CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 85131 of 2017

[Arising out of Order-in-Appeal No: GOA-EXCUS-000-APP-157-2016-2017 dated 29th September 2016 passed by the Commissioner of Excise (Appeals), Goa.]

Radioactiv Entertainment
Loyola House, Block No. L, Landscape City,
Chogm Road, Porvorim, Goa – 403521 …*Appellant*

versus

Commissioner of Excise
ICE House, EDC Complex, Patto Plaza, Panaji,
Goa – 403 001 ***…Respondent***

APPEARANCE:

Shri Bharat Raichandani, Advocate for the appellant

Shri M Suresh, Joint Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLEDR SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO: A/85804 / 2020

DATE OF HEARING: 28/08/2019
DATE OF DECISION: 23/07/2020

PER: C J MATHEW

M/s Radioactiv Entertainment, a partnership firm registered, under Finance Act, 1994, as provider of 'event management' service, was proceeded against for non-inclusion of payments pertaining to events organized by them for clients, in the ‘gross amount’ computed for tax liability on service rendered between April 2008 and March 2011. According to the tax authorities, the entire amount totaling ₹2,36,49,608, having been billed, should have been taxed. The original authority confirmed demand of ₹24,72,155 under section 73 of Finance Act, 1994, along with applicable interest under section 75 of Finance Act, 1994, besides imposing penalty of like amount under section 78 of Finance Act, 1994 as well as ₹10,000 under section 77 of Finance Act, 1994.

2. Aggrieved by this order, the assessee carried the dispute in appeal and the rejection thereof, in order-in-appeal no. GOA-EXCUS-000-APP-157-2016-17 dated 29th September 2016 of Commissioner of Central Excise & Customs (Appeals), Goa, has led to the present dispute before us.

3. Learned Counsel for the appellant submits that the disputed amount were payments made to artists and suppliers of material on the request of the client without any additional consideration, other than the overall management charges on which tax liability had been duly discharged, obtained for it. According to him, these expenses were not incurred by the appellant in the course of managing the event hosted by their clients and, in accordance with the decision of the Hon’ble Supreme Court in *Union of India v. Intercontinental Consultants and Technocrats P Ltd [2018 (10) GSTL 401 (SC)]*, which, confirming the

ultra vires of rule 5(1) of Service Tax (Determination of Value) Rules, 2006, held that reimbursed expenses were not to be included in the assessable value. He also referred to the decision of the Tribunal in *Commissioner of Service Tax-I, Mumbai v. Virtual Marketing (I) Pvt Ltd [2017 (49) STR 577 (Tri-Mumbai)]* which had placed reliance upon the decision of the Hon'ble High Court of Delhi in *Intercontinental Consultants and Technocrats Pvt Ltd v. Union of India [2013 (29) STR 9 (Del)]* that, on appeal of Revenue, was upheld by the Hon'ble Supreme Court.

4. Learned Authorized Representative contends that section 67 of Finance Act, 1994, even without the aid of rule 5(1) of Service Tax (Determination of Value) Rules, 2006, was ample enough for inclusion of all costs, incurred by the appellant, in the assessable value as consideration for the service contracted by their clients. He placed reliance on the decision of the Tribunal in *Impact Communications v. Commissioner of Service Tax, New Delhi [2018 (8) GSTL 396 (Tri-Del)]* and in *Sercon India Pvt Ltd v. Commissioner of Service Tax, Delhi [2018 (14) GSTL 375 (Tri-Del)]*.

5. It has been pointed out by Learned Counsel that the said decision in *re Sercon India Pvt Ltd* has been stayed by the Hon'ble Supreme Court. Notwithstanding the current status of that decision of the Tribunal and the other decision cited by Learned Authorized Representative, we take note that both, observing that the facts therein

are distinguishable from those in the dispute before Hon'ble High Court, did not have the benefit of the finality accorded by the Hon'ble Supreme Court. Furthermore, the decision of the Tribunal relied upon for adopting a contrarian approach, *i.e.*, *Neelav Jaiswal & Bros v. Commissioner of Central Excise, Allahabad [2014 (34) STR 225 (Tri-Del)]*, records the existence of circumstances that are different. As that lead decision is not before us, we are unable to subject the present facts to the test of that precedent. In the light of the judgement of the Hon'ble Supreme Court, the decisions of the Tribunal are rendered inconsequential.

6. In *re Intercontinental Consultants and Technocrats P Ltd*, the Hon'ble Supreme Court has held rule 5(1) of Service Tax (Determination of Value) Rules, 2006, requiring all expenditures incurred in the course of providing taxable service to be treated as consideration for service provided, to be *ultra vires* section 67 of Finance Act, 1994 as value therein was legislatively restricted to the service sought to be taxed. Therefore, in addition to erasure of that portion of rule 5 of Service Tax (Determination of Value) Rules, 2006, the value, by default, is neither the entire amount charged from the recipient nor to be enhanced by the expenditure met by the provider and without justification by tax authorities if disputed by the assessee. Those are the altered rules of engagement arising from the said decision. The impugned order is bereft of such validation despite the appellant having pleaded non-inclusion before the original, and

appellate, authority.

7. The service offered by the appellant, and taxable within the framework of section 65(105)(zu) of Finance Act, 1994, is, unlike other taxable services that are 'provided to any person' 'by any other person', rendered

> *'(zu) to any person, by an event manager in relation to event management'*

with the relevant expressions,

> *'(40) "Event Management" means any service provided in relation to planning, promotion, organising or presentation of any arts, entertainment, business, sports, marriage or any other event and includes any consultation provided in this regard'*

and

> *'(41) "Event Manager" means any person who is engaged in providing any service in relation to event management in any manner'*

defined in section 65 of Finance Act, 1994.

8. The implication, thereupon, is that the contracts entered into with the recipients of 'event management' service by the appellant would determine the extent to which the two parties have visualized the proper rendering of the service and anything beyond those would be rendering of a different service that may or may not be taxable. Furthermore, in

terms of the decision of the Hon'ble Supreme Court, the reimbursable expenses that can be established as having been incurred for convenience, in accordance with an agreement between the two parties, to be passed on by the appellant without retention of any portion thereof is not amenable to inclusion in the 'gross amount' envisaged in section 67 of Finance Act, 1994.

9. Despite this defence having been placed before the lower authorities, the contentions thereof were not ascertained in the context of the contract and 'pass through' of the payments. Neither before those authorities not before us has the appellant furnished the necessary evidence. This lapse on both sides is required to be resolved before appellate intervention is purposeful.

10. For the above reasons, it would be appropriate to set aside the impugned order and remand the matter back to the original authority to dispose of the proposals in the show cause notice in the light of the decision of the Hon'ble Supreme Court after giving an opportunity to the appellant to produce the relevant records.

(Order pronounced in the open court on 23/07/2020)

(C J Mathew)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

**/as*