IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –III

Service Tax Appeal No.ST/188/2012-ST [DB]

[Arising out of Order-in-Appeal No.455 (AKJ) ST/JPR-I/2011 dated 05.12.2011 passed by the Commissioner (Appeals), Central Excise, Jaipur]

M/s. Rajshree Enterprises …Appellant

Vs.

C.C.E., Jaipur-I … Respondent

Present for the Appellant : Ms.Rinki Arora, Advocate
Present for the Respondent: Mr. J.P. Singh, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. B.RAVICHANDRAN, MEMBER (TECHNICAL)

Date of Hearing/decision: 22/03/2017

FINAL ORDER NO. 52580/2017

PER: B.RAVICHANDRAN

The appeal is against the order dated 05.12.2011 of Commissioner (Appeals-I), Jaipur. The appellants are engaged in providing taxable service under the category of clearing and forwarding agency in terms of Section 65(105) (j) read with Section 65 (25) of Finance Act, 1994. They have entered into an agreement with M/s.Parle Products Ltd. to act as their C & F Agent. The dispute in the present case is relating to valuation of the taxable service. The appellants contented that they are liable to pay service tax only on agency commission and remuneration received for performing C& F services. It was contended that M/s. Parle Products Ltd. were reimbursing various expenditure like ground rent, telephone, postal charges, electricity etc. on actual basis in terms of the agreement. Such reimbursable expenditures are not be included in the taxable value.

2. On the other hand, the Revenue held the view that gross value for the purpose of service tax in terms of Section 67 of the Act read with Rule 6 (8) of the Service Tax Valuation Rules, at it existed, during the relevant time, to be included all the expenses incurred by the appellant during the course of providing the C & F services. Proceedings initiated against the appellant resulted in the original order confirming service tax liability of Rs.2,09,350/- and imposition of various penalties. On appeal, the same was upheld by the impugned order.

3. The ld. Counsel for the appellant submitted that in terms of the written agreement with the client, the appellants are incurring various expenditures, which are reimbursed on actual basis and the documents are supporting their claim. Admittedly, the lower authorities also recorded these facts. The view of the Revenue that this reimbursable expenditure also should form part of gross value in terms of Section 67 of the Act is not legally sustainable. She relied on various decided cases referred to later in this order.

4. The ld. A.R. reiterated the findings recorded by the lower authorities.

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

6. The impugned order recorded the appellants' contention regarding the nature and categories of reimbursable expenditure. Admittedly, there is no dispute regarding these expenditures having been incurred by the appellant in terms of the agreement and also being reimbursed on actual basis by their client. The appellants are not disputing their service tax liability on the agency commission and remuneration received for providing C & F services. In such factual position, we note that the settled legal position is not supporting the findings of the impugned order. The Hon'ble Madras High Court in Commissioenr of Serivde Tax, Chennai vs. Sangamitra services Agency – 2014 (33) STR 137 (Mad.) held as below:-

> ***7.*** *We do not agree with the said contention. In the absence of any material to show the understanding between the Principal and the Client that the Commission payable by the principal was all inclusive, it is difficult to hold that the gross amount of remuneration/commission would nevertheless include expenditure incurred by the assessee providing the services; that all incidental charges for running of the business would also form part of the remuneration or Commission (by whatever name called). The phrase "by whatever name called" must necessarily have some link or reference or nature to the receipt of remuneration or commission. Thus, if a receipt is for reimbursing the expenditure incurred for the purpose, the mere act of reimbursement, per se, would not justify the contention of the Revenue that the same, having the character of the remuneration or commission, deserves to be included in the sum amount of remuneration/commission.*

__8.__ As per Rule 6(8) of Service Tax Rules, 1994, the gross amount referred to therein would apply to receipts of such sum, which would bear the character of remuneration or commission, in that, the said sum is brought under the head "receipts".

7. The said decision has been followed by the Tribunal in various cases. In Amit Sales vide Final Order No.53149/2016 dated 22.08.2016, the Tribunal observed as below:-

"6. Larger Bench of the Tribunal in the case of Sri Bhagavathy Traders Vs. CCE Cochin-2011 (24) STR 290 (Tril-LB) has observed that the terms of the agreement entered into between the service recipient and service provider has to be examined and when rent for the premises has been agreed upon by the service recipient for payment purposes and similarly when the salary of the staff and the other reimbursable expenses stand agreed upon between service recipient and service provider same has to be considered as reimbursable expenses. When the agreement in question is viewed and examined in the light of the above decision of the Larger Bench, we note that the service recipient decided and agreed to pay all the expenses for running the C&F agency. In fact we note that Hon'ble Madras High Court in the case of Commissioner of S.T. Chennai Vs. Sangamitra Services Agency-2014 (33) STR 137 (Mad), has held if the receipt is for reimbursing the expenditure incurred for the purpose of providing clearing and forwarding agent services, the same will not form part of the value of the services. The Hon'ble High court of Delhi in the case of Intercontinental Consultants & Technocrats Pvt. Ltd. Vs. UOI-2013 (29) STR 9 (Del) has also examined the said issue and has held in favour of the assessee. Tribunal in the case of Pinnacle Shares Registry Pvt. Ltd. Vs CST, Ahmedabad-2015 (40) STR 194 (Tri-Ahmd), by following the said two decisions of the Hon'ble High Court of Delhi as also Hon'ble Madras High Court

has held that reimbursable expenses cannot be added in the assessable value of the C&F services."

8. In view of the above settled legal position, we find no merit in the impugned order and accordingly, set aside the same. The appeal is allowed.

[Dictated and pronounced in the open Court]

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita