

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.75171 of 2024

(Arising out of Order-in-Original No.11/Commr./CGST & CX/KOL-NORTH/2023-24 dated 17.05.2023 passed by Commissioner of CGST & Excise, Howrah)

M/s Akshoy Kumar Ghosh & Sons

Marshal House, Room No.342 & 343,33/1, N.S.Road, 3rd Floor, Kolkata-700001

Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Howrah

15/1, Strand Road, Kolkata-700001

Respondent

APPEARANCE :

S/Shri Avra Mazumder, Amit Kumar & Samrat Das, all Advocates for the Appellant

Shri S.Mukhopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75713/2024

DATE OF HEARING : 20.03.2024

DATE OF PRONOUNCEMENT : **19.04.2024**

Per Ashok Jindal :

The appellant is in appeal against the impugned order wherein the demand of service tax has been raised on account of non-inclusion on reimbursable expenses incurred by the appellant in taxable services.

2. The facts of the case are that the Service Tax Audit was initiated for the period 2015-16 to 2017-18 (upto June 2017) by the Department against the appellant. A letter was issued for submissions of the documents. The appellant supplied the documents and it was observed

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that the appellant has obtained the Service Tax Registration under Section 65 (105)(h) of the Act. In the balance sheet and trading/profit and loss account for the relevant period, they have declared the gross amount charged to their clients an amount of Rs.21,74,65,342/- and an amount of Rs.20,71,78,011/- as reimbursable expenses. However, the appellant has declared taxable value as Rs.3,13,96,519/-.

2.1 The case of the Revenue is that the appellant has incurred expenses showing reimbursable expenses but the tax was paid on some charges taking into consideration the same as taxable value for CHA services.

2.2 On the said basis, a show-cause notice was issued to the appellant to demand differential service tax for payment of service tax on reimbursable expenses claimed by the appellant.

2.3 The matter was adjudicated. The demand of service tax was confirmed.

2.4 Against the said order, the appellant is before us.

3. The Id.Counsel for the appellant submits that the appellant was registered as service provider for clearing and forwarding agent services under Section 65 (105)(j) read with Section 65 (25) of the Finance Act, 1994. It is his submission that the appellant is providing the pure agency services and to that effect, the appellant provided various agreements with their Principal showing that the appellant is

only a pure agent. It is the submission that the appellant has provided services, namely, freight charges, loading and un-loading etc. on behalf of their Principal on actual basis as the appellant was acting as pure agent, therefore, the said amount cannot be included in their taxable services. It is submitted that the reimbursable expenses cannot be included in the taxable services as held by this Tribunal in the case of Principal Commissioner of Central Excise & Service Tax, Patna Vs. M/s Ganga Carrier Private Limited vide Final Order No.76626/2023 dated 11.09.2023.

4. On the other hand, the Id.A.R. for the Revenue, reiterated the impugned order.
5. Heard both the parties and considered the submissions.
6. We find that the appellant has claim that they are the pure agents. In support of their claim, the appellant has filed various agreement with their Principal, which shows that the appellant is the pure agent and all the expenses of Principal are for taking and delivery of the goods, for making payment for transportation, freight of clearing and forwarding services for the purposes of agency. All the charges paid are to be reimbursed to the appellant on actual basis as the appellant is a pure agent. For better appreciation, one of such agreement is extracted here :



পশ্চিমবঙ্গ পশ্চিম বঙ্গাল WEST BENGAL

AH 968770

DEED OF AGREEMENT BETWEEN PRINCIPAL AND PURE AGENT

This **DEED OF AGREEMENT** is executed on this 08th day of February of 2014.

BETWEEN

M/S. SUDARSHAN TRADING COMPANY. Address Opp.Bal Vihar, Hamidia Road, Bhopal,M.P. Pin462001. hereinafter called "the **PRINCIPAL**" of the **ONE PART**

AND

M/S. AKSHOY KUMAR GHOSH AND SONS. Address 15/1, Strand Road, New Customs House, Kolkata-700 001. hereinafter called "the **PURE AGENT**" of the **OTHER PART.**

WHEREBY it is agreed between the parties as follows:

1. That the agent is hereby appointed as the pure agent of the principal for the purpose of making Freight Forwarding, Clearing, Truck hiring & Commissioning related to all services related to imports & exports of the services of the principal for a term of ten years commencing from the date hereof on the terms and conditions set forth hereunder. As per agreement all the service taxes had been paid by the principal as reverse charge mechanism.

AKSHOY KUMAR GHOSH & SONS.

[Signature]
Partner

KAMAL KUMAR PAUL
NOTARY GOVT. OF INDIA
Regd. No. 2700004
C.M.M's Court
2 & 3 Bankshall Street
Kolkata-700001

SUDARSHAN TRADING COMPANY

[Signature]
Partner

08 FEB 2014

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2. That the Pure agent shall be allowed to deduct and retain as his agency commission with himself expenses as he think good of all services behalf of the principal. The pure agent shall keep a record of all imports & exports and shall regularly receive from the principal. All sums reimbursed by the principal in respect of such all the transactions of Exports and imports less his agency commission had been received from the principal during different period of time. All the transactions related to Imports and exports of the principal shall be made to the pure agent for cash/cheque against services/delivery of goods.

3. That the pure agent shall, at the expense of the principal, take or deliver the goods ,make the payment to transporters & Freight Forwarders on services and made service for the purpose of the agency. All the goods entrusted to his services by the principal under this agreement and on request, shall produce to the principal, receipts, for the transactions of the said reimbursement. That the principal shall reimburse all the transactions relating to or incidental to the said pure agent .

4. That the pure agent shall, in all his commercial dealings and on documents and produce on behalf of the principal.

5. That the agent shall not sell the goods of the principal to any purchaser.

6. That in the event of any dispute arising between the agent and the related parties with respect to the services of the principal, the pure agent shall immediately inform the principal of the same and shall be solved on principal's approval or consent.

7. That either principal or pure agent may terminate this agreement at his option at any time after the expiration of TEN years by giving the other one month's notice in writing.

8. That the benefits under this agreement shall not be assignable to any other person.

9. That the pure agent shall always, during the existence of this agreement, devote his whole business time and energy for pushing the services of the principal and shall in all such dealings act honestly and faithfully to the principal and shall carry out orders and instructions and shall not engage or be interested either directly or indirectly as agent or servant in any other business or trade without the prior consent in writing of the principal.

10. That all products/goods shall be delivered by the pure agent for delivery at principal's consent.

AKSHOY KUMAR GHOSH & SONS

[Signature]
Partner

SUDARSHAN TRADING COMPANY

[Signature]
Partner

KAMAL KUMAR PAUL
NOTARY GOVT. OF INDIA
Regd. No. 2700/04
C.M.'s Court
2 & 3 Bankshall Street
Kolkata-700001

08 FEB 2014

11. That without prejudice to any other remedy he may have against the agent for any breach or non-performance of any part of this agreement, the principal shall have the right summarily to terminate this agreement.

19. That the principal shall be entitled to terminate this agreement by one month's notice in writing to the pure agent in the event of his ceasing to carry on the said business of the principal.

IN WITNESS WHEREOF the parties have signed this deed.

Witness:

1. *Biplab Das*
25 Strand Road, Kolkata-1

2. *Tomal Pal*
33/1 W.S Road Kolkata-700001

SUDARSHAN TRADING COMPANY

Partner

SIGNATURE OF THE PRINCIPAL

AKSHOY KUMAR GHOSH & SONS

SIGNATURE OF THE PURE AGENT

IDENTIFIED BY ME

P.G. SHAW
PANCHAJANYA SHAW
CHIEF CLERK
Regd. No. 2700/04
Kolkata

Signature Aligned Only
on Identification of L.O. Advocate

KAMAL KUMAR PAUL
NOTARY GOVT. OF INDIA
Kolkata, West Bengal

KAMAL KUMAR PAUL
NOTARY GOVT. OF INDIA
Regd. No. 2700/04
G.M.'s Court
2 & 3 Bankshall Street
Kolkata-700001

08 FEB 2014

7. On going through the agreement itself, we find that the appellant is only pure agent and all the expenses for transportation, loading and un-loading etc. paid by the appellant were reimbursed from the Principal on actual basis. In that circumstances, the appellant is not required to include the reimbursable expenses in their taxable services.

8. Moreover, the present issue whether the reimbursable expenses are includable in the taxable value or not, has been examined by this Tribunal in the case of M/s Ganga Carrier Private Limited (supra), wherein this Tribunal has observed as under :

"14. The issue to be decide in the present appeal is whether the reimbursement of expenses received by the Respondent are includable in the assessable value for the purpose of payment of service tax. The Respondent stated that they have paid Service tax on the amount of remuneration/ commission received, which include handling charges, transportation charges, salvaging charges, documentation charges, etc. They did not pay service tax on the amount of reimbursement of expenses such as salaries of client's staff, other expenses like rent, telephone expenses, printing, postage, etc. They were under the bona-fide belief that reimbursement of expenses was never under the scope of levy of service tax. They cited Board Circular F. No. B.43/7/97-TRU dated 11th July, 1997 and contended that the reimbursement of expenses in case of clearing and forwarding agents are not forming part of gross value as per this Circular and hence not includable in the assessable value for the purpose of computation of service tax.

15. We observe that Service tax (Determination of Value) Rules, 2006, has brought in the concept of 'Pure Agent' to address the

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taxability issues of reimbursements. As per the said Rules, expenditure incurred as a 'Pure Agent' were excluded from the assessable value. In the present matter under dispute, a perusal of the agreements entered with the different principals clearly reveals that there were specific amounts for remuneration to be charged as a C&F Agent. We also observe that the Respondent has recovered precisely the same amount from the recipient that has been paid on their behalf by producing the documentary evidence in regard to such expenditure. Thus, it is clearly established that the Respondent has acted as 'Pure Agent' while incurring such expenditure.

16. We observe that all the 'reimbursement expenses' have been included in the consideration with effect from 14/05/2015. Hence while calculating service tax, the service provider has to include all the expenses whatever he incurred for rendering service, w.e.f.14.04.2015 only and not before that period. The dispute in the present appeal pertains to the period from 2000-01 (October) to 2004-05 (September) and hence, the substitution brought in the definition of 'Consideration' vide Finance Act, 2015 would not be applicable for the period in the present appeal.

17. We observe that the issue has been decided by the Hon'ble Delhi High Court in the case of INTERCONTINENTAL CONSULTANTS & TECHNOCRATS PVT. LTD. Versus UNION OF INDIA [2013 (29) S.T.R. 9 (Del.)] which has been affirmed by the Hon'ble Supreme Court of India also in 2018 (10) G.S.T.L. 401 (S.C.). The gist of the decision is reproduced below:

"Section 66 levies service tax at a particular rate on the value of taxable services. Section 67(1) makes the provisions of the section subject to the provisions of Chapter V, which includes Section 66. This is a clear mandate that the value of taxable services for charging service tax has to be in consonance with Section 66 which levies a tax only on the taxable service and nothing else. There is thus inbuilt mechanism to ensure that only

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*the taxable service shall be evaluated under the provisions of 67. Clause (i) of sub-section (1) of Section 67 provides that the value of the taxable service shall be the gross amount charged by the service provider "for such service". Reading Section 66 and Section 67(1)(i) together and harmoniously, it seems clear to us that in the valuation of the taxable service, nothing more and nothing less than the consideration paid as quid pro quo for the service can be brought to charge. Sub-section (4) of Section 67 which enables the determination of the value of the taxable service "in such manner as may be prescribed" is expressly made subject to the provisions of sub-section (1). The thread which runs through Sections 66, 67 and Section 94, which empowers the Central Government to make rules for carrying out the provisions of Chapter V of the Act is manifest, in the sense that only the service actually provided by the service provider can be valued and assessed to service tax. We are, therefore, undoubtedly of the opinion that Rule 5(1) of the Rules runs counter and is repugnant to Sections 66 and 67 of the Act and to that extent it is ultra vires. It purports to tax not what is due from the service provider under the charging Section, but it seeks to extract something more from him by including in the valuation of the taxable service the other expenditure and costs which are incurred by the service provider "in the course of providing taxable service". What is brought to charge under the relevant Sections is only the consideration for the taxable service. By including the expenditure and costs, Rule 5(1) goes far beyond the charging provisions and cannot be upheld. It is no answer to say that under sub-section (4) of Section 94 of the Act, every rule framed by the Central Government shall be laid before each House of Parliament and that the House has the power to modify the rule. As pointed out by the Supreme Court in *Hukam Chand v. Union of India*, AIR 1972 SC 2427 :-*

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"The fact that the rules framed under the Act have to be laid before each House of Parliament would not confer validity on a rule if it is made not in conformity with Section 40 of the Act."

Thus Section 94(4) does not add any greater force to the Rules than what they ordinarily have as species of subordinate legislation.

18. We observe that the ratio of the decision in the case INTERCONTINENTAL CONSULTANTS & TECHNOCRATS PVT. LTD. Versus UNION OF INDIA [2013 (29) S.T.R. 9 (Del.)], squarely applicable in this case. We observe that the adjudicating Authority has dropped the demand made in the Notice on the ground that the remuneration for C&F work and reimbursement for miscellaneous activities have been separately mentioned against specific items and they got reimbursement on actual basis. The decisions cited above clearly supports the view taken by the adjudicating authority in the impugned order. Accordingly, we hold that there is no infirmity in the impugned order and uphold the same.

19. In view of the above discussion, we uphold the impugned order and reject the appeal filed by the department."

9. As this Tribunal has already been held that the reimbursable expenses are not includible in the taxable value of services, therefore, we hold that the reimbursable expenses in this case, are also not includable in the taxable value of service. Therefore, we hold that the appellant has correctly paid the service tax during the impugned period.

10. Consequently, no demand of differential service tax is sustainable against the appellant.

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11. In view of this, we do not find any merit in the impugned order and the same is set aside.

12. In the result, the appeal is allowed with consequential relief, if any.

(Pronounced in the open Court on **19.04.2024**)

Sd/

(Ashok Jindal)
Member (Judicial)

Sd/

(K.Anpazhakan)
Member (Technical)

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