(2015) 12 CESTAT CK 0022

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 1762 Of 2012

M/s AT Kearney Limited APPELLANT

Vs

CST, New Delhi RESPONDENT

Date of Decision : 31-12-2015

Acts Referred:

Service Tax (Determination Of Value) Rules, 2006 — Rule 5(1)
Finance Act, 1994 — Section 65(105), 66, 67, 94

Citation : (2015) 12 CESTAT CK 0022

Hon'ble Judges : G. Raghuram, J;R. K. Singh, Technical Member

Bench : Division Bench

Advocate : Nageshwar Rao, Ranjan Khanna

Final Decision : Allowed

Judgement

1. Appeal is filed against order-in-appeal dated 23.03.2012 in terms of which service tax of Rs.32,92,209/- covering the period 01.04.2003 to

17.04.2006 was upheld alongwith interest and penalties on the ground that the ""Out of Pocket Expenses"" which were reimbursed by the service

recipient were not included by the appellant in the assessable value of 'Management Consultant service' rendered by it.

2. The appellant gas contended that this issue is no longer res integra and has been settled by Delhi High Court in the case of Intercontinental

Consultants and Technocrats Pvt. Ltd. vs. Union of India & Anr. - 2012- TIOL-966-HC-DEL-ST.

3. Ld. DR on the other hand submitted that the said judgment of Delhi High Court dealt with Rule 5(1) of the Service Tax (Determination of Value)

Rules, 2006 while the period involved in this case is before the said fules came into existence and therefore, the said judgment is not squarely applicable in the facts of the present case.

4. We have considered the contentions of both sides and perused the record. We find that in para 13 of the show cause notice it is clearly stated that

the appellant has not paid service tax on ""Out of Pocket Expenses"" billed by and reimbursed to it in the course of performance of the said service and

that it appeared that value of ""Out of Pocket Expenses"" is to be added in the assessable value in terms of Sections 66 and 67 of the Finance Act,

1994. The appellate authority sustained the finding of the primary adjudicating authority holding that ""Out of Pocket Expenses"" reimbursed by service

recipient are includible in the assessable value of 'Management Consultant service' and thereby sustained the impugned demand. We find that this

issue was the subject matter in the case of Intercontinental Consultants and Technocrats (supra) where the High Court analysed the scope of Section

67 ibid and held that Rule 5(1) of Service tax (Determination of Value) Rules, 2006 is ultra vires Section 66 and 67 of the Finance Act, 1994.

Regarding the contention of Ld. DR that the judgment in the case of Intercontinental Consultants and Technocrats (supra) dealt with the period

beginning from the date when the Service Tax (Determination of Value) Rules, 2006 came into existence and the period involved in this case is prior

thereto, we find from the perusal of the said judgment that it is not the case. Indeed para 10 and part of para 11 of the said judgment is directly

relevant to this point and is therefore reproduced below:

10. The contention of the petitioner that Rule 5(1) of the Rules, in as much as it provides that all expenditure or costs incurred by the

service provider in the course of providing the taxable service shall be treated as consideration for the taxable service and shall be

included in the value for the purpose of charging service tax goes beyond the mandate of Section 67 merits acceptance. Section 67 as it

stood both before 01.05.2006 and after has been set out hereinabove. This section quantifies the charge of service tax provided in Section

66, which is the charging section. Section 67 both before and after 01.05.2006 authorises the determination of the value of the taxable

service for the purpose of charging service tax under Section 66 as the gross amount charged by the service provider for such service

provided or to be provided by him. in case where the consideration for the service is money. The under lined words i.e. ""for such service

are important in the setting of Section 66 and 67. The charge of service tax under Section 66 is on the value of taxable services. The taxable

services are listed in Section 65(105). The service provided by the petitioner falls under clause (g). It is only the value of such service that is

to say, the value that can be brought to charge and nothing more. The quantification of the value of the service can therefore never exceed

the gross amount charged by the service provider for the service provided by him. Even if the rule has been made under Section 94 of the

Act which provides for delegated legislation and authorises the Central Government to make rules by notification in the official gazette,

such rules can only be made ""for carrying out the provisions of this Chapter"" i.e. Chapter V of the Act which provides for the levy,

quantification and collection of the service tax. The power to make rules can never exceed or go beyond the section which provides for the

charge or collection of the service tax. (emphasis added)

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. â?¦.â??

It is evident from the said judgment that the said Rule 5(1) was held ultra vires by Delhi High Court on the ground that it exceeded and went beyond

the scope of Sections 66 and 67 (as it stood before and after 01.05.2006 The said rule provided some fig leaf for inclusion of such expenses in the

assessable value of taxable service and in the absence thereof, even a fig leaf to include such expenses in the assessable value would not exist.

5. Thus, we find that the judgment of Delhi High Court in the case of Intercontinental Consultants and Technocrats (supra) is squarely applicable to

the facts of the present case. Accordingly, we hold that the impugned order is not sustainable. The appeal is allowed.

