CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

REGIONAL BENCH – COURT NO. III

Service Tax Miscellaneous Application No.41042 of 2017

and

Service Tax Appeal No.42210 of 2016-DB

(Arising out of Order-in-Appeal No.502/2016 (STA-1), dated 29.08.2016 passed by the Commissioner of Service Tax (Appeals-I), Chennai)

M/s. Royal Agencies, **: Appellant**
No.1, Buddu Street,
First Floor, Mannady,
Chennai – 600 001.

VERSUS

Commissioner of Service Tax, **: Respondent**
No.692, M.H.U. Complex,
Nandanam,
Chennai 600 035.

APPEARANCE:

Shri M. Ponnusamy, Consultant for the Appellant

Shri L. Nandakumar, Authorized Representative for the Respondent

CORAM:

HON'BLE SMT. SULEKHA BEEVI C.S, MEMBER (JUDICIAL)
HON'BLE SHRI C.J. MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO. 40486/2020

DATE OF HEARING: 06.02.2020

DATE OF DECISION: 06.02.2020

Per Smt. Sulekha Beevi C.S:

Brief facts are that the appellant who is a CHA was issued show-cause notice dated 31.08.2010 alleging that the appellant has short-paid service tax amounting to Rs.71,952/- for the period Oct.'08 to Dec.'08 on CHA Services and also that they have not included the reimbursable expenses in taxable value for paying the service tax for the period Apr.'06 to Mar.'08. After due process of law, the original authority confirmed the demand along with interest and also imposed penalty. On appeal the Commissioner (Appeals) upheld the same. Hence this appeal.

2. On behalf of the appellant, the learned consultant Shri M. Ponnusamy appeared and argued the matter.

3. In regard to the allegation that the appellant short-paid service tax for the period Oct.'08 to Dec.'08, it is explained by him that the appellant had already paid the tax, which is noted by the original authority in para 8 of the Order-in-Original, dated 25.04.2012. That only a amount of Rs.9,073/- was remaining as balance as per the calculation arrived at by the adjudicating authority. The appellant had paid the service tax for the said period along with interest as calculated by them.

4. With regard to the demand made in respect of reimbursable expenses, he relied upon the decision of the Hon'ble Supreme Court in the case of *Union of India Vs. M/s. Intercontinental Consultants and Technocrats Pvt. Ltd.,* reported in *2018 (10 G.S.T.L.401 (S.C.)*. It is clarified by the learned consultant that the amounts are actual expenses which are reimbursed by the customers.

5. The learned Authorised Representative for the Revenue Shri L. Nandakumar supported the findings in the impugned order.

6. Heard both sides.

7. With regard to the first issue that there is short-payment of service tax for the period Oct.'08 to Dec.'08, the adjudicating authority in para 8 of Order-in-Original has observed that the appellant has paid-up the amount and also filed service tax returns in 2009. Only an amount of Rs.9,073/- with interest stands to be discharged as calculated by the adjudicating authority. Taking note of this fact that the appellant has discharged the service tax for the said period before

show-cause notice, we find that the imposition of penalties in this regard is unwarranted. By invoking section 80 of the Finance Act, 1994, we set aside the penalty imposed in this regard. We, however, make it clear that the appellant has to pay the balance amount of Rs.9,073/- with interest if not paid.

8. The second issue in in regard to reimbursable expenses. On perusal of records as well as show-cause notice, it is clear that the demand is made on the expenditure incurred by the appellant as pure agent. The said issue is covered by the decision of the Hon'ble Supreme Court in the case of *M/s. Intercontinental Consultants and Technocrats Pvt. Ltd.,* (supra). Following the same, we hold are of the opinion that the demand cannot sustain and requires to be set aside, which we hereby do.

9. From the foregoing, the impugned order is modified to the extent of setting aside the penalty in regard to the demand of Rs.7,71,952/- and setting aside the demand in respect of the demand of Rs.21,56,503/- being service tax on reimbursable expenses. Appeal partly allowed in above terms with consequential reliefs, if any.

(Dictated and pronounced in the open court)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

(C. J. MATHEW)
MEMBER (TECHNICAL)

ksr
14-02-2020