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

ST/00533/2010

[arising out of Order-in-Appeal No.42/2010-ST, dated 11.05.2010 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore]

M/s. TRUETZSCHLER INDIA P. LTD. APPELLANT

Versus

COMMISSIONER OF CENTRAL EXCISE, COIMBATORE RESPONDENT

Appearance:

For the Appellant Shri M. Saravanan, Adv.
For the Respondent Shri P. Arul, AC (AR)

CORAM:

Hon'be Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Date of hearing/decision **18-12-2017**

FINAL ORDER NO. 43472 /2017

Per B. Ravichandran:

The appellant is aggrieved with the impugned order upholding the service tax liability on certain expenses incurred by the appellant to depute employees and other incidental expenses to render taxable services of "Erection, Commissioning or Installation". These expenses are fully paid up by the appellants and reimbursed by the client. The impugned order held that in terms of section 67 all amount including such expenses will form part of the gross taxable value. Referring the Service Tax Valuation Rules, 2006, the impugned order held that the said rules clarify the valuation as per section 67.

2. We have heard both sides and perused the appeal records.

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3. The fact that these expenses are reimbursed on actual basis is admitted. The show-cause notice specifically mentions that these are reimbursement of expenses incurred by the assessee. We note that reimbursable expenses which are on actual basis cannot form part of a taxable value in terms of section 67 of the Finance Act, 1994. The Hon'ble Madras High Court in the case of *Commissioner of Service Tax, Chennai Vs M/S. Sangamitra Services Agency* reported in *2014 (33) S.T.R.137 (Mad.)* held that in the absence of any material to show the understanding between the principal and the client, that the commission payable by the principal was of inclusive, it is difficult to hold that the gross amount reimbursement/commission would nevertheless include expenditure incurred by the assessee in providing the services; that all incidental charges for rendering the service would also form part of reimbursement or commission [by whatever name called]. The ratio, that the reimbursable expenses incurred by service provider, which are reimbursed by the recipient of services on actual basis has been a subject-matter of various decisions of the Tribunal also. It is held that such expenses cannot form part of the gross value which is relatable to only services provided. In view of the above legal position settled by various decisions, we find no merit in the impugned order confirming tax liability on such expenses. Accordingly, the same is set aside and appeal is allowed.

(Dictated and pronounced in open court)

22/1/18.

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

ksr
22-01-2018

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति / CERTIFIED TRUE COPY
27/02/18
सहायक पंजीकार / Assistant Registrar
सीमा शुल्क, उत्पाद शुल्क एवं सेवा कर अपीलीय अधिकरण,
चेन्नई / CESTAT, CHENNAI - 600 006.