IN THE CUSPTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:20/02/2017

Service Tax Appeal No.1506/2011 (DB)

[Arising out of Order-in-Appeal No.305(DKV)ST/JPR-I/2011 dated 15.07.2011 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur-I]

M/s.Ravi Associates Appellants

Vs.

CCE, Jaipur-I Respondent

**Appearance**:

Rep. by Shri Alok Kothari, Advocate for the appellant.
Rep. by Shri Sanjay Jain, DR for the respondent.

**Coram: Hon'ble Shri S. K. Mohanty, Member (Judicial)**
**Hon'ble Shri B. Ravichandran, Member (Technical)**

**Final Order No. 52140/2017**

**Per B. Ravichandran:**

The appeal is against order dated 15.07.2011 of Commissioner (Appeals), Jaipur-I. The appellants are engaged in providing "Clearing and Forwarding Agency Service" to M/s. Cadila Pharmaceutical P. Ltd. The dispute in the present appeal relates to the period October, 1999 to September, 2004 and is with reference to valuation of taxable service rendered by the appellant. The appellant claimed certain exclusions from gross amount on the ground that these are re-imbursable expenditure subject to a ceiling paid by the client mainly relating to stationary, telephone, courier, cartage, electricity, legal expenses, etc. The Revenue held that gross value, as received from the client, should be subject to tax under heading "Clearing & Forwarding Agency Service". Ld. Counsel submitted that the contract specifically provided for re-imbursement of the expenditure subject to ceiling of 80% of the commission amount. He further submitted that they have been registered with the Department in discharging service tax on the commission received. Since these amounts were towards re-imbursement of actual expenditure incurred while providing services to the clients and with reference to client's requirements, the same are not to be added in the taxable value.

2. Ld. Counsel mainly pleaded for time bar of the demand as there has been considerable litigation in the valuation of C& F Agency Service mainly with reference to re-imbursable expenditure.

3. Ld. Counsel also prayed for setting aside the penalties on the ground that there is no malafide attributable to the appellant.

4. Ld.AR submitted that the specific conditions regarding re-imbursement upto 80% of the value of the commission was inserted in the contract in December, 1998. Further, the contract did not stipulate what are the amount to be incurred by the appellant on behalf of the clients. It only talks about mandatory ceiling of the reimbursement. In the absence of specific agreement, there is no question of considering any expenditure, as incurred by the appellant on behalf of a client. These activities and expenses thereto are very essential to provide taxable service and in terms of Section 67, the gross amount is liable to tax.

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

6. On merits of the case, we find that the appellants though relied upon a clause regarding mandatory ceiling for re-imbursement of expenditure, nowhere it could be established that the various types of expenditure, that are to be incurred by the appellant on behalf of the clients. The agreement did not specifically list all such expenditures and in the absence of such categorical stipulation, a general observation regarding mandatory ceiling of re-imbursement by itself cannot be taken as a support for excluding a portion of the value on the ground that these are re-imbursable expenditure. The facts are to be asserted with supporting evidence. While general legal principles are claimed in favour of the appellant, the same cannot be applied to them unless it is factually accepted that they are covered by such principles. The agreement should stipulate and show such re-imbursable expenditure.

7. Regarding the question of time limit, we are in agreement with the appellant's plea that there has been a large number of litigation and clarification, with reference to valuation of C & F Agency Service. We note that the impugned order relied on the provisions of Rule 5 (1) of Service Tax (Determination of Value) Rules, 2006, which is not applicable to the period in question. Even otherwise, the said rule has been struck down by the Hon'ble Delhi High Court as ultra virus of the main provision of the Finance Act, 1994, in the case of **Intercontinental and Consultants & Technocrats Pvt. Ltd. Vs. Union of India - 2013 (29) STR 9 (Delhi).** We find that in the facts and circumstances of the case, it is not tenable to hold that this is a fit case for invoking extended period alleging fraud, collusion, willful mis-statement or suppression of facts. As such, we hold

that the service tax liability, as confirmed by the impugned order, shall be restricted to normal period. The penalties imposed on the appellants are also set aside. The appeal is disposed of in the above terms.

[order dictated and pronounced in the open court]

(S.K. Mohanty )
Member (Judicial)

( B. Ravichandran )
Member (Technical)

Ckp.