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No Service Tax on CHA's Reimbursable Expenses: CESTAT Ahmedabad

Shakti Enterprise Vs Commissioner of Central Excise & ST (CESTAT Ahmedabad)

Introduction: In a significant decision, the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) in Ahmedabad ruled on the case of Shakti Enterprise vs Commissioner of Central Excise & ST. The issue at hand was whether a Clearing House Agent (CHA) is liable to pay service tax on various expenses incurred on behalf of their clients.

Case Background: The appellant, Shakti Enterprise, argued that they act as a pure agent and provide CHA services under the client's authorization. They claimed that the expenses incurred for and on behalf of their clients are reimbursed and should not be included in the gross value of CHA services.

CESTAT Ruling:

i. The Tribunal observed that Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006, which mandates inclusion of reimbursable expenses in the value of taxable services, was held ultra vires by the Supreme Court in the case of Intercontinental Consultants & Technocrats Pvt. Limited.

ii. The Board's circular clarified that reimbursable charges, meeting specific conditions, should be excluded from the taxable value of CHA services. The conditions include acting as a pure agent, providing evidence of nexus between services and reimbursable amounts, and recovering reimbursements on an actual basis.

iii. The Tribunal, relying on the Supreme Court judgment and the Board's circular, held that the reimbursable expenses incurred by the CHA on behalf of the service recipient are not includible in the taxable value.

Conclusion: The CESTAT Ahmedabad's ruling in favor of Shakti Enterprise sets a precedent that CHAs are not liable to pay service tax on reimbursable expenses incurred on behalf of their clients. This decision provides clarity and relief for CHAs, emphasizing compliance with specified conditions for exclusion of such expenses from the taxable value.

FULL TEXT OF THE CESTAT AHMEDABAD ORDER

The issue involved in the present case is that whether the appellant being CHA is liable to pay Service tax on various expenses incurred on behalf of their clients. The details of said expenses are as under:

S. N.	Name of Service	Year wise value of service				
		2008-09	2009-10	2010-11	2011-12	2012-13
1	Conveyance and Mis. Expenditure	1687900	2622940	3167000	2186850	43100
2.	Forklift/crane/exam/ delivery /sorting	3355128	0	0	0	0
3	Labor Charges for Examination & for delivery	5475622	12476352	12503097	10686355	933613
4	Lift on/off charges	0	37562	429542	1044458	400318
5	Ground rent/survey charges/ detention /cleaning & washing/ seal of charges/drop charges	503895	0	0	0	0
	Total	11022545	15136854	16099639	13917663	1377031

The case of the department is that all these expenses incurred during the course of providing CHA service, therefore the same is includible in the gross value of CHA services provided by the appellant.

2. Shri ND George, Ld. Counsel appearing on behalf of the appellant submits that the appellant are paying service tax correctly on the service charge of their service i.e. CHA service. All the other charges towards actual expenses which has borne by the appellant for and on behalf their client and same is recovered as reimbursement as actual charges.

3. He further submits that the appellant is pure agent and providing CHA service under the authorization given by the client therefore, actual expenses incurred for and on behalf of their client as reimbursement and the same is not includible in the gross value of CHA service.

4. He also submits that CBIC under its Circular No. 119/13/2009-ST dated 12.12.2009 also clarified this issue wherein it was clarified that other than CHA service charges, other charges incurred and recovered as reimbursement from their client is not includible in the gross value of CHA service. He placed reliance on the following judgments.

(i) Intercontinental Consultant & Technocrats Pvt. Limited. -2013(29) STR 9 (Del)

(ii) International Shippers & Traders Pvt. Limited. – 2016(45) STR 460 (Tri. Bang.)

5. He further argued that the department has invoked Rule 5 for inclusion of reimbursable expenses in the value of CHA service charges. The said Rule was held *ultra-vires* by the Supreme Court in the case of Intercontinental Consultants & Technocrats Pvt. Limited (supra).

6. He also submits that for demand of service tax in the present case, in the show cause notices, extended period was invoked. The issue that whether the reimbursable expenses are liable to be included in the gross value of CHA service was the matter of interpretation of law and there were many litigation. Therefore, the appellant had bonafide belief that they are liable to pay service tax only on the value of CHA service and not on other reimbursable expenses. The appellant was registered with Service tax department and discharging service tax on their service charges therefore, there was no suppression of facts hence the demand is hit by limitation also. On the same ground, penalty was not imposable invoking the provisions of Section 80.

7. Shri Ajay Kumar Samota, Ld. Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

8. We have considered the arguments on both sides and perused the records. We find that revenue has disputed matter on the ground that as per the provisions of Rule 5(1) of the valuation Rules, all expenditure or costs incurred by the service provider shall be treated as consideration for the taxable service provided and shall be included in the value for the purpose of charging service tax for the said services. Service provider has not acted as a 'pure agent' for the service recipient within the meaning provided in Explanation 1 to Rule 5(2) of Valuation Rules. Service provider further not fulfilled the condition detailed in Rule 5 (2) of the valuation Rules. It is beyond doubt that in order to exclude expenditures or costs incurred by the service provider, they should have acted as a pure agent and the condition detailed in Rule 5 (2) of the valuation Rules were required to be followed in principle. Therefore, there is no question of excluding any amount from the total taxable value received by the Service provider from the service recipient on any count.

9. We find that as per the provisions of Rule 5 of the Service Tax (Determination of Value) Rules, 2006, the reimbursable expenses also need to be included in the value of taxable services rendered. However, this rule has been held to be *ultra-vires* to section 67 by Hon'ble Supreme Court in the case of Intercontinental Consultants & Technocrats Pvt. Limited as reported in 2018 (10) G.S.T.L. 401 (S.C.). Hence, the demand of Service Tax on this count is clearly not sustainable.

On the very issue in hand, the Board in the circular supra has also clarified the matter in favour of the assessee. The relevant para of the circular is reproduced below:

"5. It is reported that disputes have arisen on the issue of inclusion of such reimbursable charges, which are currently pending at various stages of dispute settlement mechanism. Certain field formations have also issued communications, directing that charges on certain activities incurred by CHAs are not covered under exclusions available to 'pure agent'. It is also reported that divergent practices as regards the records &

documentations, are being followed by the CHAs in relation to the charges for receiving services from other service providers as well as to their billings to their customers. This has added to the conflict and litigation.

6. With a view to resolve the disputes and to bring it clarity, the issue has been examined. The divergent practices followed at different places and lack of consistency in the manner of maintaining records and issuance of documents by the CHAs, make it impossible to lay down any specific guidelines or issue any specific directions. In the circumstances, it is clarified that essentially, the exclusion should be allowed to such charges from the taxable value of CHA services, where all the following conditions are satisfied, –

(a) The activity/service for which a charge is made, should be in addition to provision of CHA service (as mentioned in paragraph 1);

(b) There should be arrangement between the customer & the CHA which authorizes or allows the CHA to (i) arrange for such activities/services for the customer; and (ii) make payments to other service providers on his behalf;

(c) The CHA does not use the activities/services for his own benefit or for the benefit of his other customers;

(d) The CHA recovers the reimbursements on 'actual' basis i.e. without any mark-up or margin. In case of CHA includes any mark-up or profit margin on any service, then the entire charge (and not the mark-up alone) for that particular activity/service shall be included in the taxable value;

(e) CHA should provide evidence to prove nexus between the other (than CHA) services provided and the reimbursable amounts. It is not necessary such evidence should bear the name or address of the customer. Any other evidence like BE No./Container No./BL No./ packing lists is acceptable for the establishment of such nexus. Similar would be the case for statutory levies, charges by carriers and custodians, insurance agencies and the like;

(f) Each charge for separate activities/services is to be covered either by a separate invoice or by a separate entry in a common invoice (showing the charges against each entry separately) issued by the CHA to his customer. In the latter case, if certain entries do not satisfy the conditions mentioned herein, the charges against those entries alone should be added back to the taxable value;

(g) Any other miscellaneous or out of pocket expenses charged by the CHA would be includable in the taxable value for the purposes of charging tax on CHA services.

7. The conditions mentioned at paragraph (6) would be applicable for services provided with effect from 19th April 2006, i.e. after the introduction of the valuation rules. For the prior period, the taxable value should be determined in accordance with the prevailing instructions issued by Board as referred to foregoing paragraph 3 of this circular. Any communication issued by any of the subordinate offices which are contrary to the

conditions referred to in paragraph 6 of this circular, or as the case may be, the prevailing Board's circulars stands superceded to the extent of the contradiction.

8. The pending disputes may be settled in terms of this circular."

In view of the Hon'ble Apex Court judgment in Intercontinental case supra and the Board circular, the reimbursable expenses incurred by the appellant on behalf of the service recipient is not includible.

10. We, therefore hold that the demand cannot be sustained. The impugned order is set aside. The appeal is allowed with consequential relief, if any.

(Pronounced in the open court on 04.12.2023*)*

Date: 2023-12-08