

Taxability of Reimbursement of expenses under Service tax and GST

The Delhi, CESTAT in *M/s Seher v. Commissioner of Service Tax Delhi [Service Tax Appeal No. 52708 of 2016 dated June 13, 2022]* held that, service tax is not payable on reimbursement of expenses as the nature of service should make no difference to the taxability of reimbursement.

Facts:

M/s Seher ("**the Appellant**") is engaged in providing Event Management Services was hired by Indian Council for Cultural Relations, Ministry of External Affairs ("**ICCR**") to manage its various events. To complete the service, the Appellant engaged third-party vendors on payment and the same payment was reimbursed by the ICCR.

The Revenue department ("**the Respondent**") conducted an audit for the period of 2006-07 to 2010-2011 and found that against the services provided amounting Rs. 10,30,78,749 to the Appellant has shortly paid the service tax of only Rs. 51,21,220 (including service tax) and observed that service tax, was short paid.

Accordingly, the Show Cause Notices ("**the SCN**") dated August 3, 2012, April 02, 2014 and April 17, 2014 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 Chapter V of the Finance Act, 1994 ("**the Finance Act**")

Then, Order-in-Original ("**the Impugned Order or the OIO**") was passed holding that the Appellant 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.

Subsequently, the Appellant preferred an appeal before the Commissioner (Appeals) who vide the Order-in-Appeal ("**the Impugned Order**") upheld the OIO. Being aggrieved, the present appeal has been filed.

Argument by the Respondent:

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The Respondent contended that the Appellant for engaging the third parties does not qualify as 'Pure Agent' under Rule 5 of the Service Tax (Determination of Value) Rules, 2006 ("**the Service Tax Valuation Rules**") and hence, was providing a complete service who has to pay tax on the entire amount including the payment made to third-party vendors and reimbursed by the client.

Argument made by the Appellant:

The Appellant contended that, they are 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 paid to third parties which have been reimbursed by the client.

Issue:

Whether Reimbursement of Expenses was chargeable to Service tax?

Held:

The Delhi, CESTAT in held as under:

- Analysed the provisions of the Finance Act, According to Rule 5(2) of the Service Tax Valuation Rules, which specifically provided that expenditure incurred by the service provider as a pure agent of the recipient service shall be excluded from the value of taxable service if certain conditions are met.
- Observed that, this Rule 5 of Service Tax Valuation Rules was held to be ultra vires of Section 67 of the Finance Act by the Supreme Court in the case of Intercontinental Consultants and Technocrats Pvt. Ltd.
- Held that, the nature of service should make no difference to the taxability of reimbursements when Rule 5 of the Service Tax Valuation Rules under which the tax

was demanded itself has been ultra vires by Supreme Court in the case of Intercontinental Consultants and Technocrats Pvt. Ltd.

- Set aside the Impugned Order.

Goods and Services Tax (“GST”) on Reimbursement of Expenses:

Section 15 of the Central Goods and Services Tax Act, 2017 (“the CGST Act”), provides that the value of a supply of goods or services or both shall be the transaction value, which is the price paid or payable for the supply of goods or services when

- where the supplier and the recipient are not related, and
- the price is the sole consideration for the supply.

Section 15(2) of the CGST Act further states that the value of supply shall include:

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

–Further, any **reimbursement of expenses** incurred as a **“pure agent” in terms of Rule 33 of the CGST Rules** provides that any expenditure incurred as a pure agent will be excluded from the value of supply, and hence, from the aggregate turnover as well.

Pure agent means a person who need to satisfy the following conditions for the exclusion from the value of supply:

1. Enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both.
2. Neither intends to hold or holds any title to the goods or services or both so procured or provided as pure agent of the recipient of supply.
3. Does not use for his own interest, such goods or services so procured.
4. Receiver only the Actual amount incurred to procure such goods or services in addition to the amount received for the supply he provides on his own account.

If these conditions are not satisfied, then such expenditure incurred will be included in the value of supply under GST.

In terms of clause (b) of Section 15(2) of the CGST Act, any expenses which ought to be incurred by the recipient and provided to the supplier shall be included in the value of supply for the chargeability of GST.

In terms of clause (c) of Section 15(2) of the CGST Act, any incidental expenses charged by the supplier to the recipient for supply of the services shall be included in the value of the supply for the chargeability of GST unless otherwise satisfied the conditions as prescribed in Rule 33 of Pure Agent for exclusion of expenses from value of supply.

Our Comments:

To know more, kindly see our video on "[Taxability of Reimbursement of Expenses under Service Tax and GST || CA Bimal Jain](#)"

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