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

Date of Hearing/decision:8.5.2018

Service Tax Appeal No.55951/2014 (DB)

[Arising out of Order-in-Appeal No.IND/CEX/000/APP/251/2014 dated 25.09.2014 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Indore]

CCE, Indore Appellants

Vs.

M/s.Mahendra Kumar Jain Respondent

Appearance:

Rep. by Shri A.K. Singh, DR for the appellant.
Rep. by Ms. Priyanka Goel, Advocate for the respondent.

Coram: Hon'ble Shri V. Padmanabhan, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

Final Order No. 51754/2018

Per V. Padmanabhan:

The present appeal is filed by Revenue against the Order-in-Appeal No. IND/CEX/000/APP/251/2014 dated 25.09.2014. The respondent is engaged in providing "Cargo Handling Services". The dispute covers the period 1.10.2006 to 31.03.2008, during which the Revenue noticed that the appellant has not included certain expenses, which were reimbursed by their clients. Accordingly, show cause proceedings were initiated to demand differential service tax by including the reimbursable expenses in the total consideration received by the appellant. But both the authorities below took the view that there is no justification for including such reimbursable expenses and demanded service tax, which were set aside. The Revenue has filed the present appeal.

2. In this connection, we have heard Shri A.K.Singh, ld. DR for the Revenue as well as Ms. Priyanka Goel, Advocate for the respondent.

3. After hearing both the sides, we note that the issue regarding the inclusion of re-imbursable expenses into the value of consideration for payment of service tax was the subject matter in the case of **Union of India Vs. M/s.International Consultants and Technocrafts Pvt. Ltd. – 2018 (3) TMI 357 –Supreme Court of India.** The Hon'ble Supreme Court in the above case has upheld the decision of the Hon'ble Delhi High Court holding that the inclusion of such reimbursable expenditure was not justified and Rule 5 of the Service Tax Rules which was held to be un-constitutional and ultra virues of the provisions of Section 66 and 67 of the Finance Act, 1994.

4. By following the decision of the Hon'ble Supreme Court in the case of **M/s.International Consultants and Technocrafts Pvt. Ltd. (supra),** we dismiss the appeal filed by Revenue.

[Order dictated and pronounced in open court]

(V. Padmanabhan)
Member (Technical)

(Ajay Sharma)
Member (Judicial)

Ckp.