IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Appeal No. ST/556/2011-ST(SM)

[Arising out of Order-in-Appeal No. 375-Appl/S.Tax/Div-I/Delhi-I/2010/7066 dated 31.12.2010, by the Commissioner of Customs, Central Excise & Service Tax (Appeals), New Delhi].

For approval and signature:
Hon'ble Shri V. Padmanabhan, Member (Technical)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of the 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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s. Grant Thornton **....Applicants**

Vs.

C.C.E. New Delhi-I **....Respondent**

Appearance:

Shri Siddhartha Nigam, CA for the Appellants
Shri R.K. Mishra, DR for the Respondent

CORAM:
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 04.01.2017

FINAL ORDER NO. 50224/2017-ST(SM)

Per V. Padmanabhan:

The appeal has been filed against the order of Commissioner (A) Delhi dated 31.12.2010. The appellant is registered with the service tax department and paying service tax under the category of management consultant. The dispute has arisen on a demand of Rs.1,09,257/- by way of service tax for the period July 2005 to September 2005. Revenue was of the view that this service tax is payable on amount claimed to be out of pocket expenses incurred by the appellant and reimbursed by the service recipient. The original authority confirmed the demand of service tax but in the impugned order Commissioner (A) has recorded the finding that though the appellant has produced copies of the relevant bills raised for clearance for reimbursement and out of pocket expenses but failed to produce relevant documents evidencing such expenses have actually been incurred by the appellant as out of pocket expenses. Accordingly, he denied the deduction of out of pocket expenses. He has also observed that there is a need to verify by the original authority whether service tax liability has been discharged on the said out of pocket expenses as claimed by the appellant. Accordingly, he directed the original adjudicating authority to verify the same with original documents.

2. With the above background I have heard Shri Siddhartha Nigam, CA for the Appellants and Shri R.K. Mishra, DR for the Respondent.

3. Ld. Counsel submitted that it is settled position of law that out of pocket expenses cannot be incurred for payment of service tax. It is his submission that the Commissioner (A) ought to have allowed the detection on the basis of the documents already submitted by him.

4. Ld. DR reiterates the orders of the authorities below.

5. On perusal of records, I find that the limited issue is with reference to the out of pocket expenses which has been incurred by the appellant in the course of providing services and which had

subsequently been reimbursed by the service recipient. The dispute is whether such expenses can be included for payment of service tax or not. It is fairly well settled that service tax is liable only on the value of consideration received for providing the services. Out of pocket expenses which are in the nature of the conveyance, travel, mobile expenses etc. cannot be included for purpose of levy of service tax. From records, I find that the appellant had submitted the copy of some of such bills evidencing the out of pocket expenses.

6. In the fact and circumstances of the case, I find that issue needs to be remanded to the original adjudicating authority who is directed to consider the documents which will be submitted by the appellant and extend the benefit of deduction of out of pocket expenses after verification of the original documents. He will also carry out verification of the points specifically referred by Commissioner (A) in the impugned order. Since the issue pertains to 2010, I direct that this exercise should be completed within two months from the date of receipt of this order. Appellant should be permitted to submit additional evidence as per law.

7. In view of the above, the appeal is allowed by way of remand.

[Dictated and Pronounced in the open Court]

(V. Padmanabhan)
Member (Technical)

Bhanu