

Nature of services should make no difference to the taxability of reimbursements when provision under which tax demanded itself has been declared *ultra vires*- Delhi CESTAT

22 June 2022



Summary

The Delhi Customs Excise and Service Tax Appellate Tribunal (CESTAT) has held that when the provision demanding tax has been held *ultra vires*, the demand of service tax cannot be sustained. The CESTAT observed that the appellant hired third party service providers for providing event management services as approved by the client. The CESTAT ruled that the appellant has not entered into a turnkey contract for the entire service. In such arrangement, the appellant would have been entitled to avail CENVAT credit of the service tax paid, considering services provided by sub-contractors as its input services. The CESTAT further opined that the nature of service should make no difference to the taxability of reimbursements when Rule 5 under which the tax was demanded itself has been *ultra vires* by the Hon'ble Supreme Court¹. Hence, the CESTAT quashed service tax demand on expenses reimbursed by the client, incurred by the appellant for hiring third party vendors.

Facts of the case

- The appellant² is engaged in providing event management services³. The ICCR⁴ has hired the appellant for managing its various events.
- As a part of event management, the appellant engaged third party service providers on the request of client and as per the budget allocation and instructions given by its client. Accordingly, the appellant made payments to such service providers and claimed reimbursements from the client along with utilization certificates.
- During audit, it was observed that the appellant had short paid the service tax. Hence, show cause notices (SCNs) were issued proposing to recover the short-paid service tax along with penalties.
- The appellant contended that it was acting as a pure agent in relation to amount received as reimbursement of

expenses paid to third parties for their services.

Delhi CESTAT observations and ruling⁵:

- **Reimbursement to be claimed upon appropriate utilisation:** The appellant has not entered into a turnkey contract for the entire service. The appellant is receiving payment for its services along with reimbursement of expenses incurred in hiring other service providers. The amount so incurred by the appellant is reimbursed upon submission of appropriate utilisation certificates.
- **Rule held *ultra vires* by the Apex Court:** The rule⁶ specifically provides that upon satisfaction of certain conditions, the expenditure incurred by appellant as pure agent would be excluded from the value of taxable service. Accordingly, service tax was levied on the appellant as he did not qualify as a pure agent. However, the rule has been held *ultra vires* by the by

¹ in the case of Intercontinental Consultants and Technocrats Pvt. Ltd.

² M/s Seher

³ taxable under Section 65 (105) (zu) of the Finance Act, 1994

⁴ Indian Council for Cultural Relations, under Ministry of External Affairs

⁵ Service Tax Appeal No. 52708 of 2016 dated 13 June 2022

⁶ Sub-rule (2) of Rule 5 of Service Tax (Determination of Value) Rules, 2006

the Apex Court in a decision⁷ passed in case of Intercontinental Consultants and Technocrats Private Limited⁸.

- **Nature of service does not make difference:** The CESTAT held that when the rule has been held *ultra vires*, the nature of service should not make a difference in relation to taxability of reimbursements received from clients. Hence, the service tax demand cannot be sustained.

Our comments

Earlier, the Apex Court in case of Intercontinental Consultants and Technocrats Private Limited⁹ had held that valuation of tax service cannot be anything more or less than the consideration paid as *quid pro qua* for rendering such a service.

Relying on the decision of Apex Court, the CESTAT Delhi has disregarded the tax liability when the relating provision itself has been held *ultra vires*.

The concept of pure agent exists in GST regime also, wherein it is mentioned that the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply subject to the fulfilment of conditions.

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⁸ Civil Appeal No. 2013 of 2014 dated 7 March 2018

⁹ Civil Appeal No. 2013 of 2014

Contact us

To know more, please visit www.grantthornton.in or contact any of our offices as mentioned below:

NEW DELHI

National Office,
Outer Circle,
L 41, Connaught Circus,
New Delhi - 110001
T +91 11 4278 7070

NEW DELHI

6th Floor, Worldmark 2,
Aerocity,
New Delhi - 110037
T +91 11 4952 7400

AHMEDABAD

Unit No - 603 B, 6th Floor,
Brigade International
Financial Center,
GIFT City Gandhinagar,
Ahmedabad - 382355
T +91 79 6900 2600

BENGALURU

5th Floor, 65/2, Block A,
Bagmane Tridib,
Bagmane Tech Park,
CV Raman Nagar,
Bengaluru - 560093
T +91 804 243 0700

CHANDIGARH

B-406A, 4th Floor,
L&T Elante Office Building,
Industrial Area Phase I,
Chandigarh - 160002
T +91 172 433 8000

CHENNAI

9th floor, A wing, Prestige
Polygon, 471 Anna Salai,
Mylapore Division, Teynampet,
Chennai - 600035
T +91 44 4294 0000

DEHRADUN

Suite No 2211, 2nd Floor,
Building 2000, Michigan Avenue,
Doon Express Business Park,
Subhash Nagar,
Dehradun - 248002
T +91 135 264 6500

GURGAON

21st Floor, DLF Square,
Jacaranda Marg,
DLF Phase II,
Gurgaon - 122002
T +91 124 462 8000

HYDERABAD

Unit No - 1, 10th Floor,
My Home Twitza, APIIC,
Hyderabad Knowledge City,
Hyderabad - 500081
T +91 40 6630 8200

KOCHI

6th Floor, Modayil Centre Point,
Warriam Road Junction,
MG Road
Kochi - 682016
T +91 484 406 4541

KOLKATA

10C Hungerford Street,
5th Floor,
Kolkata - 700017
T +91 33 4050 8000

MUMBAI

11th Floor, Tower II,
One International Center,
SB Marg Prabhadevi (W),
Mumbai - 400013
T +91 22 6626 2600

MUMBAI

Kaledonia, 1st Floor,
C Wing,
(Opposite J&J Office),
Sahar Road, Andheri East,
Mumbai - 400069

NOIDA

Plot No 19A, 2nd Floor,
Sector - 16A,
Noida - 201301
T +91 120 485 5900

PUNE

3rd Floor, Unit No 310-312,
West Wing, Nyati Unitree,
Nagar Road, Yerwada
Pune - 411006
T +91 20 6744 8800

For more information or for any queries, write to us at GTBharat@in.gt.com



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