coimbatore — Respondent

Appearance

Ms. D. Naveena, Advocate for the Appellant
Ms. T. Usha Devi, DC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **25.02.2019**

Final Order No. **40372 / 2019**

Per Bench

The appellant was issued a show cause notice dated 9.12.2005 demanding service tax under Business Auxiliary Service for the period from 1.8.2003 to 31.3.2005. After due process of law, the original authority confirmed the demand along with interest and imposed penalties under sections 77 and 78 of the Finance Act, 1994. In appeal, Commissioner (Appeals) upheld the same. Hence this appeal.

2. On behalf of the appellant, ld. counsel Ms. D. Naveena submitted that they are accepting that their activity falls under BAS. However, she submitted that the taxable value as arrived by department would include certain reimbursable expenses which are in the nature of wages and remuneration paid to the employees during the relevant period. She relied upon the decision in Union of India Vs. Intercontinental Consultants and Technocrats Pvt. Ltd. – 2018 (10) GSTL 401 (SC) and argued that reimbursable expenses cannot be included in the taxable value. She therefore pleaded that the appellant may be given a chance to furnish evidence with regard to the reimbursable expenses. The second argument was with regard to the penalties imposed. She submitted that the adjudicating authority has imposed higher amount of penalty than that of the service tax demand confirmed. She submitted that the appellant was under bonafide belief that the activity does not fall under BAS. Therefore, the appellant did not discharge the service tax during the relevant period and was contesting the same before various forums. Therefore, she pleaded that the penalties may be set aside.

3. The ld. AR Ms. Usha Devi supported the findings in the impugned order. She submitted that the appellant has not

taken the plea of reimbursable expenses before the lower authorities. It is also submitted by her that even in the appeal memorandum, they have not taken such a plea. Further, the appellant has not put forward any evidence with regard to such reimbursable expenses included in the taxable value. Therefore she submitted that the demand and penalties imposed are legal and proper.

4. Heard both sides.

5. The appellant is now contesting the demand with regard to the alleged reimbursable expenses that have been included in the taxable value. Nothing is forthcoming with regard to such expenses in the orders placed before us. The appellant has to furnish necessary documents to establish that reimbursable expenses have been included in the taxable value. For this limited purpose, we are of the opinion that the matter requires to be remanded to the adjudicating authority who shall consider whether any reimbursable expenses are to be excluded from the taxable value that has been arrived by the adjudicating authority.

6. With regard to the penalties, ld. counsel submitted that the appellants were under bonafide belief that the said activity did not fall under BAS. From the litigations taken up by the appellant, we find that the said contention requires to be considered. For this reason, we find that the penalties imposed

are unwarranted and requires to be set aside, which we hereby do.

7. From the foregoing discussions, we hold that the matter is remanded to the adjudicating authority for the limited purpose of looking into whether the reimbursable expenses are to be excluded or not. The penalties are set aside in toto. The appeal is partly allowed with consequential relief, if any in the above terms, as per law.

(Dictated and pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

Rex