CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH, COURT NO. I

SERVICE TAX APPEAL NO. 52708 OF 2016

[Arising out of the Order-in-Original No. DLI/SVTAX/002/COM/003/16-17 dated 31/05/2016 passed by Commissioner of Service Tax Delhi – II, New Delhi – 110 019.]

M/s Seher, **...Appellant**
G-18, Maharani Bagh, Srinivas Puri,
New Delhi – 110 065.

Versus

Commissioner of Service Tax Delhi – II, **...Respondent**
5th Floor, 14-15, Farm Bhawan, Nehru Place,
New Delhi – 110 019.

APPEARANCE:

Shri S.C. Kamra, Advocate for the appellant.
Shri Ravi Kapoor, Authorized Representative for the Department

CORAM:
HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 50509/2022

DATE OF HEARING : 29.04.2022
DATE OF DECISION: 13.06.2022

P.V. SUBBA RAO

This appeal is filed by M/s Seher[1] assailing order-in-original[2] dated 31.05.2016 passed by the Commissioner of Service Tax, Delhi – II.

2. The appellant is engaged in providing Event Management Services which are undisputedly taxable under Section 65 (105)

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[1] **appellant**
[2] **impugned order**

(zu) of the Finance Act, 1994 and the appellant is registered with the Department and has been paying service tax. The appellant's services are hired by the Indian Council for Cultural Relations, under Ministry of External Affairs to manage its various events. The office of the Directorate General of Audit audited the records of appellant and found that the appellant had paid the service tax of Rs. 51,21,220/- during the period 2006-2007 to 2010-2011 while it had provided services aggregating to Rs. 10,30,78,749/- (including service tax) during this period. Audit, therefore, observed that service tax, was short paid. Accordingly, show cause notices dated 03.08.2012, 02.04.2014 and 17.04.2015 were issued to the appellant proposing to recover the short paid service tax aggregating Rs. 1,19,21,936/- and also proposing to impose penalties under the Sections 76, 77(2) and 78 of the Finance Act, 1994. These three show cause notices were adjudicated by the impugned order. Aggrieved, the present appeal is filed.

3. As an Event Management Agency, the appellant conceptualizes, consults, plans, coordinates and organizes events hosted by the client in the following manner :-

(a) The client has the appellant only for conceptualization, planning and coordination of the event and separately has third party service providers, such as, transporters, caterers, electricians, musicians, artists etc. The appellant receives only professional fees on which it has paid service tax which is not in dispute.

(b) The client requests the appellant to organize the complete event in which case the appellant approaches third party service providers and engages

> them as per the budget allocation and instructions given by the client. The appellant pays vendors and claims reimbursement of the cost of these vendors from the client along with utilization certificates duly certified by the auditors.

4. The dispute in this case is with respect to the second type of contracts. According to the Revenue, the appellant is providing a complete service and has to pay service tax on the entire amount including what has been paid by it to the third parties and is reimbursed by the client. According to the appellant, it is only providing the service of organizing the event and the amounts which it paid to third parties were only reimbursed by the client. Therefore, it was acting as a pure agent and no service tax can be levied on the amounts which it paid to third parties which have been reimbursed by the client.

5. Learned Counsel for the appellant submits that it has been recorded in paragraph 42 of the impugned order that the gross amount charged by the appellant includes both conceptualization fees and expenditures reimbursement which was held liable to service tax and by the impugned order. He submits that it is undisputed that the additional amounts which the appellant received were towards reimbursement of expenses paid by it towards third party as has been recorded correctly in paragraph 42 of the impugned order. However, the Commissioner has not accepted the appellant's claim that it was acting as a pure agent for its clients in respect of such payments received as reimbursement on the ground that it had not fulfilled the

conditions laid down in Rule 5 (2) of Service Tax (Determination of Value) Rules, 2006. He submits that their case is squarely covered by the judgment of Supreme Court in the case of **Union of India versus Intercontinental Consultants and Technocrats Pvt. Ltd.**[3] and reimbursements of amounts which it received cannot be charged to service tax. He, therefore, prays that the impugned order may be set aside and the appeal may be allowed.

6. Learned Authorized Representative of the Revenue supports the impugned order.

7. We have considered the submissions of both sides and perused the records.

8. Service tax is levied on taxable services rendered by the assessee. The valuation of taxable services is done as per Section 67 of the Finance Act, 1994. Upto 17.04.2006, this section read as follows :-

> **"Valuation of taxable services for charging service tax. -**
>
> For the purposes of this Chapter, the value of any taxable service shall be the gross amount charged by the service provider for such service provided or to be provided by him.
>
> *Explanation 1*. For the removal of doubts, it is hereby declared that the value of a taxable service, as the case may be, includes,
>
> (a) the aggregate of commission or brokerage charges by a broker on the sale or purchase of securities including the commission or brokerage paid by the stock broker to any sub broker.
>
> (b) the adjustments made by the telegraph authority from any deposits made by the subscriber at the time of application for telephone connection or pager or facsimile or telegraph or telex or for leased circuit;

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[3] **2018 (10) G.S.T.L. 401 (S.C.)**

(c) the amount of premium charged by the insurer from the policy holder;

(d) the commission received by the air travel agent from the airline;

(e) the commission, fee or any other sum received by an actuary, or intermediary or insurance intermediary or insurance agent from the insurer;

(f) the reimbursement received by the authorized service station from manufacturer for carrying out any service of any motor car, light motor vehicle or two wheeled motor vehicle manufactured by such manufacturer; and

(g) the commission or any amount received by the rail travel agent from the Railways or the customer.

But does not include -

(i) initial deposit made by the subscriber at the time of application for telephone connection or pager or facsimile (FAX) or telephone or telex or for leased circuit;

(ii) the cost of unexposed photography film, unrecorded magnetic tape or such other storage devices, if any, sold to the client during the course of providing the service;

(iii) the cost of parts or accessories, or consumable such as lubricants and coolants, if any, sold to the customer during the course of service or repair of motor cars, light motor vehicle or two wheeled motor vehicles;

(iv) the airfare collected by air travel agent in respect of service provided by him;

(v) the rail fare collected by rail travel agent in respect of service provided by him;

(vi) the cost of parts or other material, if any, sold to the customer during the course of providing maintenance or repair service;

(vii) the cost of parts or other material, if any, sold to the customer during the course of providing erection, commissioning or installation service; and

(viii) interest on loan.

Explanation 2 - Where the gross amount charged by a service provider is inclusive of service tax payable, the value of taxable service shall be such amount as with the addition of tax payable, is equal to the gross amount charged.

Explanation 3. For the removal of doubts, it is hereby declared that the gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service."

9. This section was changed w.e.f. 18.04.2006 as follows:

"Valuation of taxable services for charging service tax. -

(1) Subject to the provisions of this Chapter, where service tax is chargeable on any taxable service with reference to its value, then such value shall,

(i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;

(ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money as, with the addition of service tax charged, is equivalent to the consideration;

(iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.

(2) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

(3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.

(4) Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed.

Explanation: For the purpose of this section,

(a) "consideration" includes any amount that is payable for the taxable services provided or to be provided;

(b) "money" includes any currency, cheque, promissory note, letter of credit, draft, pay order, travelers cheque, money order, postal remittance and other similar instruments but does not include currency that is held for its numismatic value;

(c) "gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of accounts of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise."

10. Service Tax (Determination of Value) Rules, 2006 were notified on 19.04.2006 in terms of the amended Section 67. Rule 5 of these Rules stipulated inclusion in or exclusion of value of certain expenditures and costs sub-rule (2) of Rule 5 specifically provided that expenditure of cost incurred by the service provider as pure agent of the recipient service shall be excluded from the value of taxable service, if certain conditions are met. This Rule 5 was held to be *ultra vires* of Section 67 by the Supreme Court in the case of **Intercontinental Consultants and Technocrats**

Pvt. Ltd. Paragraphs 24 and 25 of this judgment are reproduced below :-

> "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.
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> 25. This position did not change even in the amended Section 67 which was inserted on May 1, 2006. Sub-section (4) of Section 67 empowers the rule making authority to lay down the manner in which value of taxable service is to be determined. However, Section 67(4) is expressly made subject to the provisions of sub-section (1). Mandate of sub-section (1) of Section 67 is manifest, as noted above, viz., the service tax is to be paid only on the services actually provided by the service provider".

11. The appellant relied on this judgment in the proceeding before the Commissioner, who however, did not agree that the ratio of this judgment applied to the appellant's case. The relevant portion of the impugned order is as follows:

> "I find that the issue in the case law quoted by the Noticee is inherently different from the instant case as the present case deals with service provided by third party service providers like Catering, tent, sound, artists, etc. which are integral and inseparable part of the event as a whole, without which the event cannot occur. These are indeed input services for the noticee in the course of organizing and holding an event. They are not merely reimbursement of the likes of air travel, hotel stay, etc. which was the case in the judgment quoted above. Therefore, I hold that the judgment as quoted by the Noticee is not squarely applicable as far as the SCNs in the instant case are concerned.
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> Thus, I hold that the gross amount includes all the payments received/charged by the Noticee in the course of management of event being organized by its clients in terms of Section 67 of the Finance Act (As amended) and chargeable to Service Tax. I also hold that payment made by the Noticee as detailed in para 37

above is liable to be adjusted against any liability of service tax arising out of this order".

12. Consequently, the Commissioner has confirmed the service tax and imposed penalty as proposed.

13. We find that the Commissioner has in the impugned order recorded that the appellant was claiming reimbursement. It is not the case of the Revenue that the appellant entered into a turnkey contract for the entire service and was hiring sub-contractors for various purposes. If such was the arrangement, the appellant would be the service provider and its service would be the entire package on which it would be liable to pay the service tax. The others would have been the sub-contractors to the appellant who would have been liable to pay service tax on the amounts they received for their services. In such an arrangement the services of others would have been input services to the appellant on which the appellant would have been entitled to avail Cenvat credit of the service tax paid by such sub-contractors.

14. However, Revenue accepts that the appellant was receiving two types of payment – one for its services and another towards reimbursement of the expenses which it incurred in hiring other service providers. Estimates of expenses to be incurred on the other service providers are approved by the client and the actual amounts incurred by the appellant are claimed by it as reimbursements from the client after submitting appropriate utilization certificates.

15. In this arrangement, the only reason the Revenue sought service tax on the amounts reimbursed to the appellant by the client is that the appellant did not fulfill the conditions laid down in Rule 5 to qualify as a pure agent. However, we find that Rule 5 itself has been held to be *ultra vires* of Section 67 by the Supreme Court in the case of **Intercontinental Consultants and Technocrats Pvt. Ltd.** The Commissioner sought to distinguish the appellant's case on the ground that the nature of services for which reimbursements were made in **Intercontinental** case were different from the case of the appellant. In our considered view, the nature of service should make no difference to the taxability of reimbursements when Rule 5 under which the tax was demanded itself has been *ultra vires* by Supreme Court in the case of **Intercontinental Consultants and Technocrats Pvt. Ltd.**

16. Consequently, the demands confirmed against the appellant do not survive. The penalty imposed upon the appellant also needs to be set aside and we do so. The appeal is allowed and the impugned order is set aside with consequential relief to the appellant.

(Order pronounced in open court on 13/06/2022.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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