CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH-COURT NO.I

SERVICE TAX APPEAL No. 50240 of 2016

(Arising out of Order-in-Appeal No. 27/ST/DLH/2014 dated 24.04.2015 passed by Principal Commissioner of Service Tax, Appeals-I, Delhi)

M/s. RMA & Associates **.... Appellant**
Reg. Office at 48, UG-2 Hasanpur, I.P. Extenstion,
New Delhi-110092 (India)

Versus

Principal Commissioner of Service Tax, Appeals-I, Delhi **.... Respondent**
17-B, IAEA House, I.P. Estate, M.G. Road,
New Delhi-110002

APPEARANCE:

None for the Appellant
Shri Radhe Tallo, Authorized Representative for the Department

CORAM:

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

Date of Hearing: 30/05/2022

FINAL ORDER NO. 50476 / 2022

JUSTICE DILIP GUPTA

This appeal seeks the quashing of the order dated April 24, 2015 passed by the Principal Commissioner of Service Tax, Appeals-I, Delhi[1] by which the order dated February 28, 2014 passed by the Assistant Commissioner has been upheld.

2. The appellant was engaged in providing "chartered accountant services". The dispute in the present appeal is regarding the non-payment of service tax on the amount

1. the Commissioner (Appeals)

representing reimbursement of expenses like conveyance, travelling and mobile expenses.

3. A show cause notice dated July 02, 2008 was issued to the appellant mentioning therein:

> "And whereas, from the perusal of statement of Sri Rajiv Bajpai on behalf of RMA & Associates and the reply of RMA dated May 17, 2008, it appears that RMA have not paid service tax on the expenditure got reimbursed by them in the course of performance of their professional services and it appears that value of service is to be added in the gross value of services rendered by them in terms of section 67 of Finance Act, 1994. It therefore, appears that service tax along with education amounting to Rs.57,613/- as detailed in the Annexure to this show cause notice is recoverable under section 73 of Finance Act, 1994."

4. The appellant filed a reply to the aforesaid show cause notice and denied the allegations mention therein. However, the Assistant Commissioner confirmed the demand in the following manner:

> **"22. DISCUSSIONS AND FINDINGS**
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> 22.1 The noticee has recovered some amounts which are claimed as reimbursement from its clients to whom the assessee has provided services, but for paying service, service tax on its receipts (called professional charges). Such amounts of reimbursement have not been included i.e. grossly undervalued its income. Service tax appears to have been evaded & have been demanded in show cause notice.
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> 22.2 The provision of the section no-where defines for the exclusion of the charges claimed by the noticee. The statue in an un-ambiguous term defines that service tax is to be paid on gross amounts charged; Even for where there is an inclination on the part of the assessee for to claim any deduction (whether admissible or not) it has to be declared & specifically mentioned for the purpose of assessment. To interpret the law/statue to one's own advantage is ultra virus to the basis spirit of the provision. The noticee has no-where mentioned or declared the reimbursement, claimed extra from these customers in their returns. The noticee has filed his return in which it has failed to show such reimbursement & short paid amounts, which is thus rightly recoverable. Seen in the spirit of circular quoted by the noticee the

> reimbursement claimed here has no direct nexus with the services and these are not case specific. These are general charges for which proportion of charges has no clear co-relation. The noticee has nowhere established that the amount of expenses ever if incurred on behalf of customer are verifiable. From the documents there appears no direct co-relation between the amounts re-imbursed and invoices raised. No supporting documents/ vouchers/ accounts have been produced."

5. The submissions made by the appellant before the Commissioner (Appeals) did not find favour of the Commissioner (Appeals) and the appeal was ultimately dismissed. The relevant portion of the order is reproduced below:

> "6. The appellant have contended that they are not liable to pay service tax on the charges recovered from their clients on reimbursement of out of pocket expenses which are claimed on actual cost basis. I have carefully gone through the contention of the appellant and also the impugned order. The adjudicating authority has held that the appellants have no where mentioned or declared the reimbursement, claimed extra from their customers in their returns. The appellants have quoted circular No.11/03/19980TRU dated 07.10.98 but the impugned order says that even if seen in the spirit of the circular quoted, the reimbursement claimed here has no direct nexus with the services and that these expenses are not verifiable. The impugned order has also observed that there is no direct co-relation between the amounts reimbursed and invoices raised. The appellants have not been able to negate the observations made in the impugned order and have summarily failed in explaining as to why these expenses were not reflected in their returns or as to why the same are not tallying with the invoices raised by them."

6. As no one had been appearing on behalf of the appellant, the Tribunal on March 28, 2022 adjourned the matter to May 30, 2022, but made it clear that in case the appellant did not appear on the next date, the matter would be decided on merits.

7. Today also no one has appeared on behalf of the appellant. The appeal is, accordingly, being decided after hearing Dr. Radhe Tallo, learned authorized representative for the Department.

8. The issue, in respect of reimbursable expenses has been considered and decided by the Supreme Court in **Union of India** vs. **Intercontinental Consultant and technocrats**[2]. The relevant observations are as follows:

> "21. Undoubtedly, Rule 5 of the Rules, 2006 brings within its sweep the expenses which are incurred while rendering the service and are reimbursed, that is, for which the service receiver has made the payments to the assesses. **As per these Rules, these reimbursable expenses also form part of 'gross amount charges'. Therefore, the core issue is as to whether Section 67 of the Act permits the subordinate legislation to be enacted in the said manner, as done by Rule 5**. As noted above, prior to April 19, 2006, i.e., in the absence of any such Rule, the valuation was to be done as per the provisions of Section 67 of the Act.
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> 22. Section 66 of the Act is the charging Section which reads as under:
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> > "there shall be levy of tax (hereinafter referred to as the service tax) @12% of the value of taxable services referred to in subclauses of Section 65 and collection in such manner as may be prescribed."
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> 23. Obviously, this Section refers to service tax, i.e., in respect of those services which are taxable and specifically referred to in various subclauses of Section 65. Further, it also specifically mentions that the service tax will be @12% of the 'value of taxable services'. Thus, service tax is reference to the value of service. **As a necessary corollary, it is the value of the services which are actually rendered, the value whereof is to be ascertained for the purpose of calculating the service tax payable thereupon**.
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> 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,

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2. 2018(10)G.S.T.L. 401(S.C.)

> therefore, find that High Court was right in interpreting Section 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."

9. Thus, service tax could not have been levied on the reimbursed expenses.

10. The Commissioner (Appeals), therefore, was not justified in holding that the reimbursable expenses would be subjected to service tax.

11. The order dated April 24, 2015 passed by the Commissioner (Appeals), therefore, cannot be sustained. It is, accordingly, set aside and the appeal is allowed.

(JUSTICE DILIP GUPTA)
PRESIDENT

(P V SUBBA RAO)
MEMBER (TECHNICAL)

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