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C.M.A.Nos.1792, 1793, 1933 & 1934 of/2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR. JUSTICE C.SARAVANAN

C.M.A.Nos.1792, 1793, 1933 & 1934 of 2019
and
CMP.Nos.8701, 8704, 8706 & 8707 of 2022

M/s. Premier Garment Process,
Old No.4, New No.29,
Govindan Street, T.Nagar,
Chennai – 600 017.

... Appellant in all the W.As.

Versus

The Commissioner of Central Excise & Service Tax,
MHU Complex, Nandanam,
Chennai.

... Respondent in all the W.As.

Appeals preferred under Section 35G of Central Excise Act as made applicable under Section 83 of the Finance Act, 1994, to answer the substantial questions of law raised in favour of the appellant and consequently set aside the Final Order No.41401, 41404, 41403 & 41402/2018 respectively dated 12.02.2018 passed by the Tribunal.

For Appellants
in all the W.As.

: Mr.AR.L.Sundaresan,
Senior Counsel for
Mr.G.Natarajan,



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For Respondent

in all the W.As.

: Mrs.R.Hemalatha,
Sr.Standing Counsel

COMMON JUDGMENT

By this common order, all the four appeals are disposed of. In these appeals, the appellant has challenged the impugned common order of the Customs, Excise & Service Tax Appellate Tribunal, as it stood then in final Order No.41401-41404/2018 dated 12.02.2018 in ST/157/2007, ST/3 & 4/2012 and ST/41856/2014 respectively.

2. The relevant portion of the impugned order of the Appellate Tribunal is extracted below for proper understanding.

The crux of these appeals is whether the appellant by performing these services namely, supply of bed rolls to passengers travelling in A/c III Tiers and in other higher classes and charges thereof collected by appellant from railways, will fall under the mischief of “Customer Care Service” provided to the railways as taxable under “Business Auxiliary service”.

6.4 No definition of “Customer Care” has been given in Section 65(19) or for that matter anywhere else in the Finance Act, 1994. as per the Oxford Dictionary, “Customer Care” is defined as “assistance and support provided by a company to those people who buy or use its products or services”.



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Customer Care service is also often explained as “provision of service to customers, before, during and after a purchase”, as the process of looking after customers to best ensure their satisfaction with the business and its goods and services. The underlining motive to provide customer care services is the desire to maintain ongoing client relationship and loyalty. The railways provide bed rolls to the upper class passengers who undisputedly have to shell out considerable more ticket price as compared to second class passengers, to ensure their comfort, as a customer initiative. In our view, the appellant when performing its activities and providing these services of supply of bed rolls, free of charge to the upper class passengers, on behalf of Railways, they are surely providing the customer care service as desired by the Railways and on behalf of the Railways.

6.5. Ld. Advocate has sought to argue that they are not providing the service on behalf of a “client”. He has contended that client is an individual, corporation etc. that employs a professional to advise or assist it in the professional line of work; that they are only supplying bed rolls involving only laundering and labour work, hence appellants are not a professional or a technical person. We are unable to agree with the Ltd.Advocate on this point. It is not that parameters of every customer care activity involves



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technical or professional expertise. Ltd. Advocate has also argued that “Customer Care Service provided on behalf of client” will cover only business transactions, more particularly of goods coupled with services; that on sale of goods or services, the customer is having right to ask for technical / professional services for rectification of any deficiency which would alone mean “Customer Care Service”. This argument also does not wash. On the other hand, in the present era, there are customer cares which would be required even for services rendered and to say that customer care will be required only in sale of goods is definitely a misconception.

6.6 Another argument of the Ld.Advocate is that no customer care to passengers would be possible since railway transportation service is a public transport and there is absolutely no personal relationship with these passengers. Hence passengers are not customers of railways and only when repeated dealings are existing, one can be called “customer”. We find that the Ld.Advocate is once again laboring under a misbelief. We find that the Vision Statement of the Indian Railways as found on their website reads as follows:-

Vision Statement

Indian Railways shall provide safe, efficient, affordable,



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customer-focused and environmentally sustainable integrated transportation solutions. It shall be a modern vehicle of inclusive growth, connecting regions, communities, ports and centres of industry, commerce, tourism and pilgrimage across the country (emphasis added)

The Mission Statement of the Railways is also worthy of reproduction as under:-

Mission

Indian Railways aims to be the engine for India's economic growth and development by being safe, financially viable, environment-friendly and caring for its customers and employees. (emphasis supplied)

The vision and Mission Statements thus indicate that Railways are inter alia, customer focused and to care for customers who are none other than their passengers. The supply of bed rolls to upper class passengers is one such endeavour of the railways to provide customer care to tis passengers.

6.7 Viewed in this light the Railways are indubitably the “client” of the appellant since they perform the said customer care service on behalf of the railways. In the event, the activities carried out by the appellant will definitely come within Section 65(105) (zzzq) read with Section 65 (104c) of



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the Finance Act, 1994. In the Doon's caterers case, the appeal was allowed because even though the proceedings sought to demand service liability from the appellants therein under Support Services, the commissioner (Appeals) went beyond the scope of SCN and held the services as falling under BAS.

6.10 On the other hand, as found by the Tribunal in the case of RC Goel Vs CCE New Delhi [2017(5) GSTL 324 (Tri.Del.)] also relied upon the appellant, although department sought to bring this services under BSS, the Tribunal took the view that such services are more appropriately classifiable under 'Business Auxiliary Service' under the category of 'Customer Care Services provided on behalf of the client'.

7. We do not find any merit in the appeal and therefore, do not find any grounds to interfere with the impugned orders.

8. All appeals are dismissed.

3. The appellant herein was issued with four different show cause notices and suffered adverse orders in the hands of the Original Authority as detailed below:

<i>Appeal No.</i>	<i>Period of Dispute</i>	<i>SCN</i>	<i>OIO</i>	<i>Service Tax Demanded</i>	<i>HC Order</i>
ST/157/2007	7/2003	74/05-	15/07-	74,35,664	HC Order dt.7.12.2011 in



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Appeal No.	Period of Dispute	SCN	OIO	Service Tax Demanded	HC Order
	to 9/2006	27.12.06	30.04.07		W.P.No.36541/07 to dispose appeal without predeposit and within 60 days
ST/41856/14	4/10 to 3/11	566/11 - 22.10.11	01/14-15 dt 16.6.14	92,23,567	1. PD waiver granted vie Misc.Order No.41283 to 41285/2015 dated 15.10.15 2. All the appeals directed to be linked for common disposal
ST/3 & 4/2012	10.06 to 8/07 & 9/2007	73/08 dt. 1.4.08 and 32/08 dt. 20.10.08	72/08 dt.20.09.08 and 08/09 dt.16.2.09	28,87,329 and 2,03,748	OIA Nos.50 & 51/2011 dated 25.4.2011 (common) Final Order No.40568 & 40569/14 dt. 27.6.2014 – CESTAT CMA 164 & 165/15 – HC Order dt. 27.2.15 with directions to decide on merits

4. The case of the appellant before this Court was that, by virtue of the Finance Act, 2013, a specific exemption has been granted in the form of Section 99 of the said Act which exempts service provided by the Railways both in terms of Section 66 as stood prior to 1st July 2012 and in terms of tax payable under section 66B w.e.f. 01.07.2012 till 30.06.2017. The learned senior counsel for the appellant has placed reliance on the aforesaid section which reads as under.

99. Special provision for taxable services provided by Indian Railways.

(1) Notwithstanding anything contained in section 66, as it stood prior to the 1st day of July, 2012, or in section 66B, no service tax shall be levied or collected in respect of



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taxable services provided by the Indian Railways during the period prior to the 1st day of October, 2012.

(2) No refund shall be made of service tax paid in respect of taxable services provided by the Indian Railways during the said period prior to the 1st day of October, 2012.

5. It is submitted that the passengers travelling in Railways having no privity of contract, the service provided by the appellant has to be construed as service provided by the railways and therefore, in terms of Section 99 of the Finance Act, 2013 as extracted above, the appellant cannot be saddled with tax liability for the period mentioned above. In these appeals, the appellant has raised the following substantial questions of law.

a. Whether the Railways be termed as “clients” in the transaction of supply of bed rolls to the passengers travelling in AC Coaches by the appellant?

b. Whether in the absence of the definition of “Service” prior to 1-7-2012 in the finance Act and even after insertion of the definition of “Service” under Section 66 B (44) of the Finance Act effect from 1-7-2023, the supply of any goods where the ownership is not transferred, amounts to “deemed sale” and outside the purview of the Finance Act?

c. Whether the supply of bed rolls by the appellant can



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be brought under the purview of Finance Act prior to 1-7-2012, especially when by virtue of insertion of Section 66D(o) effective only from 1-7-2012 that the transport of passengers travelling in upper classes of railways was brought within the purview of Finance Act?

d. Whether the Tribunal is justified in holding that the appellant is doing service on behalf of the Railways whereas for any deficiency in supply, the passenger has the right to sue the railways only and the appellant is no way connected to such claims and therefore, it is the service rendered by railways which is not liable to tax?

e. Whether larger period of limitation is invokable when the appellant bonafide believe that the activities carried out by them is not amenable to levy of Service tax and it is only washing of clothes and hiring the same to railways?

6. The appeals are opposed by the learned counsel for the respondent stating that section 99 of the Finance Act, 2013 is not relevant. It is submitted that reliance placed under section 99 of Finance Act, 2013 is misplaced inasmuch as it applies only to service provided by the railways and not service provided to railways. Therefore, it is submitted that these appeals are liable to be dismissed.



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7. In support of the impugned order of the tribunal, the learned counsel for the respondent has placed reliance on the following decisions.

i) C.S.T. Service Tax, Ahmeddabad vs. Hakamichand D & Sons, Final Order: A/10413-10414/2022 dated 06.05.2022

ii) Essar Steel India Limited and Anr. Vs. State of Gujarat (2017 (8) SCC 357.

iii) Commissioner of Customs (Import), Mumbai Vs Dilip Kumar & Company)

iv) State of Gujarat Vs Arcelor Mittal Nippon Steel India Limited (2022(6) SCC 459).

Therefore, she prays that the appeals have to be dismissed as no substantial questions of law arise for consideration.

8. We have examined the records and perused the provisions of the Finance Act, 1994 as it stood prior to 01.07.2012 and thereafter.

9. Prior to the aforesaid period, the appellant was liable to pay tax service provider as “Business Auxiliary Service” as defined under section 65(19) of the Finance Act, 1994, which reads as under:



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“(iii) for clause (19) the following clauses shall be substituted, namely:-

(19) “ business auxiliary service” means any service in relation to --

(i) promotion or marketing or sale of goods produced or provided by or belonging to the client; or

(ii) promotion or marketing of service provided by the client ; or

(iii) any customer care service provided on behalf of the client; or

(iv) procurement of goods or services, which are inputs for the client; or

(v) production of goods on behalf of the client; or

(vi) provision of service on behalf of the client; or

(vii) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments maintenance of accounts and remittance, inventory management, evaluation, or development of prospective customer or vendor, public relation services, management or supervision, and includes services as a commission agent, but does not include any information technology service and any activity that amounts to “manufacture” within the meaning of clause (f) of section 2 of the central excise Act, 1944(1 of 1944)”



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10. The appellant was liable to pay tax, as the service provided by the appellant squarely falls within the ambit of Clause (iii) of section 65(19) of Finance Act, 1994, which reads as under:

(iii) any customer care service provided on behalf of the client.

11. For the period after 01.07.2012, the service provided by the appellant fall within the definition of 'service' as under Section 65(b)(44) of the Finance Act 1994 w.e.f. 01.07.2012, which reads as follows:

(44) "service" means any activity carried out by a person for such consideration, and includes a declared service, but shall not include-

(a) an activity which constitutes merely, -

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the Constitution; or

(iii) a transaction in money or actionable claim;

(b) a provision of service by an employee to the employer in the course of or in relation to his employment;

(c) fees taken in any court or tribunal established



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under any law for the time being in force.

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12. The reliance placed on Section 99 of the Finance Act, 2013 by the appellant in this appeal, at this stage, is of no relevance as it applies only to taxable service provided by the Indian Railways. The service provided by the appellant to the Railways cannot be construed as the service provided by the Railways. What is provided by the appellant is the service of supply of bed rolls alone for the passengers travelling in AC compartments. Therefore, the appellant cannot claim any exemption in terms of the aforesaid provisions of the Finance Act, 2013. That apart, while claiming exemption, the Hon'ble Supreme Court in ***Union of India v. Wood Papers Ltd. 1991 taxmann.com 77(SC)*** has held as under:

“....Literally exemption is freedom from liability, tax or duty. Fiscally, it may assume varying shapes, specially, in a growing economy. For instance tax holiday to new units, concessional rate of tax to goods or persons for limited period or with the specific objective etc. That is why its construction, unlike charging provision, has to be tested on different touchstone. In fact, an exemption provision is like an exception and on normal principle of construction or interpretation of statutes it is construed strictly either because



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of legislative intention or on economic justification of inequitable burden or progressive approach of fiscal provisions intended to augment State revenue. But once exception or exemption becomes applicable no rule or principles requires it to be construed strictly. Truly speaking liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject, but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction.....”

13. This view has been followed repeatedly by the Hon'ble Supreme Court and recently in ***Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar & Company***, the law has been summarised by the Hon'ble Supreme Court as follows:

“(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.



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(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.

(3) The ratio in Sun Export case is not correct and all the decisions which took similar view as in Sun Export Case stands over-ruled.”

14. Once the language in taxing statute is clear, there is no scope in interpreting the same as the tax provisions has to be read as it is and nothing is to be intended. In this connection, the decision of the privy council in ***Cape Brandy Syndicate v Inland Revenue Commissioner [(1921) 1KB 64]*** wherein it is held as follows:

“In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.”

15. This view has also been followed by the Honb'le Supreme Court



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repeatedly in several cases dealing with taxing enactment. Therefore, we are not inclined to interfere with the order passed by the Central Excise Service Tax Appellate Tribunal. Accordingly, these Civil Miscellaneous Appeals are dismissed. We, however, give liberty to the appellant to work out their remedy in terms of section 64-A of the Sales of Goods Act, 1930.

16. Considering the fact that the appellant is in arrears of tax right from 2003 and has not paid the amount till date, the official respondents are directed to recover the amount by ensuring that the appellant's business is not stalled, by giving time for repaying the amount together with interest and penalty. No costs. Consequently, connected miscellaneous petitions are closed.

(S.V.N., J.) (C.S.N., J.)
30.09.2022

Internet : Yes
Index : Yes / No
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To



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The Commissioner of Central Excise & Service Tax,
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