IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV

DATE OF HEARING/DECISION : 31/10/2017.

Service Tax Appeal No. 57748 of 2013

[Arising out of the Order-in-Appeal No. 64/ST/DLH/2013 dated 28/02/2013 passed by The Commissioner (Appeals), Central Excise, Delhi – I.]

M/s R.K. Swamy BBDO Pvt. Ltd. Appellant

Versus

CST, Delhi Respondent

Appearance

Shri I.C. Kumar, Advocate – for the appellant.

Shri Sanjay Jain, Authorized Representative (DR) – for the Respondents.

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

Final Order No. 57510/2017 Dated : 31/10/2017

Per. B. Ravichandran :-

The appeal is against order dated 28/02/2013 of Commissioner (Appeals), Delhi – I. The appellants are engaged in providing advertising services and are registered with the Department for payment of service tax. The dispute in the present case relates to the valuation of services rendered by the appellant for tax purposes. The appellants were not paying service tax on the amount shown as business expenses/out of pocket expenses like travel, transportation and staying in hotel etc. incurred on behalf of their clients. They issue subsequently debit notes to their clients. The contention of the appellant is that these are expenses incurred on behalf of the client and are not to be included in the assessable value for tax purposes. The lower Authorities held that gross amount received by the appellant are liable to service tax in terms of Section 67 of the Finance Act, 1994. Reliance was placed on Circular dated 31/03/1996 issued by the Board.

2. The learned Counsel appearing for the appellant submitted that the fact that appellant incurred out of pocket expenditure in the form of travel, accommodation, etc. on behalf of client is not in dispute. The circular dated 07/10/1998 issued by the Board clearly covers the issue. It was clarified that no service tax is liable to be paid on such out of pocket expenses subject to verification of documentary evidence substantiating such expenses were in fact incurred.

3. The learned AR while supporting the findings of the lower authorities submitted that any exclusion from gross receipt should be based on documentary evidence and contractual arrangement.

4. We have heard both the sides and perused the appeal records. Admittedly, the appellants incurred certain out of pocket expenses in the form of travel, accommodation during the course of provision of service to the client and such expenses were claimed to be reimbursable on actual basis in terms of arrangement with the client. On the legal principal, these

expenses are not to be included in the taxable value. We note that the matter has been well settled. The clarification issued by the Board, mentioned above, also categorically support such view. The Tribunal in various cases consistently held a view that actual reimbursable expenditure in the form of out of pocket expenses incurred by the service provider on behalf of the service recipient which are reimbursed on actual basis as per the pre-arrangement are not to be included in the gross value for tax purposes. There is no contrary view on this legal position. However, such exclusions are necessarily to be supported by documentary evidence in terms of agreement. It should be on actual basis with no mark up or margin. This aspect can be verified by the Original Authority.

5. In view of the above discussions, we find that the appellants are not liable to pay service tax on reimbursable out of pocket expenditure which are supported by documentary evidence. Subject to verification of such documentary evidence, no tax liability will arise on the same. The appeal is allowed in the above terms.

(Order dictated and pronounced in open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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