CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench

Court – I

Service Tax Appeal No. 2552 of 2012

(Arising out of OIA No.113/2012 (H-III) ST dt.25.05.2012 passed by Commissioner of Central Excise, Customs & Service Tax (Appeals-III), Hyderabad)

Crystal Marketing Corporation
K/1/1, IDA Uppal, Hyderabad,
Telangana – 500 039

......Appellant

VERSUS

Commissioner of Central Tax
Secunderabad - GST
LB Stadium Road, Basheerbagh,
Hyderabad, Telangana – 500 004

......Respondent

Appearance
Shri P.V.B. Chary, Advocate for the Appellant.
Shri B. Sangameshwar Rao, AR for the Respondent.

Coram:
HON'BLE MR. ANIL CHOUDHARY (JUDICIAL)
HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30308/2023

Date of Hearing: 04.10.2023
Date of Decision: 04.10.2023

[Order per: ANIL CHOUDHARY]

Heard the parties. The issue involved in this Appeal is whether the Appellant, who was providing clearing and forwarding agent services and are registered with the Department, is liable to pay Service Tax on certain expenses which have been reimbursed by their principal during the period October, 2009 to March, 2010.

2. The brief facts are that during the aforementioned period, the Appellant have received reimbursement of expenses of following amounts:

S.No.	Taxable Service	Amount	Service Tax payable @ 10.3%
1	Salaries	1,49,038/-	15,351/-
2	Telephone Fax	1,60,226/-	16,503/-
3	Electricity	71,967/-	7,413/-
4	Printing & Stationery	1,34,719/-	13,876/-

5	Post & Courier	1,43,370/-	14,767/-
6	Conveyance	27,949/-	2,879/-
7	Other expenses	9,86,480/-	1,01,607/-
8	Loading & Unloading	12,41,240/-	1,27,848/-
9	Security Charges	88,550/-	9,121/-
10	Total	30,03,539/-	3,09,365/-

3. It appeared to Revenue that the Appellant is liable to pay Service Tax on the aforementioned amounts by way of reimbursements totalling Rs.30,03,539/-. Accordingly, SCN dated 23.02.2011 was issued proposing to demand Service Tax of Rs.3,09,365/- with interest and further penalty was proposed under Sec 76 of the Act.

4. The SCN was adjudicated on contest and the proposed demand was confirmed along with penalty under Sec 76 of the Act. Being aggrieved, the Appellant preferred Appeal before the Commissioner (Appeals) who was pleased to confirm the Adjudication Order dismissing the Appeal. Being aggrieved, the Appellant is before this Tribunal.

5. We find that the issue herein is arising by way of periodical SCN. Earlier also the same issue of the same Appellant has been considered by this Bench and vide Final Order No. 30702-30703/2019 dated 19.06.2019, the Tribunal held as follows:

> *"7. On perusal of records and submission of both sides, we find that the demand is raised on the expenses which are reimbursed by the principal to the appellant herein. It is undisputed that the appellants have discharged service tax on the entire commission received by them. Apart from such commission, they are also receiving amounts in the nature of reimbursement of expenses. Such amount is not in the nature of consideration for any services provided by the appellant. These are the expenses incurred by the appellant and have been reimbursed by the principal pursuant to the agreement. Such reimbursable expenses cannot form part of the assessable value during the relevant period because service tax can only be levied on the gross amount charged for rendering services as has been held by the Hon'ble Apex Court in the case of UOI Vs Intercontinanteal consultants and Technocrats (supra). The case of Modern business solutions (supra) relied upon by the learned A.R. as well as the case of Adarsh Agency (supra) are on a different footing. These were cases where some expenses incurred by the service provider whle rendering services have been sought as deductions which has been disallowed by the Tribunal in those cases. In the present case, the show-cause notice clearly indicates that the disputed amounts are reimbursable expenses, therefore no service tax can be levied on such reimbursable expenses. In view of the above, we find that the impugned orders are not sustainable and need to be set aside and we do so.*
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> *8. The appeals are allowed and the impugned orders are set aside with consequential relief if any."*

6. In view of the precedent Order of this Tribunal in favour of the Appellant on the same issue, we allow this Appeal and set aside the Impugned Order. The Appellant shall be entitled to consequential benefits, in accordance with law.

(Dictated and pronounced in the Open Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

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