CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 86010 of 2017

(Arising out of Order-in-Appeal No. MUM-SVTAX-002-APP-697-16-17 dated 31.12.2017 passed by the Commissioner of Service Tax (Appeals-II), Mumbai)

M/s IOT Infrastructure & Energy Service Ltd. .... **Appellant**
Plot No. Y2, CEAT Tyre Road,
Near Nahur Railway Station, Bhandup (West),
Mumbai – 400 078

Versus

Commissioner of CGST & Central Excise, ... **Respondent**
Navi Mumbai
16th Floor, Satra Plaza, Sector – 19D,
Palm Beach Road, Vashi,
Navi Mumbai – 400 705

APPEARANCE:

Shri Aditya Jain, CA a/w Ms. Shivani Kaushik, Advocate for the Appellant

Shri Dhananjay Dahiwale, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85015/2026

Date of Hearing: 07.01.2026
Date of Decision: 07.01.2026

PER: S.K. MOHANTY

Heard both sides and examined the case records.

2. Briefly stated, the facts of the case are that the appellants are engaged, *inter alia*, in the provision of various taxable services, including storage and warehousing service, to their customers. For provision of such taxable service, the appellants had received certain amount as 'reimbursable expenses' from their customers through issuance of debit notes. The department had considered that the reimbursable amount received by the appellants was on account of provision of the taxable service and as such, such amount should be included in the gross value of service, for the purpose of levy of service tax thereon. The Department had interpreted that the amount received through the debit note should form part of the taxable value of services in terms of sub-rule (1) of Rule 5 of

the Service Tax (Determination of Value) Rules, 2006. On the basis of such understanding, show-cause proceedings were initiated by the Department, seeking recovery of the service tax amount for the period from April, 2010 to September, 2010. The matter arising out of the show-cause notice dated 11.10.2011 was adjudicated by the original authority vide Order-in-Original dated 28.12.2012, wherein the proposals made therein were confirmed. On appeal against such adjudication order dated 28.12.2012, the learned Commissioner (Appeals) has upheld confirmation of the adjudged demands and rejected the appeal filed by the appellant. Feeling aggrieved with the impugned order dated 31.01.2017, the appellants have preferred this appeal before the Tribunal.

3. It is an admitted fact on record that for provision of the storage and warehousing services, the appellants got themselves registered with the jurisdictional Service Tax authorities and had also discharged the service tax liability, attributable to provision of such taxable services. We find that the Department in this case, had not objected to the fact that the amount claimed and received by the appellants through their debit notes was in context with the reimbursable expenses, which were incurred by them, regardless of provision of the taxable services under the category of Storage and Warehousing Services. Since the reimbursable expenses are not in context with the provision of taxable services and cannot be termed as "consideration for provision of the taxable services", in our considered view, the demand confirmed in the adjudication order and subsequently upheld in the impugned order cannot be sustained.

4. We find that the issue arising out of the present dispute regarding demand of service tax by taking recourse of Rule 5(1) of the Rules of 2006 was dealt with by the Hon'ble Delhi High Court in the case of *Intercontinental Consultants and Technocrats Pvt. Ltd. Vs. Union of India – 2013 (29) S.T.R. 9 (Del.)*, wherein the provision of Rule 5(1) *ibid* was struck down as bad in law, holding that incurrence of expenditure during the course of provision of taxable service, can never be termed as the gross amount charged for provision of such service, which is sought to be taxed under the statute. The relevant paragraph in the said case is reproduced below:

> ***11.*** *In the aforesaid backdrop of the basic features of any legislation on tax, we have no hesitation in ruling that Rule 5(1) which provides for inclusion of the expenditure or costs incurred by the service provider in the course of providing the taxable service in the value for the purpose of charging service tax is ultra vires Section 66 and 67*

and travels much beyond the scope of those sections. To that extent it has to be struck down as bad in law. The expenditure or costs incurred by the service provider in the course of providing the taxable service can never be considered as the gross amount charged by the service provider "for such service" provided by him…….

We find that the above order passed by the Hon'ble Delhi High Court was challenged by the Union of India by way of filing a Civil Appeal before the Hon'ble Supreme Court. The Hon'ble Supreme Court by judgement dated 07.03.2018, reported in *2018 (10) GSTL 401 (SC),* were pleased to uphold the order passed by the Hon'ble Delhi High Court (supra), holding as under:-

"24. *In this hue, the expression 'such' occurring in Section 67 of the Act assumes importance. In other words, valuation of taxable services for charging service tax, the authorities are to find what is the gross amount charged for providing 'such' taxable services. As a fortiori, any other amount which is calculated not for providing such taxable service cannot a part of that valuation as that amount is not calculated for providing such 'taxable service'. That according to us is the plain meaning which is to be attached to Section 67 (unamended, i.e., prior to May 1, 2006) or after its amendment, with effect from, May 1, 2006. Once this interpretation is to be given to Section 67, it hardly needs to be emphasised that Rule 5 of the Rules went much beyond the mandate of Section 67. We, therefore, find that High Court was right in interpreting Sections 66 and 67 to say that in the valuation of taxable service, the value of taxable service shall be the gross amount charged by the service provider 'for such service' and the valuation of tax service cannot be anything more or less than the consideration paid as quid pro qua for rendering such a service."*

5. In the present case, since the disputed amount was received by the appellants as reimbursable expenses and has no connection with the taxable service, we are of the view that in terms of the ratio laid down by the Hon'ble Supreme Court in the case of *Intercontinental Consultants (supra),* the adjudged demand confirmed in the present case cannot be sustained. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellants.

(Dictated and pronounced in open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha