CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. IV

E-HEARING

SERVICE TAX APPEAL NO. 51490 OF 2019

[Arising out of the Order-in-Appeal No. BHO-EXCUS-001-APP-491-18-19 dated 29.03.2019 passed by The Commissioner (Appeals), Customs, CGST & Central Excise, Bhopal (M.P.).]

M/s Rajiv Dausage, **Appellant**
35, Naya Gaun,
Jabalpur – 482 008.

VERSUS

Commissioner, Customs, **Respondent**
CGST & Central Excise,
GST Bhawan, Mission Chowk, Napier Town,
Jabalpur (M.P.) – 482 001.

APPEARANCE
Shri Krishan Garg, Chartered Accountant – for the appellant.
Shri Shashank Yadav, Authorized Representative for the Department.

CORAM:
HON'BLE DR. MS. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE SHRI P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 50335/2025

DATE OF HEARING/DECISION : 13.02.2025.

P.V. SUBBA RAO

M/s. Rajiv Dausage[1] filed this appeal to assail the order-in-appeal dated 29 March 2019[2] passed by the Commissioner(Appeals), whereby he upheld the order passed by the Deputy Commissioner and rejected the appeal filed by the appellant. We have heard learned Chartered Accountant for the

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1. **appellant**
2. **impugned order**

appellant and learned authorised representative for the Revenue and perused the records of the case.

2. The appellant, an insurance surveyor, rendered services during 2012-2013 and charged surveyor fees and was also registered with the service tax department. In addition to the surveyor fee, the appellant received reimbursement of certain expenses such as conveyance, halting charges, photocopy charges, etc.

3. Receiving information that the appellant had not paid service tax on the amount of consideration and reimbursement of expenses received for his services during the period 2012–2013, the department started an investigation. It found that the total receipts of the appellant during the financial year 2012-2013 was ₹11,41,112/- and issued a show cause notice dated 23 November 2017[3] demanding service tax of ₹1,41,041/- invoking extended period of limitation along with interest and penalties.

4. The appellant resisted the proposals in the SCN on the ground that the reimbursable expenses were not exigible to service tax as per the judgment of the Delhi High Court in **Intercontinental consultants and technocrats Private Limited** versus **Union of India**[4] and if the amounts received as reimbursable expenses are excluded, the total professional fees received by the appellant during the year 2012-2013 was only ₹6,49,142/- which was below the threshold limit. Therefore, the

3. SCN
4. [2012] 28 taxman.com 213 (Delhi)

appellant had neither charged service tax from its clients, nor paid it to the department.

5. The Deputy commissioner, however, confirmed the demand with interest and penalties in his order dated 9 November 2018 and the Commissioner (Appeals) upheld this order through the impugned order even after recording that the appellant had placed reliance on the judgment of the Supreme Court in **Intercontinental consultants and technocrats Private Ltd.** versus **Union of India**[5] holding that reliance on this judgment was misplaced. The relevant portion of the order in appeal is reproduced below:

> "7. I have examined their submission. The reliance placed on the decision of the Apex court in the case of Intercontinental Consultants and Technocrats Pvt. Ltd. is misplaced. The Hon'ble High Court of Delhi has merely declared the Rule 5 (1) of the Service Tax Valuation Rules as ultra vires of Section 67 of the Finance Act, 1994. The Apex court has held that the Rule 5 of the Rules went much beyond the mandate of section 67 and the Delhi HC was right in interpreting sections 66 and 67 to hold that the value of taxable service shall be gross amount charged by the service provider 'for such service' and the valuation for service tax could not be anything more or less than the consideration paid as quid pro quo for rendering such a service. It has been held that the authorities are to find what is the gross amount charged for providing 'such' taxable services. As a fortiori, any other amount which is calculated not for providing such taxable service cannot a part of that valuation as that amount is not calculated for providing such 'taxable service'.

5. [2018] 10 GSTL 401 (S.C.)

> 8. The Court has not defined as what are the reimbursable expenses. Further, this said decision is also not an exposition on section 67 of the Act. As per section 67 of the Act, the value of taxable service shall be the gross amount charged by the service provider for such services. The value of the taxable service is the total amount of consideration consisting of all components of the taxable service and it is immaterial that the details of individual components of the total consideration is indicated separately in the invoice".

6. Learned Chartered Accountant for appellant submitted that the period of dispute is 2012–2013 and the amendment to section 67 to include reimbursable expenses in the value for calculation of service tax was made only on 14 May 2015. The law laid down by the Supreme Court as applicable during the relevant period is that no service tax can be charged on reimbursable expenses received by the service provider. Therefore, the impugned order cannot be sustained and may be set aside and the appeal may be allowed.

7. Learned authorised representative for the Revenue reiterated the impugned order.

8. We have considered the submissions.

9. The short question to be answered as if service tax could be charged during the relevant period on the reimbursements of expenses received by the service provider and the answer is negative as per the judgment of the Supreme Court in **Intercontinental Consultants**. The relevant portion of the judgment is as follows.

> "24. In this hue, the expression 'such' occurring in Section 67 of the Act assumes importance. In other words, valuation of taxable services for charging service tax, the authorities are to find what is the gross amount charged for providing 'such' taxable services. As a fortiori, any other amount which is calculated not for providing such taxable service cannot a part of that valuation as that amount is not calculated for providing such 'taxable service'. That according to us is the plain meaning which is to be attached to Section 67 (unamended, i.e., prior to May 1, 2006) or after its amendment, with effect from, May 1, 2006. Once this interpretation is to be given to Section 67, it hardly needs to be emphasised that Rule 5 of the Rules went much beyond the mandate of Section 67. We, therefore, find that High Court was right in interpreting Sections 66 and 67 to say that in the valuation of taxable service, the value of taxable service shall be the gross amount charged by the service provider 'for such service' and the valuation of tax service cannot be anything more or less than the consideration paid as *quid pro qua* for rendering such a service".

10. The Commissioner (Appeals) committed a grave error in not following the judgment of the Supreme Court and upholding demand of service tax by including the reimbursable expenses received during 2012–2013 in the value of taxable services. The impugned order therefore, needs to be set aside and is set aside. The appeal is, accordingly, allowed.

(Order dictated and pronounced in open court.)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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