

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.75994 of 2015

(Arising out of Order-in-Original No.09/ST/Ayukta/2015 dated 02.07.2015 passed by
Commissioner of Central Excise & Service Tax, Patna.)

Commissioner of Central Excise & Service Tax, Patna
(C.R. Building (Annexe), Birchand Patel Path, Patna-800001.)

...Appellant

VERSUS

M/s. Inductus Ltd.

.....Respondent

(New Dakbungalow Road, Patna-800001.)

APPEARANCE

Shri R.K.Agarwal, Authorized Representative for the Revenue

Ms. Shreya Mundhra & Ms. Sreemoyee Gangopadhyay, both Advocates for
the Respondent (s)

**CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)**

FINAL ORDER NO. 75058/2025

DATE OF HEARING : 06.01.2025

DATE OF DECISION : 06.01.2025

Per : RAJEEV TANDON :

The Revenue has filed the instant appeal assailing the Order-in-Original No.09/ST/Ayukta/2015 dated 02.07.2015, whereby the learned adjudicating authority has dropped the demand raised vide show cause notice dated 30.05.2014 against the respondent.

2. The appeal revolves around a narrow compass and seeks to recover service tax on reimbursement expenses of salary, incurred by the respondent on behalf of their principal towards the employees/workers supplied thereto by the respondent during the period 2010-11 to 2012-13.

3. The facts of the case are that the respondent is engaged in provisioning of 'Manpower Recruitment and Supply Services' to its clients since April, 2008. As a part of the business model, the respondent supplied manpower to various clients depending upon their requirement and in turn received reimbursement of actual amount of salary paid, from its clients. It is not disputed that the respondent in turn disbursed the salary etc. as received from its clients amongst the respective personnel deployed on actual basis and no margin or mark up from such amount was retained by the respondent. The respondent received service charges for the provisioning of 'Manpower Recruitment and Supply Service' on which appropriate Service Tax is discharged and is not the subject matter of the present appeal. The billing for the said service charges and the reimbursement expenses are done separately by the respondent.

4. The respondent were issued the aforesaid show cause notice in terms of section 73(1) of the Finance Act, 1994 alleging contravention of provisions of section 67, 68 and 70 of the Act read with Rule 6 & 7 of the Service Tax Rules, 1994, alleging evasion of Service Tax for an amount of Rs.1,06,41,600/- on the plea that the assessee had not paid Service Tax on the gross amount received from their clients while

providing the said taxable service of 'Manpower Recruitment and Supply Service'. The notice alleged declaration of lesser taxable value in the Service Tax returns for the period 2010-11 to 2012-13, further imputing that the aforesaid anomalies were intentional and vital information suppressed from the department in connection with the nature and quantum of taxable value received by the respondent for providing taxable service and the same was an expression of intent to evade payment of Service Tax and was so endorsed in the show cause notice.

5. The Revenue in its appeal, while admitting that the respondent was engaged in providing taxable service under the category of 'Manpower Supply Services' to different clients essentially rests its case on the basis of the law propounded in **Jyoti Computer Services vs. Comissioner of Customs, Central Excise & Service Tax, Hyderabad-II [2014 (33) S.T.R. 707 (Tri.-Bang.)]** to canvass that in the case of 'Manpower Supply Service' the service receiver requests for a number of men or women, as the case may be, with requisite qualification that are made available to the client. The said decision rendered by the Tribunal *inter alia* further stated that –

"the service receiver may choose and select or may simply accept the persons sent by the service provider but responsibility for the performance of these persons and payment of salaries to them and other obligations which are required to be met by the employer will be with the service provider only.

We have also considered the clauses of the agreements which clearly provided that any point of time, the person can be told to cease the employment and go away. This shows that when the person are not required by the service receiver can simply send them back, there is no obligation to show reasons as to why the persons were sent back. Further, there is no connection between the persons sent by the appellant and the organizations because the salaries are being paid by the appellant and not by the service receiver. The service receiver simply pays the amount adding a commission due to the appellant."

6. In view of the aforesaid, the appellant points out to Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 to emphasize that where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the rendering of the taxable service, provided or to be provided and therefore are required to be included in the value for the purpose of charging of service tax on the said service. Thus the Revenue's case is that the amount dispensed by the respondent is the expenditure incurred for providing of the taxable service, which forms integral part of the taxable value and therefore includible in the taxable value. In support of their stance, the Revenue seeks to garner support from Section 67 of the Finance Act, 1994, to emphasize that where the provisions of service tax is for a consideration in money by the gross amount charged, the service tax would be leviable thereon.

7. The Order-in-Original points out that the demand raised was based on Circular No.B1/6/2006-TRU dated 27.07.2005 (which has since been withdrawn vide Circular No.B1/4/2006-TRU dated 19.04.2006). The Revenue however on the basis of later Circular withdrawing the impugned circular (supra) dated 27.07.2005 adverts to Para 4.1.7 which reads as under:-

"Reimbursable expenditure" that "value for the purpose of charging service tax is the gross amount received as consideration for provision of service. All expenditure or costs incurred by the service provider in the course of providing a taxable service forms integral part of the taxable value and are includible in the value. It is not relevant that various expenditure or costs are separately indicated in the Invoice or bill issued by the provider to his client."

8. The adjudicating authority however dwelling on the rival claims agreed with the view of the respondents and has recorded a specific finding that though the respondent had issued separate invoices to their clients for salaries, the same were in the nature of 'salary reimbursement' and not 'remuneration' and hence not taxable under the Service Tax law.

9. The respondent also refers to the Tribunal's Larger Bench decision in the case of **Sri Bhagarathy Traders vs. Commissioner of Central Excise, Cochin [2011 (24) S.T.R. 290 (Tri.-LB)]** to highlight that *"the concept of reimbursement will arise only when the person actually paying was under no obligation to pay the amount and*

he pays the amount on behalf of the buyer or the goods and recovers the said amount from the buyer of the goods."

10. From the facts of the case and the records herein, it is evident that the adjudicating authority dropped the demand essentially for the following :

- (i) The amounts in question were reimbursed on actual basis and were in the nature of reimbursement and not remuneration.
- (ii) The respondent acted as a pure agent for their clients and hence such amount were not includible in the value of taxable service in terms of section 67 of the Finance Act, 1994.
- (iii) The adjudicating authority further relied on the following :
 - Decision of Hon'ble Madras High Court in the case of **Commissioner of S.T., Chennai vs. Sangamitra Services Agency [2014 (33) S.T.R. 137 (Mad.)]**
 - Tribunal's decision in the case of **Harsh And Company vs. Commr. of C.E., Cus. And Service Tax, Cochin [2014 (35) S.T.R. 985 (Tri.-Bang.)]**
 - Tribunal's decision in the case of **Sri Sastha Agencies Pvt.Ltd. vs. Asst. Commr. of C.Ex., & Cus., Palakkad [2007 (6) S.T.R. 185 (Tri.-Bang.)]**
 - Allegation regarding suppression of facts was found unsustainable.

11. The Ld.AR for the department in his pleadings while relied upon the ratio of the law as laid down in the case of **Jyoti Computer Services**, cited supra, as well as in the case of **Sri Bhagarathy Traders**, cited supra, and invited our attention to para 6.2 of the decision of the Larger Bench to fortify their contention :-

"6.2 *Similar is the situation in the transaction between a service provider and the service recipient. Only when the service recipient has an obligation legal or contractual to pay certain amount to any third*

party and the said amount is paid by the service provider on behalf of the service recipient, the question of reimbursing the expenses incurred on behalf of the recipient shall arise. For example, when rent for premises is sought to be claimed as reimbursement, it has to be seen whether there is an agreement between the landlord of the premises and the service recipient and, therefore, the service recipient is under obligation for paying the rent to the landlord and that the service provider has paid the said amount on behalf of the recipient. The claim for reimbursement of salary to staff, similarly has to be considered as to whether the staff were actually employed by the service recipient at agreed wages and the service recipient was under obligation to pay the salary and it was out of expediency, the provider paid the same and sought reimbursement from the service recipient."

12. The Ld.AR for the department also pointed out that the decision relied upon by the adjudicating authority were in relation to levy of service tax on reimbursable expenses with reference to "C & F Agent Service" and not 'Manpower Recruitment and Supply Agency Service'. The Ld.AR finally submits that the respondent was under legal obligation to pay salary to the personnel deployed by them at the premises of various clients and such personnel were in effect actually the employees of their clients. Thus the question of reimbursement of salaries does not arise. In so far as the decision in the case of **Hash & Company**, referred supra, he submits that the said decision was an interim decision rendered by the Tribunal. He submits that even in the case of **Commissioner of Central Excise, Mumbai vs. Jubilant Enpro Pvt.Ltd. [2016 (46) S.T.R. 448 (Tri.-Mumbai)]**, it was held that merely because the gross amount charged was split in two invoices, it would not mean that one was only the gross amount charged, while the other was not. Thus total gross amount charged for

the services rendered would not be required to be computed for the purpose of liabilities towards service tax.

13. We have heard the two sides at length and perused the record.

14. We note that it is undisputed that the respondent supplied manpower as per the requirement of its clients and the said personnel were deployed with their clients; therefore, salary etc. payable to such employees, were reimbursed in actual amounts and paid to the respondent. The amount so received by the respondent was disbursed amongst the persons on actual basis. In addition, the respondent did receive service charges for the services rendered by it for provisioning of manpower recruitment and supply services, upon which appropriate service tax was duly discharged. It is also on record that the billing for service charges and reimbursement expenses were done separately by the respondent. We also note from records that the respondents were subjected to audit during the earlier period viz F/Y-2008-09 and F/Y-2009-10 wherein no such objections were raised regarding valuation of the service provided by the respondent. Even during the aforesaid period 2008-09 to 2009-10, the respondents were paying service tax only on the service charges received by them from different clients. As for the computation of the period of limitation is concerned, in view of the stated position, we find that the respondent were filing their returns regularly, the practice of assessment and payment of service tax was well within in the knowledge of the department. We therefore fail to understand at the outset as to how the department could invoke the charge of suppression of fact with intent to evade service tax.

15. In the case of **City Bank [2007 (8) S.T.R. 505 (T)]** it was held by the Tribunal wherein similar service was provided to City Bank by the service provider that reimbursement of expenses by the bank were not taxable. The Tribunal in the said case had taken note of the circular issued by D.G. Service Tax to clarify that reimbursement of the expenses was not taxable. To similar outcome were the decisions rendered by the Tribunal in the case of **Scott Wilson Kirkpatrick (I) Ltd. vs. Commr. of Service Tax, Bangalore [2007 (5) S.T.R. 118 (T)]** categorically holding that reimbursement of expenses were not chargeable to Service Tax (delivered in the case of Consulting Engineer Service), **B.S. Refrigeration Ltd. vs. Commr. of Service Tax, Bangalore [2006 (4) S.T.R. 103]** (delivered in the case of Clearing & Forwarding Agent Service), **Sangamitra Services Agency vs. CCE, Chennai [2007 (8) S.T.R. 2004 233 (T)]** (delivered in the case of C & F Agent services).

16. Rule 5(2) of the Service Tax (Determination of Value) Rules, supra, with regard to expenditure incurred on behalf of the principal provides for exclusion of expenditure or costs incurred by the service provider when the person concerned is a pure agent. Rule 5(1) of the aforesaid Rules provides for inclusion of such expenditure or costs to the value of service rendered as are incurred by the service provider in the course of provisioning of the service as a consideration for rendition of the taxable service. Salary etc. paid to employees at work and that too without a mark up can certainly not be deemed as a consideration for the provisioning of the service. In view thereof it is evident that the

present case does not call for inclusion of the salary component within the ambit and scope of Rule 5(1) *ibid*, as tried to be made out by the department. To address the aforesaid aspect of relationship as a pure agent, the examination of the condition and the factual response as depicted in the following table would clearly illustrate the incidence and the role of the respondent in the matter.

Description of the condition	Whether the conditions were fulfilled in the present case
The service provider acts as a pure agent of the recipients of service when he makes payment to third party for the goods or services procured;	Yes. The respondent had made payments to the DEPLOYED EMPLOYEES on behalf of their clients on its actual basis.
The recipients of service received and used the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;	Yes. Clients received and used the services procured from individual employee deployed with the clients by the respondent.
The recipients of service authorized the service provider to make payment on his/their behalf	Yes. The respondent was authorized by the clients to pay salary etc. to the deployed employees.
The recipients of service knew that the goods and services for which payment were made by the service provider shall be provided by the third party.	Yes. The clients were aware that the payments were made to deployed employees with them and no margin or mark-up was retained by the noticee.
The payments made by the service provider on behalf of the recipient of service were separately indicated in the invoices issued by the service provider to the recipient of service.	Yes. The respondent raised separate invoices for salary etc. for the deployed employees which were reimbursed to them on the actual basis.
The service provider recovers from the recipient of service only such amount as has been paid by him to the third party.	Yes. The respondent received the precise amount which were actually paid to the deployed employees.
The goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provided on his own account.	Yes. The respondent recruited the employees and deputed them with their clients as per their requirement. In lieu of recruitment and deployment they received service charge only. For the work done by the deputed employees the clients paid the noticee their salary etc. which were paid to individual employee on actual basis.

Acting as a pure agent, no reimbursable expenses can be added to arrive at the determination of the value of taxable service.

17. The Order-in-Original records the gross referencing and tallying of the invoices raised in the names of individual personnel to ascertain that whatever amount was charged by the respondent from their clients in the guise of salary was actually paid to the individual person and was duly transferred to their bank accounts without retaining any margin or mark up in the process. In this regard in Para 50 of the impugned order it is recorded as under:-

"50.Therefore, the invoices raised in the name of individual personnel and their corresponding salary sheets and payment sheets prepared by the noticee were examined and found that whatever amount was charged by the noticee from their clients in the name of salary of an individual personnel the same and precise amount was transferred to his bank account without retaining any margin or mark up in it. Thus, there remains no dispute that Service Tax has been sought to be recovered from the noticee on the amount received as salary etc. of the personnel deployed by them with their clients which is actually reimbursement of the expenditure incurred by the noticee on behalf of their clients received by them on its actual basis and subsequently paid to the respective individuals."

18. The adjudicating authority has recorded the fact of further examining the various agreements executed by the respondent with various clients including that of Bharti Airtel Ltd., Vikramshila Dugdh Utpadak Sahkari Sangh Ltd., Kosi Dairy Project, IGIMS etc. amongst others to whom the respondent was concerned with supply of manpower. All these contracts have been recorded to include, in addition to remuneration, reimbursement of the salary, contribution of the manpower deployed with them on a monthly basis, the adjudicating authority has in para 51 of the impugned order has to this effect stated as under:-

"From the agreement executed between the noticee and invoices/bills raised, it is clear that remuneration and reimbursement have separately been mentioned against specific work and accordingly shown on the face of each invoice/bills. Thus, the clients are well aware before making payments that reimbursed amount of salary etc. has to be paid to the specific person deployed with them. Undoubtedly, the noticee have made such payments of salary under due authorization by the clients. The clients were liable to pay for the payments but the noticee paid on their behalf and realized the same from their clients, hence it cannot be considered as value of taxable service rendered. The noticee did not procure any service from the personnel deployed with the clients. Conclusively, the noticee have fulfilled all the requisite conditions as stipulated in Rule 5(2) of the Valuation Rules for exclusion of such reimbursement from the taxable value for the purpose of levy and payment of Service Tax."

19. As for the department's assertion with regard to Section 67 of the Act, it is a clear mandate of law that the value of taxable service for levy of service tax has to be in consonance with the provisions of Section 66 of the Act *ibid* which levies tax only on the "value of taxable service" *per se* alone. Thus it is inbuilt in the mechanism of law to ensure that only "taxable service" component is required to be considered with reference to Section 67 of the Act. Reading Sections 66 and 67 of the Act harmoniously, it would be evident that the valuation of taxable service is nothing more nor anything less than the consideration paid for the service which alone is taxable and leviable to service tax. It is also evident from the combined reading of the two aforesaid sections that only service component provided by the supplier of service can be valued and assessed to service tax. The respondent's role is to deploy stipulated number of persons as per the requirement of their client, for which purpose they have entered into an agreement

inter alia specifying the collection of salary for the people deputed, from the clients in respect of all such personnel deployed. Thus for such expense as is not a pass through, with reference to the element of rendition of service, the respondent is separately compensated in terms of the said agreement and has nothing to do with the remuneration required to be paid for the personnel deployed. For subjecting the value to tax, it is imperative that a distinction is accorded between reimbursement and remuneration which is a consideration for service delivery.

20. In the case of **Union of India vs. Intercontinental Consultants And Technocrats Pvt.Ltd. [2018 (10) G.S.T.L. 401 (S.C.)]**, the hon'ble apex court in the context of reimbursable expenses had even held Rule 5(1) to be *ultra vires*. It held that the "Gross amount charged" has to be ascertained with respect to deliveries "for such service". From the facts of this case, it is quite clear that the charges for deliverance of Manpower Service in the present matter are separately indicated and are not contained in the salary i.e. required to be paid to the personnel made available to their clients by the respondent. This Tribunal in the case of **Kou-Chan Knowledge Convergence (P) Ltd. vs. Commr. of Service Tax, Service Tax-I Commissionerate, Bengaluru [2004 (9) TMI 1249 – CESTAT BANGALORE]** in the specific context of Supply of Manpower and Recruitment Agency Service had and with reference to the identical question of reimbursement of expenses incurred by the appellant towards basic salary advance, overtime, PF, administration, ESIS, HRA, exgratia medical expenses

paid to the employees and recovered from the customers whether required to be included in the 'gross taxable value' under Section 67 of the Finance Act had held as under:-

"7. The learned Commissioner in the impugned held that the gross amount charged by the service provider for such services provided in terms of Section 67(1)(i) of the Finance Act, 1994 be part of the taxable value; hence rejected the argument advanced by the appellant that salary and reimbursement expenses like ESIS, bonus, conveyance, OT allowance etc. received from their clients do not form part of the gross value of such services provided as it is not in conformity with the Section 67 of the Finance Act, 1994.

8. We find from the records that the appellant during the relevant period has entered into agreements dt. 01.01.2007 with M/s. Bharati Airtel, Bangalore, dated 22.03.2005 with M/s. Bharati Infotel and dated 24.02.2007 with M/s. Bharati Televentures for supply of manpower in rendering various telecom services. The appellant paid service tax on the service charges in supplying manpower to M/s. Bharati Airtel, M/s. Bharati Infotel and M/s. Bharati Televentures against the said agreements; however in discharging service tax, they have not included the salary and other expenses reimbursed in the gross taxable value computed under Section 67 of the Finance Act, 1994.

9. We find that the said issue is no more res integra and covered by the judgement of the Tribunal in the case of M.P Security Force Vs. CCE&ST (supra). In the said case, the appellant M.P. Security Force provided security services and manpower supply service during the relevant period. The question before the Tribunal was whether the component of salary, EPF, ESI and uniform allowances etc. be included in the gross amount charged to their clients. Following the judgment of the Hon'ble Supreme in UOI Vs. Intercontinental Consultants and Technocrats Ltd.'s case (supra) interpreting the expression "such services" under Section 67(1) of the Finance Act, 1994, the Tribunal held as follows:-

8. The issue regarding valuation of taxable services has been the subject matter of decision of Hon'ble Delhi High Court in case of *Intercontinental Consultants & Technocrats Pvt. Ltd. (supra)*, which has been affirmed by Hon'ble Supreme Court as reported in 2018 (10) G.S.T.L. 401 (S.C.), wherein it is held that under provision of Section 67(1) of the Act only service element has to be included for gross amount of "such services". The relevant portion of the judgment is extracted 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". 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 subsection (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 :-

"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.

9. In view of above, the contributions made towards EPF and ESI are not liable to be included for the computation of gross amount under Section 67(1) of the Act. We also find that the similar issue had been come up for consideration before this Tribunal in case of Young Brothers Transporters and Contractors v. CCE, Meerut-I - 2017 (6) G.S.T.L. 513 (Tri. - Del.), wherein it is held that employer contribution towards PF, EPF, ESI into Central Govt. account is not required to be included for the purpose of a computation of gross amount for discharge of service tax liability. Paragraph 6 of the order, which is the relevant paragraph, is reproduced as under :

"6. The Employees Provident Fund & Miscellaneous Provisions Act, 1952 and the Employees State Insurance Act, 1948 created the liability upon the principal employer to contribute to the respective funds, an amount equal to employees contribution. Thus, in compliance of the said provisions, the service receiver M/s. HNGIL had contributed to such funds, the amount towards the workmen deployed by the appellant. The fact is not under dispute that such contributed amount was never given by such service receiver to the appellant. Thus, the gross value for the computation of service tax liability in the hands of the appellant will not take into consideration the amount of contribution made by the service receiver M/s. HNGIL directly into the respective heads of account. Therefore, in our considered view, service tax demand cannot be confirmed on the employer's contributed amount towards P.F., E.P.F. and E.S.I.

In this order earlier decision of Tribunal in case of Neelav Jaiswal and Brothers v. Commissioner of Central Excise, Allahabad - 2014 (34) S.T.R. 225 (Tri. - Del.) was also considered, which is referred in the

impugned order. In this regard, we also find that the Hon'ble Allahabad High Court in the case of Ehardwez Security Services v. Union of India - in Civil Writ Petition No. 437 of 1998 held that the respondent shall be entitled to charge service tax on the gross except after giving the abatement in respect of statutory levy and the taxes and if the same has direct relation with the services rendered by the client and charged specifically in the bill.

10. As far as the abatement towards deduction of wages and salaries paid to the personal employees by the appellant is concerned, the same is covered by the decision of Mumbai Bench of this Tribunal in case of Security Guards Boards for Greater Bom. & Thane Dist. v. CCE, Thane-II - 2017 (51) S.T.R. 51 (Tri. - Mum.), wherein it is held that wages and allowance including salary and administrative charge collected from client is excludible from the gross value of taxable service in terms of Section 67 of the Act. The relevant paragraph of order is reproduced hereinafter :

"4.1 Further, under section 6 of the Maharashtra Private Security Guards (Regulation of Employment & Welfare) Act, 1981, following has been provided:-

"31. Disbursement of wages and other allowances to registered Security Guards of the Board. - The wage and other allowances payable to the registered Security Guards of the Board every month by the registered principal employer shall be remitted by the registered principal employers by cheque to Secretary, of the Board, within such time after the end of the month, as may be specified by the Board. The Secretary thereupon shall arrange to disburse the wages and other dues, if any to the registered Security Guards of the Board on specified days every month subject to deductions, if any, recoverable from them under the Scheme :

Provided that the Board may, if it thinks fit, and subject to such conditions as may be laid down by it, allow a registered principal employer to pay directly to the Security Guards the wages and other allowances after making such deductions as may be authorized and recoverable from them under the Scheme, within such time and in such manner as may be specified by the Board."

From the above clause, it is apparent that the wages and allowances are collected by the Board as an Agency for payment to the concerned

persons/authorities. Therefore, the wages and allowances are excludible from the value of service tax. Thus, the taxable value for the purpose of levy needs to exclude these charges. The demand is modified to that extent."

11. We, accordingly, hold that the appellant is entitled for the abatement towards the payment made on account of contribution towards ESI, EPF and PF and also towards wages and salaries while computing the assessable value in terms of Section 67 of the Act for the payment of service tax."

Slew of cases have evidently held that reimbursement expenses are not taxable and it is only the remuneration component and not reimbursement i.e. required to be subjected to levy of service tax.

21. In fact, yet another elaborate judgement examining the very legal aspects was rendered by this Tribunal in the case of **M.P. Security Force vs. Commissioner of Central Excise & S.T., Bhopal [2020 (43) G.S.T.L. 253 (Tri.-Del.)]** had the following to state :-

"8. The issue regarding valuation of taxable services has been the subject matter of decision of Hon'ble Delhi High Court in case of Intercontinental Consultants & Technocrats Pvt. Ltd. (supra), which has been affirmed by Hon'ble Supreme Court as reported in [2018 \(10\) G.S.T.L. 401](#) (S.C.), wherein it is held that under provision of Section 67(1) of the Act only service element has to be included for gross amount of "such services". The relevant portion of the judgment is extracted 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". 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 :-

"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.

22. In the case of **Deep Enterprises vs. Commissioner of Service Tax, Ghaziabad [2019 (1) TMI 715 –CESTAT ALLAHABAD]**, this Tribunal has held as under:-

"4. After carefully considering the submissions made by both the sides, we note the Hon'ble Delhi High Court in the above referred decision in the case of *M/s. Intercontinental Consultants & Technocrats Pvt.Ltd.* has held Rule 5(1) of the Rules as running counter and repugnant to Section 66 & 67 of the Act and to that extent the same has been held as *ulter-vires*. The Hon'ble High Court observed that it purports to tax not what is due from the service provider under the charging Section, but 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". The said decision of the Hon'ble Delhi High Court stands followed by the Tribunal in the case of *M/s. Fortune Park Hotels Ltd. V/s Commissioner of Service Tax, Delhi* reported in 2017 (49) S.T.R. 567 (Tri.-Del.) as also in the case of *M/s. SCI International Securities Ltd. V/s Commissioner of Central Excise & Service Tax, Vadodara-I* reported as 2017 (49) S.T.R. 399 (Tri.-Ahmd.).

5. Inasmuch as the issue stands settled that reimbursable expenses cannot form part of the gross value of the services being provided by the service provider, we find no reasons to include the E.S.I./P.F./W.C.P. amount in the assessable value of the services, inasmuch as the same are admittedly reimbursable to the persons concerned."

23. In the case of **Security Guards Board for Greater Bom. & Thane Dist. Vs. C.C.E., Thane-II [2017 (551) S.T.R. 51 (Tri.-Mumbai)]** after a detailed examination of the matter it was held that wages and allowances collected by the Board as an Agency, for payment to concerned persons/authorities were excludible from the value of the Service Tax and the taxable value for the purpose of levy needs to exclude the said charges.

24. The Hon'ble Madras High Court in the case of **Commissioner vs. Sangamitra Services Agency [2014 (33) S.T.R. 137 (Mad.)]**, cited supra, had categorically held that –

"7. In the absence of any material to show any understanding between Principal and the Client that the Commission payable was all inclusive, it is difficult to hold that the gross amount of remuneration/commission would nevertheless include expenditure incurred by the assessee providing the services; that all incidental charges for running of the business would also form part of the remuneration or Commission (by whatever name called). The phrase "by whatever name called" must necessarily have some link or reference or nature to the receipt of remuneration or commission. Thus if a receipt is for reimbursing the expenditure incurred for the purpose, the mere act of reimbursement, per se, would not justify the contention of the Revenue that the same having the character of the remuneration or commission, deserves to be included in the sum of remuneration/commission".

It further held that the gross amount referred to *inter alia* would apply to "receipt of such sums as would bear the character of remuneration or commission."

Accordingly, the Hon'ble High Court held that reimbursable expenses received by the party were not liable to be added to the taxable value.

25. To the contention of the Ld.AR that most of the cases under consideration were in the context of delivery of C & F Services and not that of manpower supply, it is immaterial whether such decisions are

rendered in the context of C & F Services or any other services in as much the underlying principle for valuation remains the same. It is therefore settled law that reimbursement expenses are not required to be added to the gross value for arriving at for payment of service tax. To similar impact, is also the ratio of law laid down in the case of the **Assistant Commandant, CISF Unit, NRL, Assam v. Commissioner of Central Excise & Service Tax, Shillong [2024 (11) TMI 666 (Tri-Kol)]**, that was delivered with reference to expenses undertaken towards medical expenses of the CISF's Dog Squad or in respect of donations and financial grants received for celebrations of the Republic Day/Independence Day.

26. We find from records that the adjudicating authority has distinctly noted the agreements entered into by the respondent with their clients/service recipients. Besides seeking recourse to the various agreements entered with the clients, bill invoices raised against different clients along with respective ledgers of their clients particularly concerning mode of payment to individuals (salary sheets), balance sheet and profit and loss account for the impugned period have also been examined by the lower authority. It is evident that the case has been made out by the department on the basis of public records of the respondent apart. In any case not only was the appellant filing returns and was being regularly audited, even the exercise as contemplated by the department by way of the impugned show cause notice is revenue neutral. Under the circumstances no case of suppression of facts can be substantiated. The figures as available in the books of accounts/other

records of the respondent have been in public domain. Under the circumstances, the question of invocation of extended timelines does not arise and demand made out is certainly beyond limitation.

24. In view of our findings aforesaid, the order of the lower authority being in accordance with law, is required to be maintained. We therefore disallow the appeal filed by the Revenue both on merits and on limitation.

The appeal is dismissed.

(Operative part of the order was pronounced in the open Court.)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/
(RAJEEV TANDON)
MEMBER (TECHNICAL)

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