

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. III

SERVICE TAX APPEAL No.636 of 2012

[Arising out of Order-in-Appeal No.CMB-CEX-000-APP.157-12 dated 21.08.2012 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore]

M/s. Benchmark Consultants

: Appellant

No.9, East Periyasamy Road,
R.S.Puram
Coimbatore 641 002.

VERSUS

The Commissioner of GST & Central Excise,

: Respondent

Coimbatore Commissionerate,
No.6/7, ATD Street, Race Course Road,
Coimbatore 641 018

APPEARANCE:

Shri M.N. Bharahi, Advocate
For the Appellant

Shri S. Balakumar, Assistant Commissioner (A.R.)
For the Respondent

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 40092 / 2023

DATE OF HEARING: 17.02.2023

DATE OF PRONOUNCEMENT: 28.02.2023

Per: Ms. SULEKHA BEEVI C.S.

Brief facts are that appellants are registered for payment of service tax under the category of "Business Auxiliary Services" as defined in Section 65 (105) (zzb) of the Finance Act, 1994. Intelligence was gathered that during the period 2005-06 to 2009-10, the appellant was

resorting to undervaluation by not including the taxable value of the amounts of reimbursements received by them for their services. Show cause notice was issued proposing to demand service tax on the reimbursable amounts received by them along with interest and for imposing penalties. After due process of law, the original authority confirmed the demand along with interest and imposed penalty. Aggrieved by such order, the appellants filed appeal before the Commissioner (Appeals) who by order impugned herein upheld the demand. Hence this appeal.

2. Ld. Counsel Shri M.N.Bharathi submitted that the issue stands covered by decision. He submitted that there is no dispute that the amounts are in the nature of reimbursable expenses. The issue as to whether service tax can be levied on reimbursable expenses has been settled by the decision of the Hon'ble Apex Court in the case of *UOI Vs Intercontinental Consultants and Technocrats Pvt. Ltd.* - 2018 (10) GSTL 401 (SC) the issue was held in favour of the appellant. Further in the appellant's own case as reported in 2018 (12) TMI 1113 CESTAT Chennai the issue was held to be in appellant's favour. He prayed that the appeal may be allowed.

3. Ld. A.R Shri S. Balakumar appeared for the Department and supported the findings in the impugned order.

4. Heard both sides.

5. The issue is as to whether service tax can be demanded on reimbursable expenses. From the show cause itself it is clear that the demand is made for the non-inclusion of reimbursable expenses in the taxable value for discharge of service tax liability. The issue is settled in the case of *UOI Vs Intercontinental Consultants and Technocrats* (supra). Following the same, we are of the view that the demand cannot sustain and requires to be set aside which we hereby do. The impugned order is set aside. Appeal is allowed with consequential relief, if any, as per law.

(pronounced in court on 28.02.2023)

Sd/-
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)