CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. 1

SERVICE TAX Appeal No. 55144 of 2014

(Arising out of Order–in-Appeal No. Ind/Cex/000/App/109/2014 dated 12.06.2014 passed by COMMISSIONER OF CENTRAL EXCISE-Indore)

M/s. International Logistics **...Appellant**
C/o Mr. Suresh Pahuja, 1-2,
Nehru Market, A.B. Road,
Indore, MP

Versus

Commissioner of Customs,
Central Excise, Indore **....Respondent**
PB No 10, Manik Bagh Road,
Manik Bagh Palace,
Indore, MP

APPEARANCE:
Mr. Manish Saharan, Advocate for the Appellant
Mr. R.K. Manjhi, Authorised Representative for the Respondent

CORAM : HON'BLE MR.JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)

Date of Hearing/ Decision: **09.05.2019**

FINAL ORDER No. 50738/2019

JUSTICE DILIP GUPTA

1. The appellant is aggrieved by the order dated 20 February 2013 passed by the Additional Commissioner to the extent it confirms the demand of service tax on Miscellaneous reimbursements. It needs to be clarified that the appellant is not challenging the confirmation of demand against man power and security.

2. The records indicate that pursuant to the show cause notice dated 15 February 2005 in relation to three services namely man power, security and miscellaneous reimbursement, the Joint Commissioner by order dated 30 November 2006 confirmed the demand made for man power and security services but dropped the demand made for miscellaneous reimbursement. The appellant feeling aggrieved by the confirmation of demand in regard to man power and security services, filed an appeal and the Commissioner (Appeals) by order dated 5 April 2007 dropped the demand for both man power and security services. The department now felt aggrieved by the dropping of the demand for these two services, namely man power and security, and, therefore, filed an appeal before this Tribunal. The Tribunal by order dated 9 February 2012 held that the expenses incurred in providing taxable services shall be part of the assessable value, since such expenses were inseparable and were internally connected. The Tribunal, therefore, remanded the matter to the adjudicating authority to determine the ultimate quantum of demand of service tax. The appeal was, accordingly, allowed by the Tribunal to the extent indicated in the order.

3. A fresh order was thereafter passed by the adjudicating authority on 20 February 2013. The order of the adjudicating authority indicates that it has confirmed the demand for all the three services, namely man power, security and miscellaneous reimbursement.

4. It is contended by Shri Manish Saharan, learned counsel for the appellant that what was required to be examined by the Adjudicating Authority after remand by the Tribunal was whether service tax could be levied for man power and security services only as it was with regard to these two services that the Department had filed the appeal before the Tribunal, but the Adjudicating Authority confirmed the demand against the miscellaneous reimbursement also, for which the demand had been dropped by the Adjudicating Authority in its initial order dated 30 November 2006. It is, therefore, his submission that the order of the Adjudicating Authority so far it confirms the demand under the head "miscellaneous reimbursement" should be set aside.

5. Shri R.K. Manjhi, learned authorised representative for the Department, has however stated that it is because of the statement contended in the order passed by the Tribunal that the Adjudicating Authority had to pass the order with regard to 'miscellaneous reimbursement' also.

6. We have considered the submissions advanced by the learned counsel for the appellant and the learned Authorised Representative for the Department.

7. The show cause notice, as stated above, was issued for three services, namely man power, security and miscellaneous reimbursement. The Adjudicating Authority earlier in its order dated 30 November 2006 had dropped the levy of service tax for miscellaneous reimbursement but had confirmed the demand for man power and security. In the appeal filed by the assessee before

the Commissioner (Appeals), the demand confirmed by the Adjudicating Authority for man power and security services was also dropped. The Department was aggrieved only by the dropping of the demand in regard to man power and security services and it is for this reason that the Department had filed the appeal before the Tribunal. The Tribunal had remanded the matter to the Adjudicating Authority to pass a fresh order. The Adjudicating Authority was, therefore, required to re-determine the quantum of tax for two services, namely man power and security services. There was no occasion for Adjudicating Authority to determine the quantum of tax for 'miscellaneous reimbursement' as that was not even an issue before the Tribunal. The appellant is therefore, justified in ascertaining that the order passed by the Adjudicating Authority to the extent it quantifies the amount of service tax for miscellaneous reimbursement needs to be set aside.

8. Thus for the reason stated above, the order dated 20 February 2013 to the extent it quantifies the amount of service tax towards miscellaneous reimbursement is set aside. The appeal is allowed to this extent.

(Dictated and pronounced in the open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(BIJAY KUMAR)
MEMBER (TECHNICAL)

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