

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi**

COURT NO. II

DATE OF HEARING : 25/04/2018.
DATE OF DECISION : 25/04/2018.

Service Tax Appeal No. 1477 of 2011

[Arising out of the Order-in-Appeal No. 257/S. Tax/D-II/11 dated 21/07/2011 passed by The Commissioner of Central Excise (Appeals), Delhi – II, New Delhi.]

M/s Text Hundred India Pvt. Ltd. Appellant

Versus

CST, Delhi Respondent

Appearance

Shri Bharat Bhushan, Advocate – for the appellant.

Shri Sanjay Jain, Authorized Representative (DR) – for the Respondent.

CORAM: Hon'ble Shri S.K. Mohanty, Member (Judicial)
Hon'ble Shri V. Padmanabhan, Member (Technical)

Final Order No. 51706/2018 Dated : 25/04/2018

Per. S.K. Mohanty :-

This appeal is directed against the impugned order dated 21/07/2011 passed by the Commissioner (Appeals), Service Tax, New Delhi.

2. Brief facts of the case are that the appellant is registered with the Service Tax Department for providing the taxable

service under the category of event management. For providing such service, the appellant receives the retainership fee and fixed mechanical income, on which the appellant discharged appropriate service tax liability. However, the appellant did not pay the service tax on the reimbursable expenses incurred on actual. During the course of audit for the period 01/04/2004 to 31/03/2006, the Service Tax Department observed that the appellant had recover certain expenses for providing the taxable service, but did not pay the service tax thereon. Accordingly, show cause proceedings were initiated against the appellant, which culminated in adjudication order dated 16/12/2009, wherein the service tax demand of Rs. 15,51,838/- and Rs. 6,42,675/- alongwith interest was confirmed against the appellant. Besides, penalties were also imposed under Section 77 and 78 of the Finance Act, 1994. On appeal, the learned Commissioner (Appeals) has upheld the adjudication order.

3. Learned Advocate appearing for the appellant submits that the adjudged demand confirmed against the appellant relates to the mechanical expenses and reimbursable expenses. He submits that in respect of mechanical expenses, the appellant had already deposited the service tax before issuance of the show cause notice and the amount deposited by it has also been appropriated to the Government account. Thus, he submits that the appellant is contesting the includibility of reimbursable expenses of Rs. 3,63,344/- in the gross value by the Department. It is the contention of the learned Advocate that the reimbursable

expenses received from the client on actual basis, should not form part of the gross value for the purpose of payment of service tax.

4. On the other hand, the learned DR appearing for the Revenue reiterates the findings recorded in the impugned order.

5. Heard both sides and perused the case records.

6. On perusal of the service agreements dated 01/01/2005 available in the case file, we find that the client of the appellant was under the obligation to reimburse the extra ordinary expenses incurred by the appellant on actual basis. Reimbursable expenses cannot be considered as amount charged by service provider, 'for providing the taxable service'. Since, the appellant was entitled for receiving the actual expenses incurred by it, the same should not be included in the gross value for the purpose of payment of service tax, inasmuch as, such amount is not towards the consideration received for providing the taxable service.

7. In view of above, we do not find any merits in the impugned order. Accordingly, after setting aside the same, we allow the appeal in favour of the appellant.

(Order dictated and pronounced in the open court.)

(S.K. Mohanty)
Member (Judicial)

(V. Padmanabhan)

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Member (Technical)