
(2008) 09 DEL CK 0277

In the Delhi High Court

Case No : Writ Petition (C) No. 6370 of 2008 and C.M. No. 12165 of 2008

Intercontinental Conslt. and Tech. Pvt. Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 01-09-2008

Acts Referred:

Finance Act, 1994 — Section 66, 67

Service Tax (Determination of Value) Rules, 2006 — Rule 5

Citation : (2008) 12 STR 689 : (2009) 19 STT 320

Hon'ble Judges : Rajiv Shakdher, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : J.K. Mittal and Sunil Upadhyay, for the Appellant; P.P. Malhotra, ASG, Shilpa Singh, CGSC and Chetan Chawla, for the Respondent

Judgement

1. The petitioner has challenged the constitutional validity of Rule 5 of the Service Tax (Determination of Value) Rules, 2006 to the extent it includes reimbursement of expenses in the value of taxable services for the purposes of levy of service tax. The petitioner also submits that the said Rule is also ultra vires the provisions of Sections 66 and 67 of Chapter V of the Finance Act, 1994.

2. The petitioner admittedly provides consulting engineering services to its clients. One of its clients being the National Highways Authority of India. The petitioner receives payments for its services but it also receives reimbursement of expenses such as air travel, hotel stay, room rent, boarding and lodging charges etc. The petitioner has been paying service tax on the amount received by it for services rendered to its clients.

3. However, the petitioner is not paying any service tax in respect of the expenses re-imbursed to it by its clients. The respondents have issued a show-cause notice dated 17-3-2008 whereby the petitioner has been asked to show cause as to why service tax ought not to be charged from the petitioner in respect of the re-imbursed expenses also as, according to the respondents it forms part of gross value of taxable services as provided u/s 67 and the said

Valuation Rule.

4. On the other hand, the learned Counsel for the petitioner submitted that the value of taxable services as per Section 67 would only include the service rendered and not the elements of re-imbursable expenses which do not form part of services at all.

5. The learned Counsel for the petitioner also submitted that when the clients are billed, the expenses for re-imbursable are indicated separately.

6. Issue notice. Notice is accepted by Ms. Shilpa Singh on behalf of all the respondents. The counter-affidavit(s) be filed within four weeks. The rejoinder(s), if necessary, be filed within two weeks thereafter.

7. Renotify on 24-2-2009.

8. In the meanwhile, the proceedings pursuant to the show-cause notice may continue, however, no coercive steps be taken till an adjudication order is passed.