

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. III
Service Tax Appeal No.42191 of 2015

(Arising out of Order-in-Appeal No.132/2015 (STA-I) dated 27.07.2015 passed by Commissioner of Service Tax (Appeals-I), Newry Towers, 2054/1, II Avenue, 12th Main Road, Annanagar, Chennai 600 040)

M/s. United India Shipping Services

129 (Old NO.64), Thambu Chetty Street,
First Floor,
Chennai 600 001.

...Appellant

Versus

Commissioner of GST & Central Excise,

Chennai North Commissionerate,
No.26/1, Mahathma Gandhi Road,
Nungambakkam,
Chennai 600 034.

...Respondent

APPEARANCE:

For the Appellant : Shri T.R. Ramesh, Advocate

For the Respondent : Mr. R. Rajaraman, Assistant Commissioner (A.R)

CORAM:

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

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

DATE OF HEARING : 08.06.2023

DATE OF PRONOUNCEMENT : 12.06.2023

FINAL ORDER No.40417/2023

Order : Per Ms. Sulekha Beevi C.S.

Brief facts are that the appellant is engaged in providing services in the nature of Custom House Agent Services. They are also registered with the Department. During the course of audit conducted by internal audit party, it was noticed that the appellant apart from collecting charges for providing CHA services also collects LCL charges,

deconsolidation charges, transportation charges, DO charges, terminal handling charges, demurrage charges, documentation charges and other charges from their clients. The appellant had excluded these charges while computing the total taxable value and had not discharged service tax on such charges on the claim that these are only reimbursable expenditure. The department was of the view that the appellant ought to have included these expenses in the taxable value to discharge service tax liability. Show cause notice dated 14.10.2009 was issued proposing to demand service tax on such expenses incurred by the appellant for providing CHA services. After due process of law, the original authority confirmed the demand along with interest and imposed equal penalty under section 78 of the Finance Act 1994 . On appeal, the Commissioner (Appeals) upheld the order of the original authority. Aggrieved by such order, the appellant is now before the Tribunal.

2. Ld. Counsel Shri T.R. Ramesh appeared and argued for the appellant. Ld. Counsel adverted to the show cause notice and submitted that as per Annexure to the SCN itself, it is seen that the demand is raised on reimbursable expenses. Annexure-A of the SCN would show that reimbursable expenses are incurred by the appellant for the period 2006-07 to 2008-09. The demand has been confirmed alleging that the appellant failed to qualify as pure agent as envisaged in Rule 5 (2) of Service Tax (Determination of Value) Rules, 2006. An amount of Rs.3,29,122/- has been confirmed for the period 2004-05 to 2007-08 alleging difference between profit and loss account with the ST-3 returns. It is submitted by the Ld. Counsel that the value mentioned in profit and loss account consists of total amount received from their clients and includes the charges in the nature of reimbursable expenses. The

appellant is not liable to pay service tax on the reimbursable expenses and therefore such an amount has not been included in the taxable value while filing the ST-3 returns. Annexure-C of the SCN raises a demand of Rs.79,599/- for the period 2004-05 to 2008-09. It is submitted that the value debit notes raised for the said period was included in the profit and loss statement and has been duplicated once again for which the demand has been raised. Without going into the merits, the demand has been confirmed and it is wholly unsustainable on account of duplication. It is also submitted that debit notes were raised for claiming reimbursable expenses on which service tax is not payable by the appellant.

3. To argue that the appellant is not liable to pay service tax on the reimbursable expenses, Ld. Counsel relied upon the decision of the Hon'ble Apex Court in the case of *Union of India Vs Intercontinental Consultants and Technocrats Ltd.* – 2018 (10) GSTL 401 (SC).

4. Ld. Counsel also argued on the ground of limitation. It is stated by the counsel that they had discharged service tax on the consideration received and the demand has been raised only on the reimbursable expenses received by them. The said issue was under litigation before the Apex Court and being interpretational issue the extended period cannot be invoked. The appellant having put forward reasonable cause for non-payment of the differential amount of service tax, it is pleaded that the penalty imposed under Section 80 of the Finance Act, 1994 may be waived.

5. Ld. A.R Shri R. Rajaraman supported the findings in the impugned order.

6. Heard both sides.

7. From the SCN itself it is seen that the demand has been made on the reimbursable expenses incurred by the appellant. Further, the allegation as per para 3.2 of the SCN that appellant has not included the charges in the nature of deconsolidation charges, transportation charges, DO charges etc. incurred by them for providing CHA services. It is understandable that such charges are collected by the appellant from their clients and paid to the concerned service provider.

8. It is settled position that the reimbursable expense is not subject to levy of service tax as per the decision of the Hon'ble Apex Court in the case of *Union of India Vs Intercontinental Consultants and Technocrats Ltd.* (supra). After analysing the facts and going through the evidence, we are of the considered view that the decision of Hon'ble Apex Court in *Intercontinental Consultants and Technocrats Ltd.* will be squarely applicable to the facts of the case. Following the same, we hold that the demand cannot sustain. The impugned order is set aside. Appeal is allowed with consequential relief, if any.

(pronounced in open court on 12.06.2023)

Sd/-
(M. AJIT KUMAR)
MEMBER (TECHNICAL)

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

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