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. I

DATE OF HEARING : 22/10/2018.
DATE OF DECISION : 22/10/2018.

Service Tax Appeal No. 1256 of 2010

[Arising out of the Order-in-Appeal No. 222 (DKV)/ST/JPR-I/2010 dated 08/06/2010 passed by The Commissioner (Appeals), Central Excise, Jaipur.]

M/s Sahiba Ditta Enterprises Appellant

Versus

CCE, Jaipur Respondent

Appearance

Ms. Priyanka Goel, Advocate – for the appellant.

Shri R.K. Majhi, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri Justice Dilip Gupta, President**
Hon'ble Shri C.L. Mahar, Member (Technical)

Final Order No. 53310/2018 Dated : 22/10/2018

Per. C.L. Mahar :-

The brief facts of the matter are that the appellant is working as C&F Agent and had taken registration under the service tax for consignment and forwarding agent service. It is a matter of fact that the appellants have been receiving commission from their consignor and have been paying service tax on the same. The department, however, noticed that the appellant received certain amount from their consignors against various expenses incurred by them and the amount of such reimbursed expenditures have not been included in the taxable value of service by the appellant for payment of the service tax. Accordingly, a service tax demand for the period 2001-2002 to 2003-2004, demanding a service tax of Rs. 1,47,710/- under Section 73 (1) of the Finance Act, 1994 was issued and penal provision under Section 76, 78 of the Finance Act, 1994 were also invoked. The matter was adjudicated by learned Assistant Commissioner vide his order dated 30th October 2009 wherein the above amount of the service tax alongwith penalty under Section 76 and 78 of the Finance Act, 1994 was confirmed and penalties have also been imposed. Against the order of the learned Assistant Commissioner, an appeal before Commissioner (Appeals) was filed which was decided by order-in-appeal No. 222 (DKV)/ST/ JPR-I/2010 dated 08/06/2010, wherein the confirmation order of the Original Adjudicating Authority has been upheld by the learned Commissioner (Appeals). The appellant is before us against the order of Commissioner (Appeals).

2. The learned Advocate appearing for the appellant has contended that they have been getting reimbursement of certain expenditures such as freight, cartage, CFA, LOC, packing material, refreshment charges, drug licence charges, electric bills and telephone charges which have been incurred by the appellant on behalf of the consignor. It has been the primary contention

that they got reimbursement of the expenditures which was incurred by them on behalf of the principle. It has been submitted that they have only worked as a pure agent wherein they have on the first hand made expenditure of certain expenses on behalf of the principle (consignor) and later on the same has been reimbursed to them by their service recipient (consignor). The learned Advocate has drawn our attention to the fact that the show cause notice has included the value of drug licence fee charges paid by them on behalf of the principle to the concerned Government Agency which got reimbursed later on from their consignor. The learned Advocate has emphasized that with regard to the drug licence fee they have only worked as a pure agent and therefore the reimbursement of such expenditure cannot be included in the taxable value of the service. The learned Advocate has also relied on certain instructions issued by the CBEC as well as this Tribunal's order in the case of **Nazeer & Co. vs. CCE, Kochi – 2009 (13) S.T.R. 672 (Tri. – Bang.)**.

3. We have also heard learned Departmental Representative who has reiterated the findings of Commissioner (Appeals) in his submissions.

4. We have heard both the sides. The Department was of view that the expenses which the appellant has got reimbursement from the service recipient were in the nature of freight, cartage, CFA, LOC, packing material, refreshment charges, drug licence charges, electric bills and telephone charges. They are primarily

his own expenses for providing service which have been reimbursed by the service recipient. It has, therefore, been alleged that taxable value of service of C&F agent have been suppressed to that extent.

5. Now before coming to the main issue on hand for adjudication it will be relevant to have a look at the provisions of Section 67 of Finance Act, 1994 as well as Rule 3 of Service Tax (Determination of Value) Rules, 2006 :-

> **"SECTION [67. Valuation of taxable services for charging service tax.** — (1) Subject to the provisions of this Chapter, where service tax is chargeable on any taxable service with reference to its value, then such value shall, —
>
> (i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;
>
> (ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money as, with the addition of service tax charged, is equivalent to the consideration;
>
> (iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.
>
> (2) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.
>
> (3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.
>
> (4) Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed.
>
> ***Explanation***. — For the purposes of this section, —
>
> (a) ["consideration" includes —
>
> (i) any amount that is payable for the taxable services provided or to be provided;

(ii) any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed;

(iii) any amount retained by the lottery distributor or selling agent from gross sale amount of lottery ticket in addition to the fee or commission, if any, or, as the case may be, the discount received, that is to say, the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such ticket.'.]

[(b) * * * *]

(c) "gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and [book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.]]

RULE 3. Manner of determination of value. — Subject to the provisions of section 67, the value of taxable service, [where such value is not ascertainable], shall be determined by the service provider in the following manner :-

(a) the value of such taxable service shall be equivalent to the gross amount charged by the service provider to provide similar service to any other person in the ordinary course of trade and the gross amount charged is the sole consideration;

(b) where the value cannot be determined in accordance with clause (a), the service provider shall determine the equivalent money value of such consideration which shall, in no case be less than the cost of provision of such taxable service".

6. It may be seen from the provisions of Section 67 (3) that the taxable value of a service includes the gross amount charged for taxable service and it will include any amount received by the service recipient for providing the taxable service. Since, the appellant have been working as C&F agent and have been incurring various expenditures, the nature of such expenditure whether same is necessary for providing the taxable service or not need to be seen by the Assessing Officer. Now on perusal of the type of expenditures which have been reimbursed to the

appellant in certain items like drug licence charges, telephone charges incurred on behalf of the service recipient it appears that the appellant have got reimbursement of actual expenditure incurred by him on behalf of his principle (consignor) and here he has only worked as a facilitator and a pure agent on behalf of his principle and therefore we feel that prima facie the appellant has a strong case to claim non-inclusion of such reimbursed amount from the taxable income. However, the other charges which he got reimbursed whether that is includable in his taxable value or not as per the provision of Section 67 of Finance Act, 1994 can only be decided by examining whether such expenditure that has been incurred on behalf of principle consignor are essential expenditures for providing the service of Consignment and Forwarding agents service and thus includable in the taxable value or not, is to be decided by getting necessary information with regard to individual expenditure reimbursed to the appellant. We find that the details of relevance of these expenditures and their necessity in the providing the service by the appellant is not available on the record of appeal and in impugned order-in-original. We, therefore, remand the matter to the Original Adjudicating Authority with a direction that the necessity of each expenditure has to be examine to ascertain whether such expenditure was necessary on the part of the appellant in performing his work or same was incurred by the appellant only on behalf of the service recipient and he worked only as a pure agent with regard to these expenditures. The

Adjudicating Authority after examining each expenditure will decide the issue afresh to determine whether the amount of such expenditure can be included in the taxable value of service tax or not. We also direct the appellant to approach the Adjudicating Authority as soon as he receives the order and extend full cooperation in an early decision.

7. In view of above, the appeal is allowed by way of remand.

(Operative part of the order pronounced in the open court.)

(Justice Dilip Gupta)
President

(C.L. Mahar)
Member (Technical)

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