

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO. 108 OF 2018

|                              |   |            |
|------------------------------|---|------------|
| The Commissioner of Central  | } |            |
| Tax and Central Excise,      | } |            |
| Mumbai South Commissionerate | } | Appellant  |
| versus                       |   |            |
| Bharat Petroleum Corporation | } |            |
| Limited                      | } | Respondent |

Mr.P.S.Jetly with Mr.J.B.Mishra for the  
appellant.

Ms.Padmavati Patil with Mr.Kiran Chavan  
I/b. M/s.Cenex Services for the  
respondent.

CORAM :- S. C. DHARMADHIKARI &  
M. S. KARNIK, JJ.

DATE :- MARCH 1, 2019

P.C. :-

1. This appeal of the Revenue challenges the order of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT). The CESTAT had before it a challenge at the instance of the Revenue to the order-in-original dated 20<sup>th</sup> April, 2012. The order-in-original of the Commissioner of Service Tax drops the demand of service tax against Bharat Petroleum Corporation Limited.

2. The argument of the Revenue throughout was that this is a franchise service and its understanding was that Bharat Petroleum Corporation Limited, after refining of crude oil, distributes petroleum products through a dealer network. The sellers' sales-outlet/dealer network is established on the basis that the applicant either owns the land and obtains these facilities and the licences so as to establish a petrol pump or an outlet or does not own the land and therefore obtains both, the land as also the equipments and instruments for outlet from the Bharat Petroleum Corporation Limited. The argument was that because the licence was sought, this arrangement would amount to rendering franchise service.

3. The Revenue placed reliance on clause (10) of the agreement entered into between the assessee and the dealer. It was argued that the products have to be sold under the name and logo of Bharat Petroleum Corporation Limited/assessee which is indicative of the fact that a representational right to sell such product has been granted. If the licence fee is charged only for such a right, then, this is clearly an arrangement falling within the meaning of rendering of franchise service.

4. Mr.Jetly would, therefore, submit that the questions of law proposed by the Revenue are all substantial questions of law.

5. On the other hand, it is argued, on behalf of the assessee, by Ms.Patil that the tribunal has rendered a factual finding and which cannot be termed as perverse or vitiated by any error of law apparent on the face of the record, justifying admission of this appeal.

6. We have perused the order impugned in this appeal. The order under appeal is rendered by the CESTAT and it was aware of the definition of the term “franchise service” as appearing in section 65(47) of the Finance Act, 1994. First, the definition of the term “franchise” as found in this clause means an agreement by which the franchisee is granted representational right to sell or manufacture goods or to provide service or undertake any process identified with franchisor, whether or not a trade mark, service mark, trade name or logo or any such symbol, as the case may be, is involved. Insofar as the understanding of the Revenue about the “franchise service” is concerned, it is apparent that this is to be found in sub-clause (zze) of clause (105) of section 65 of the Finance Act, 1994. There, the definition of “taxable service” means any service provided or to be provided and, in the instant case, to a franchise by the franchisor in relation to franchise.

7. We do not see how by reading clause (10) of the agreement in isolation can the Revenue reach this conclusion. The tribunal

found that clause (10) of the agreement between the assessee and the dealer was picked up and read in isolation to arrive at the above conclusion. That is not justified at all. The agreement will have to be read as a whole and precisely, that is done by the tribunal in the impugned order. Its discussion in para 4, therefore, meets our approval. Once the matter is approached in a holistic manner and looked as such, then, we do not find any perversity or error of law apparent on the face of the record in the impugned order. Consequently, the appeal fails and it is dismissed. There would be no order as to costs.

**(M.S.KARNIK, J.)**

**(S.C.DHARMADHIKARI, J.)**