SC holds service tax not leviable on reimbursement of expenses

This Tax Alert summarizes a recent ruling of the Supreme Court (SC) dealing with the levy of service tax on an amount received by a service provider as reimbursement of expenses.

The SC referred to Section 66 and 67 of the Finance Act, 1994 and Rule 5(1) of Service Tax (Determination of Value) Rules, 2006 and observed that service tax is leviable on the value of service that is actually rendered and any amount received for providing a service other than such taxable service cannot be a part of the valuation.

Thus, the SC upheld the decision of the Delhi High Court and held that the amount of reimbursements will not be includible in the value of gross amount charged for the purpose of levy of service tax.

The SC also considered the substantive amendment in law effective 14 May 2015 which specifically provided for the inclusion of reimbursements in the value of consideration for levy of service tax and concluded that service tax can be levied on reimbursements only after 14 May 2015.

Comments:

The Apex Court’s ruling puts at rest a long pending litigation on the issue of taxability of reimbursements until the amendment in the provisions of service tax. It will help in settling a lot of cases under dispute and provide much awaited relief to various service providers.

The principle of prospective applicability of substantive amendment by way of an explanation in the tax statute has been reconfirmed by the SC.

One will need to analyze whether this ruling will hold good to determine the taxability of reimbursements under the GST regime.