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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No.75096 of 2016

(Arising out of Order-in-Appeal No. 123-124/Pat/S.Tax/Appeal/2015 dated 30/10/2015 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Patna)

Messers Initiatives in Development Support Consultancy Services Private Limited
(445, Nehru Nagar, Patliputra Colony,
Patna-800013)

Appellant

VERSUS

Commr. of Central Excise & Service Tax, Patna
(C. R. Building (Annex), Beer Chand Patel Path, Patna-800001)

Respondent

APPEARANCE :

Mr. R. S. Bajaj, Authorized Representative for the Appellant
Mr. S. K. Singh, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.77660/2024

Date of Hearing : 25 November 2024
Date of Decision: 25 November 2024

PER R. MURALIDHAR:

The appellant is providing Consultancy Service. In the course of their service, they also get reimbursement on various counts from their clients. The Department was of the view that the appellant is required to pay the Service Tax on the gross amount received by them i.e. for the consultancy charges and all the reimbursement received by them. Show Cause Notice was issued for demanding Service Tax of Rs. 6,12,889/-. After due process, the Adjudicating Authority confirmed the demand. On appeal, the Commissioner (Appeals) dismissed the appeal. Being aggrieved, the appellant is before the Tribunal.

2. The Learned Consultant appearing on behalf of the appellant submits that during the period under consideration (2008-2009) and 2009-10, their case is squarely covered by the decision of **Delhi High Court in the case of Intercontinental Consultants & Technocrats Pvt. Ltd. Vs. Union of India [2013 (29) STR 9 (Del.)].** He submits that relying on this case law, this Bench in the case of **Principal Commissioner of Central Excise & ST vs. Ganga Carrier (P) Ltd. vide Final Order No. 76626/2023 dated 11 September 2023** has held that no Service Tax is payable on reimbursable expenses. Accordingly, he submits that the impugned Order may be set aside and appeal may be allowed.

3. The Learned AR reiterates the findings of the lower authorities and submits that the appellant has not brought in any evidence to the effect that amount shown as reimbursement were actually initially paid by them and reimbursed by the client. Since there is no evidence to this effect, the lower authorities have correctly rejected their submissions and confirmed the demands. He also submits that the demand amount of Rs. 6,12,889/- also includes the Service Tax payable on consultancy charges as per the Table given at Page No. 2 & 3 of the OIO.

4. Heard both sides and perused the appeal papers and documentary evidence placed before us.

5. We find that the issue as to whether reimbursement is payable or not is no more *res integra* for the period under dispute in this case.

6. The Delhi High Court in the case of Intercontinental Consultants and Technocrats Pvt. Ltd. cited supra has held as under:-

18. *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 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". <u>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</u>*

> *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 :-*
>
> *"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.*

7. Therefore, we set aside the confirmed demand pertaining to the Service Tax demand on reimbursable expenses.

8. However, we find force in the submission made by the Learned AR that demand is also inclusive of consultancy charges. At the Table given at Page 2 of the OIO, we find that for the year 2008-09, the appellant had rendered service to the extent of 9,12,000/- and Service Tax of Rs. 93,936/- has been demanded and confirmed. Similarly, for the year 2009-10, they have received consideration towards consultancy to the extent of Rs. 16,40,799/- on which Service Tax of Rs. 1,69,002/- is required to be paid.

9. The Learned Consultant submits that during the period 2008-2009, the appellant was covered by the threshold limit exemption. For the year 2009-10, the appellant has paid Service Tax by way of various challans. He draws our attention to challans enclosed in the appeal papers. We find that these facts are required to be verified by the Adjudicating Authority.

10. Thus, the appeal is partly allowed and partly remanded to the Adjudicating Authority.

11. Therefore, only for the limited purpose of verification of the exemption being claimed towards consultancy charges for the period 2008-09 and towards their claim that Service Tax has been discharged for the period 2009-10, we are remanding the matter to the Adjudicating Authority. He should complete the verification process and pass a considered order within three months from the date of receipt of this order.

(Dictated and pronounced in the open court.)

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

Pooja