IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

BENCH-DB

COURT –IV

Service Tax Appeal No.ST/1760/2011-CU [DB]

[Arising out of Order-in-Appeal No.301/S.Tax/D-II/2011 dated 25.08.2011 passed by the Commissioner (Appeals), Central Excise, Delhi-II]

Rural Communication & Marketing Pvt. Ltd. ...Appellant

Vs.

C.C.E., Delhi-I ... Respondent

Present for the Appellant : Mr.A.K. Nair, CA
Present for the Respondent: Mr.Govind Dixit, D.R.

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

Date of Hearing / Decision : 27/10/2017

FINAL ORDER NO. 57495/2017

PER: B.RAVICHANDRAN

This appeal is directed against the impugned order dated 25.08.2017 of Commissioner (Appeals), Delhi- II. The appellants are engaged in providing advertising service to various clients. They are registered with the Department and are discharging Service Tax for the said services. The dispute in the present appeal relates to valuation of said service for service tax purposes. More particularly, the dispute is with reference to certain bill amounts shown as reimbursement charges of Gift Prices, Display Cost, Stall Sample, audio System, Permission for campaigning from State Government, Promotional Materials etc. incurred by the appellant and reimbursed by their clients on cost basis. The Revenue held a view that all the charges incurred by the appellant in connection with providing services shall be considered for tax purposes in terms of Section 67 of the Finance Act, 1994. The claim of the appellant that these were reimbursed on actual basis and are to be excluded from taxable value in terms of Section 67 read with Notification No. 12/2003-ST dated 20.06.2003 was not accepted by the Revenue. The impugned order reversed the decision of the Original Authority and held the appellant liable for Service Tax on gross amount without any abatement of amount claimed to be reimbursable expenditure.

2. The ld. Counsel for the appellant submitted that the original authority has correctly appreciated the nature of activities in terms of agreement with the clients and as such, arrived at his conclusion. On appeal by Revenue, the Commissioner (Appeals) in the impugned order reversed the decision of the original authority holding that the concept of pure agent will not apply for the period prior to the introduction of Valuation Rules w.e.f. 19.04.2006. He held that the original authority erred in allowing exclusion of such expenses from the taxable value. The ld. Counsel submitted

that the exclusion is supported by actual documents of purchase and sale, payment on such transaction and contractual arrangements with the clients. Section 67 cannot be interpreted to cover such transactions.

3. The ld. A.R. supported the findings in the impugned order. He submitted that the original authority should not have given the benefit of pure agent for the period prior to 18.04.2006, as the Rule itself came into force only on that day. Further, the impugned order correctly relied on the decision of the Tribunal in Mckinsey & Co. – 2007 (006) S.T.R. 420 (Tri. – Mumbai). Following the said ratio, impugned order held that the appellant is liable to pay Service Tax on the gross amount.

4. We have heard both sides and examined the records.

5. We note that the dispute in the present appeal relates to valuation of service rendered by the appellant. The Revenue held a view that reimbursable expenditure as claimed by the appellant cannot be excluded, as there is no legal sanction for such exclusion. The concept of pure agent was introduced in terms of Rule 5 of Service Tax Valuation Rules, 2006 and the same is not applicable for the period prior to the Notification of the said Rules. We find that valuation of taxable service in terms of Section 67 can be with reference to service, if there were purchase and sale of goods as evidenced by the

documents, the same cannot form part of taxable value for service. This is even without reference to the concept of pure agent. It is not the case that the introduction of Valuation Rules has brought in specific exclusions, which were otherwise taxed under Section 67. In other words, the Valuation Rules were not for exempting any portion of value, which is otherwise taxable under Section 67. The basic concept of Section 67 remained the same all throughout. Prior to substitution of the Section on 01.05.2006 the main provision of valuation stated that "the value of any taxable service shall be the gross amount charged by the provider of service for such service rendered by him" The Valuation Rules brought in clarity to cover various situations and the same are notified on 19.04.2006.

6. Even otherwise, we note that the situation is covered by Notification No. 12/2003 dated 20.06.2003. We note that in para 10 of the original order, the factual position, as examined by original authority has not been countered in the impugned order. It is clear that the original authority has examined purchase bills / invoices for reimbursement raised to the client Recording that there are clear distinctions between invoices raised for services and invoices raised for reimbursements. The original authority came to the conclusion that the appellant need to pay tax only with reference to service charges or the consideration received towards the services rendered by them.

The exclusion of other reimbursable expenditure as evidenced by documents are not to be treated for tax purposes. View of the Revenue that the introduction of Rule will change this valuation concept is not accepted. Section 67 can bring the valuation of taxable service only with reference to service. In the evidence available in the present appeal that these were reimbursements, which are on actual basis in terms of agreement with the clients and are known to the parties, the same are not to be brought in for taxable purpose under Section 67.

7. Accordingly, we find that the analysis made in the original order is correct and proper and the impugned order is liable to be set aside. Accordingly, we set aside the impugned order and allow the appeal.

[Dictated and pronounced in the open Court]

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita