

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD**

ST/1631/2011-CU[DB]

(Arising out of Order-in-Appeal No.171/ST/APPL/NOIDA/11 dated 29.07.2011 passed by Commissioner(Appeals), Customs & Central Excise, Noida.)

Rajit Jain-succesor And Legal Heir

...APPELLANT(S)

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Noida
RESPONDENT (S)

APPEARANCE

Shri B.L.Narsimhan (Advocate) for the Appellant (s)

Shri Gyanendra Kumar Tripathi (A.C.) (A.R.) for the Revenue

CORAM:

SHRI ASHOK JINDAL, HON'BLE MEMBER(JUDICIAL)

SHRI ANIL G. SHAKKARWAR, HON'BLE MEMBER(TECHNICAL)

DATE OF HEARING/DATE OF DECISION : 26.12.2018

FINAL ORDER NO.72917/2018

Per Ashok Jindal :

1. The appellant is in appeal.
2. Brief facts of the case are that appellants are engaged in re-rubberisation of old, worn out rubberised rollers of various industries. The customers send them their used rollers at random and re-rubberisation comprises removing the old rubber from spindle and replacing it with the fresh rubber compound coating. Intelligence was received by officers of DGCEI that the appellants did not discharge the Service Tax liability on re-rubberisation of rollers provided by them to various customers/clients. The investigations were taken by the

officers of DGCEI. During the course of investigation various records/documents maintained by the appellants were examined by the officers of DGCEI and statements of various employees/Directors of the appellants were recorded to ascertain the facts whether re-rubberisation undertaken by the appellants on behalf of their customers was classifiable under the category of 'Management, Maintenance or Repair' Services or under the category of 'Business Auxiliary Services' as defined under the Finance Act as defined as under.

Section 65 "[(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

[Explanation. - for the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "inputs" means all goods or services intended for use by the client;]

- (v) Production or processing of goods for, or on behalf of, the client;]
- (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).

Explanation. - For the removal of doubts, it is hereby declared that for the purposes of this clause,-

(a) "commission agent" means any person who acts on behalf of another person and causes sale or purchase of goods, or provision or receipt acting on behalf of another person -

(i) Deals with goods or services or documents of title to such goods or services; or

(ii) Collects payment of sale price of such goods or services; or

Section 65 [(64) "maintenance or repair" means any service provided by -

(i) any person under a contract or an agreement; or

(ii) a manufacturer or any person authorised by him,

in relation to, -

(a) maintenance or repair including reconditioning or restoration, or servicing of any goods or equipment, excluding motor vehicle; or

(b) maintenance or management of immovable property;

On scrutiny of the records and on the basis of statements recorded by officers it was felt by them that the appellants were

getting used and unserviceable rollers from their clients for re-conditioning of used rollers in a specified manner for bringing the rollers to usable conditions and after the activity of re-rubberisation rollers could be put to the original use by their client. According to the Department this activity of re-rubberisation amounts to re-conditioning of the used rollers and is squarely covered under the Management, Maintenance or Repair Service and not under the Business Auxiliary Service and consequently the appellants are not liable for the exemption under Notification No. 14/2005 applicable to Business Auxiliary Service. Accordingly a Show Cause Notice was issued to the appellants demanding the Service Tax for the period 16-6-2005 to 31-3-2009 along with interest and also proposing the penalties on the appellants. The Show Cause Notice was adjudicated by the Commissioner vide impugned order who confirmed the service tax amount of Rs. 18,55,325/- under the category of Management, Maintenance or Repair Service along with interest and also confirming the equal amount of penalty under Section 78 of the Finance Act. The Appellants challenged the order in the present appeal.

2. Heard the parties.

3. Considering the fact that said issue has already dealt this Tribunal in the case of Zenith Rollers Ltd. V. Commissioner of Central Excise, Noida [2014 (33) S.T.R. 678 (Tri.-Del.)], wherein the Tribunal has observed as under:-

"5. *We find that appellants are receiving worn out rubber rollers from various customers. On receipt of these worn out rollers, they undertake following activity.*

- (i) removing of old rubbers from spindle*
- (ii) cleaning of spindle*
- (iii) Apply rubber bonding solution on spindle*
- (iv) Curing*

6. *We find these activities at various stages are nothing but various processes undertaken by them on goods received by them. We therefore find force in contention of the appellants that these activities are covered under Clause V of the Business Auxiliary Services as these are processing of goods on behalf of the client. We therefore hold these activities can be classified under Business Auxiliary Service.*

7. *Contention of Revenue is that re-rubberisation of rollers undertaken by the appellants amounts re-conditioning of used rollers in specified manner and is classifiable under Management, Maintenance or Repair Service. Under Section 65(64) repair includes re-conditioning, restoration or receiving of goods or equipment. In Chamber Dictionary re-conditioning means "to repair and refit to restore to original or sound condition" and this argument of Revenue has also substantial force for classifying the activity under management, maintenance or repair service.*

8. *We note that when a service is classifiable under two categories, Section 65A is attracted which reads as under :*

"65A(1) For the purposes of this Chapter, classification of taxable services shall be determined according to the terms of the sub-clauses of clause (105) of section 65.

(2) *When for any reason, a taxable service, is, prima facie, classifiable under two or more sub-clauses of clause (105) of section 65, classification shall be effected as follows :-*

(a) *the sub-clause which provides the most specific description shall be preferred to sub-clauses providing a more general description;*

(b) *composite services consisting of a combination of different services which cannot be classified in the manner specified in clause (a), shall be classified as if they consisted of a service which given them their essential character, insofar as this criterion is applicable;*

(c) *when a service cannot be classified in the manner specified in clause (a) or clause (b), it shall be classified under the sub-clause which occurs first among the sub-clause which equal merit consideration.]*

9. *We find that activities of the appellants are equally classifiable under two services namely Business Auxiliary Service and Maintenance or Repair service. Since the service cannot be classified under clause 'a' and 'b' of Section 65A, clause 'c' of Section 65A is attracted according to which service is classifiable under the sub-clause of Clause (105) of Section 65 which comes first. We find that Business Auxiliary service is covered under Section 65(105)(zzb) and Management, Maintenance or Repair Service is covered under Clause 65(105)(zzr). Since Business Auxiliary Service comes first under Clause 65(105)(zzb), we hold that service is classifiable under Business Auxiliary Service. We set aside the Order-in-Original and allow the appeal."*

4. As the issue has already been settled by this Tribunal in the case of Zenith Rollers Ltd. (supra), therefore, we hold that appellants are not liable to pay Service Tax under the 'business auxiliary service',

therefore, impugned order is set aside and in result appeal is allowed with consequential relief.

(Dictated and pronounced in the open Court.)

SD/
(ANIL G. SHAKKARWAR)
MEMBER(TECHNICAL)

SD/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

sm