FAX : 011-26108426 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

Dated: 06/01/2016

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. **ST/A/53859/2015-CU[DB]** dated **31/12/2015**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.**

**Asstt. Registrar(CUSTOMS Appeal Branch)**

| | Application | Appeal | Name and Address of Appellant |
|---|---|---|---|
| 1 | ST/Stay/2411/2012, ST/MISC/53949/2014 | ST/1762/2012 | **A K Kearney Ltd** 14th Floor, Tower-d, Global Business Park, Gurgaon-122002 (haryana) |
| | | | Name and Address of Respondent |
| 2 | | | C.S.T.-Service Tax - Delhi MG MARG... IP ESTATE,17-B... IAEA HOUSE...I P ESTATE, DELHI-110002 |

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**Copy To**
3Advocate(s) / Consultant(s):

**P. D. S. Legal,Advocate**
**GOLF VIEW CORPORATE**
**TOWER-B, SECTOR -42, SECTOR**
**ROAD, GURGAON-122002**
**SECTOR-42, SECTOR ROAD,**
**GURGAON,**
**HARYANA-122002**

4 Additional Party's Name & Address :
5 Bar Association, CESTAT, Delhi
6 Director Publications, Customs, Excise. I.P. Estate, Delhi
7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
15 C.D.R. 16 Office Copy 17 Guard File

6/1/16
**Asstt. Registrar(CUSTOMS Appeal Branch)**

DB-D.

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. I

Date of hearing / decision : 31.12.2015

For Approval and Signature:

Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. R. K. Singh, Member (Technical)

| | | |
|---|---|---|
| 1 | Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982? | |
| 2 | Whether it should be released under Rule 26 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | |
| 3 | Whether their Lordships wish to see the fair copy of the Order? | |
| 4 | Whether Order is to be circulated to the Departmental authorities? | |

Service Tax Appeal No. 1762 of 2012
(Arising out of order-in-appeal No. 107/BK/GGN/2012 dated 23.03.2012 passed by the Commissioner of Central Excise (Appeals), Gurgaon).

M/s AT Kearney Limited — Appellant

Vs.

CST, New Delhi — Respondent

Appearance:
Shri Nageshwar Rao, Advocate for the appellant
Shri Ranjan Khanna, DA for the Revenue

Coram:
Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. R. K. Singh, Member (Technical)

Final Order No. 53859/2015

**Per: R. K. Singh**:

Appeal is filed against order-in-appeal dated 23.03.2012 in terms of which service tax of Rs. 32,92,209/- covering the period 01.04.2003 to 17.04.2006 was upheld alongwith interest and penalties on the ground that the "Out of Pocket Expenses" which were reimbursed by the service recipient were not included by the appellant in the assessable value of 'Management Consultant service' rendered by it.

2. The appellant gas contended that this issue is no longer *res integra* and has been settled by Delhi High Court in the case of ***Intercontinental Consultants and Technocrats Pvt. Ltd. vs. Union of India & Anr. – 2012-TIOL-966-HC-DEL-ST***.

3. Ld. DR on the other hand submitted that the said judgment of Delhi High Court dealt with Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 while the period involved in this case is before the said Rules came into existence and therefore, the said judgment is not squarely applicable in the facts of the present case.

4. We have considered the contentions of both sides and perused the record. We find that in para 13 of the show cause notice it is clearly stated that the appellant has not paid service tax on "Out of Pocket Expenses" billed by and reimbursed to it in the course of performance of the said service and that it appeared that value of "Out of Pocket Expenses" is to be added in the assessable value in terms of Sections 66 and 67 of the Finance Act, 1994. The appellate authority sustained the finding of the primary adjudicating authority holding that "Out of Pocket Expenses" reimbursed by service recipient are includible in the assessable value of 'Management Consultant service' and thereby sustained the impugned demand. We find that this issue was the subject matter in the case of ***Intercontinental Consultants and Technocrats*** (supra) where the High Court analysed the scope of

Section 67 ibid and held that Rule 5(1) of Service tax (Determination of Value) Rules, 2006 is ultra vires Section 66 and 67 of the Finance Act, 1994. Regarding the contention of Ld. DR that the judgment in the case of ***Intercontinental Consultants and Technocrats*** (supra) dealt with the period beginning from the date when the Service Tax (Determination of Value) Rules, 2006 came into existence and the period involved in this case is prior thereto, we find from the perusal of the said judgment that it is not the case. Indeed para 10 and part of para 11 of the said judgment is directly relevant to this point and is therefore reproduced below:

> *"10. The contention of the petitioner that Rule 5(1) of the Rules, in as much as it provides that all expenditure or costs incurred by the service provider in the course of providing the taxable service shall be treated as consideration for the taxable service and shall be included in the value for the purpose of charging service tax goes beyond the mandate of Section 67 merits acceptance. Section 67 as it stood both before 01.05.2006 and after has been set out hereinabove. This section quantifies the charge of service tax provided in Section 66, which is the charging section. Section 67, both before and after 01.05.2006 authorises the determination of the value of the taxable service for the purpose of charging service tax under Section 66 as the gross amount charged by the service provider for such service provided or to be provided by him, in case where the consideration for the service is money. The under lined words i.e. "for such service" are important in the setting of Section 66 and 67. The charge of service tax under Section 66 is on the value of taxable services. The taxable services are listed in Section 65 (105). The service provided by the petitioner falls under clause (g). It is only the value of such service that is to say, the value that can be brought to charge and nothing more. The quantification of the value of the service can therefore never exceed the gross amount charged by the service provider for the service provided by him. Even if the rule has been made under Section 94 of the Act which provides for delegated legislation and authorises the Central Government to make rules by notification in the official gazette, such rules can only be made "for carrying out the provisions of this Chapter" i.e. Chapter V of the Act which provides for the levy, quantification and collection of the service tax. The power to make rules can never exceed or go beyond the section which provides for the charge or collection of the service tax.* (emphasis added)

*11. In the aforesaid backdrop of the basic features of any legislation on tax, we have no hesitation in ruling that Rule 5 (1) which provides for inclusion of the expenditure or costs incurred by the service provider in the course of providing the taxable service in the value for the purpose of charging service tax is ultra vires Section 66 and 67 and travels much beyond the scope of those sections. To that extent it has to be struck down as bad in law*.............."

It is evident from the said judgment that the said Rule 5(1) was held ultra vires by Delhi High Court on the ground that it exceeded and went beyond the scope of Sections 66 and 67 (as it stood before and after 01.05.2006 The said rule provided some ~~big~~ fig leaf for inclusion of such expenses in the assessable value of taxable service and in the absence thereof, even a ~~big~~ fig leaf to include such expenses in the assessable value would not exist.

5. Thus, we find that the judgment of Delhi High Court in the case of ***Intercontinental Consultants and Technocrats*** (supra) is squarely applicable to the facts of the present case. Accordingly, we hold that the impugned order is not sustainable. The appeal is allowed.

(Justice G. Raghuram)
President

(R. K. Singh)
Member (Technical)

*Pant*