**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE**

Regional Bench COURT-2

**Service Tax Appeal No. 823 of 2010**

[Arising out of the Order-in-Original No. 12/2010/ST dated 18.02.2010 passed by the Commissioner of The Central Excise, Customs & Service Tax, Cochin]

**Rose Bed Rolls**
Paracka House,
Karippayi Road, Rajagiri P.O.
Kalamassery Cochin,
Kerala - 682018 **.......Appellant**

**VERSUS**

**The Commissioner of Customs,**
**Central Excise, & Service Tax, Cochin**
C.R.BuiLd.ing, I.S. Press Road,
Ernakulam, Cochin
Kerala - 682018 **..... Respondent**

**Appearance:**

Mr. R. Sudheesh Kumar, Advocate for Appellant

Mr. Neeraj Kumar, Authorized Representative for Respondent

**Coram:**

**Hon'ble Mr. P.A. Augustian, Member (Judicial)**

**Hon’ble Mr. Pullela Nageswara Rao, Member (Technical)**

**FINAL ORDER No. 21002 of 2024**

Date of Hearing: 30.04.2024
Date of Decision: 15.10.2024

**Per: P.A. Augustian**

The Issue in the present appeal is whether the activities carried out by the Appellant by supplying linen/bed rolls to the passengers in AC Coaches of India railway amounts to business auxiliary service and whether Service Tax can be demanded by invoking the extended period of limitation.

2. As per the impugned order, Service Tax was demanded for the period from 2004-2005, to F.Y. 2007-2008. Show Cause Notice was issued on 29.07.2009. As part of investigation, statements were recorded from the partner of the Appellant and he has accepted that they have received charges for the said supply from railways. Though they have taken Service Tax registration in 2006 under the category of "Outdoor Catering and Dry Cleaning service", they have not paid service tax on the amount received from Railway Divisions in respect of supply of bed rolls on the reasonable believe that the service provided by them was not liable to service tax. Thereafter, Adjudication authority vide impugned order confirmed the service tax by invoking the penal provisions also. Aggrieved by said order, present appeal is filed.

3. When the appeal came up for hearing, Ld. Counsel for the Appellant draw our attention to letter dated 02.01.2009 addressed to Assistant Commissioner, Anti-evasion, New Delhi and submitted that pursuant to the enquiry from the office of the Commr. of Service Tax C. No. DL/ST/AE/ENQUIRY/87/05/11898 dated 02.05. 2008, the recipient of the taxable service provided by the Appellant, Ministry of Railway/IRCTC specifically stated that no service tax is payable on the activity of supply of bed rolls. The Ld. Counsel for the Appellant further submits that at the relevant time, suppliers of the bed rolls were neither paying service tax nor made any demand in invoice to recover the same from Ministry of Railways/IRCTC because of their bonafide belief that no service tax is payable. Most of them have not been issued with Show Cause Notice as done in Appellant's case.

4. Ld. Counsel further submits that one of the supplier M/s. Poorvanchal Caterers were issued with Show Cause Notice on 04.01.2010 but the same was dropped by the Commissioner vide Order-in-Original dated 11.07.2011 holding that no Service Tax is payable on the activity of supply of bed rolls. Ld. Counsel further submits that there is no suppression of fact to invoke the extended period of limitation. There is no allegation of any fraud or collusion or suppression of fact in the Show Cause Notice or in the impugned order to invoke the extended period of limitation. Ld. Counsel relied on large number of decisions including **CCE Vs M/s Chemphar Drugs, M/s Cosmic Dye Chemical Vs. CCE (S.C) and M/s Anand Nishikawa Co. Ltd Vs. CCE (S.C)).**

5. Ld. Counsel further drew our attention to **Para 11** of the impugned order where the Adjudication Authority justified the action of invoking the extended period on the ground that the Appellant had contravened the provision. In this regard Ld. Counsel submits that mere allegation regarding contravention of provision and Act/Rules are not enough to reach a finding regarding suppression of fact to invoke extended period of limitation. Ld. Counsel relied on the following decisions;

- **i) M/s Asok Engineering Works Vs. Collector 1987 (31) ELT 107 (T).**
- **ii). M/s Shree Bhadrahad Chemicals Vs. Collector .**
- **iii). M/s Hyderabad Asbestos Cement Vs. Collector -1990 (47) ELT 590 (T).**
- **iv). M/s Techno Invest India Vs. Collector (1990 (47) ELT 665 (T).**

**v). M/s Associated Strips Vs. Collector (1990 (50) ELT 490 (T).**

6. Further in the matter of **M/s Pushpam Pharmaceutical Company vs CC (1995 (78) E.L.T 401 (SC)**, the Apex Court once again held. that extended period of limitation is not invokable, if for just any omission of Appellant, unless it is deliberate to escape from payment of duty. The Ld. Counsel also relied on the decision in the matter of **M/s Ugam Chand Bhandari Vs Commissioner of Central Excise (2004 (167) E.L.T 491 (SC)**. The Ld. Counsel further submits that as held. in the matter of **M/s NRC Ltd vs CCE, Thane-I (2007 (5) STR 308 (Tri. Mumbai),** there is no justification to invoke the extended period of limitation when dispute is based on an interpretation and not on suppression of facts.

7. Regarding demand for normal period, The Ld. Counsel submits that Appellant is a partnership firm and therefore service tax is liable to be paid on quarterly basis. The due date for payment of service tax on quarterly basis as per Rule 6(1) of the Service Tax rules, 1994 is by the 6th day of the month, if the tax is deposited electronically through internet banking, or, in any other case, the 5th day of the month, as the case may be, immediately following the quarter in which the payment is received towards the value of taxable services. Accordingly, the service tax to be paid by the appellant was from 5th or 6th December 2004 and as such one-year period of limitation to issue the impugned Show cause is on or before 5th or 6th of December, 2010 (quarterly payment). However, SCN was issued only on 04.01.2010.

8. Ld. Counsel further submits that Service Tax payable by the Service provider is available as input credit to the service recipient. In the present case IRCTC/Railways is the service recipient and it is a Revenue neutral situation.

9. Ld. Authorised Representative for the Revenue reiterated the finding in the impugned order and submits that the issue is no more res integra. As per the decision of the Hon'ble Madras High Court in the matter of **M/s. Premier Garment Process Vs. CCE&ST, Chennai (2022 (10) TMI 881 – Madras,** the issue is settled and the activities of the Appellant is subject to service tax. Similar view was taken in the matter of M/s **Hakamichand D & Sons Vs CST-ST-Ahmedabad (2022 (5) TMI 481 – Cestat, Ahmedabad.** Thus, even if the appellant failed to collect service tax, service tax liability for providing such services is well settled and impugned order is sustainable. Regarding invoking the extended period of limitation, Ld. AR reiterated the finding of the Adjudication Authority and submits that in such cases, the Adjudication Authority has rightly invoked the extended period of limitation.

10. Heard both sides. The issue on merit is settled. The activities carried out by the Appellant is falling under the category of 'Business Auxiliary Service' and Appellant is liable to pay service tax. However, as regards invoking of extended period of limitation, on perusal of the Order-in-Original dated 11.07.2011 relied by the Appellant, on very same issue of supplying bedsheets to passengers of Railway, proceedings demanding service tax under 'Business Auxiliary Services' was dropped by the Adjudication Authority in the matter of **M/s. Poorvanchal Caterers, Patna.** Moreover, as submitted by the Appellant, there is no dispute that no amount

towards service tax was received by the Appellant from IRCTC for supply of bed rolls and they have not received any payment from the train passengers to whom such services is provided. Moreover, as submitted by the Ld. Counsel for the Appellant, the Appellant were providing services to IRCTC and if the service tax was charged by the Appellant from the IRCTC in respect of services provided by them, IRCTC would have got cenvat credit for the same in accordance with provisions of Cenvat Credit Rules 2004. Moreover, during investigation, when statement was recorded, the partner of the Appellant categorically stated that they were paying service tax for the other activities and having service Tax registration. However, they have not paid service tax for the amount received from the Railway on the presumption that no Service Tax is liable to be paid by them.

11. Facts being so and considering the various decisions relied by appellant, longer period cannot be invoked, when issue involved is interpretation of the complex provision of law and where there is no deliberate attempt to escape from payment of duty.

12. Considering the above, the demand of Service Tax for the extended period and penalty imposed as per impugned orders are set-aside. Matter is remanded to Adjudication Authority to assess the demand of duty for the normal period of dispute prior to date of Show Cause Notice on 04.01.2010. Adjudication authority shall pass appropriate order quantifying the demand for normal period within 3(three) months from the date of receipt of this order. Any amount paid by appellant towards payment of duty, pre deposit while filing the appeal shall be considered while quantifying the demand of duty and interest.

13. Appeal is partially allowed with consequential relief if any in accordance with law.

(Order pronounced in open court on 15.10.2024)

**(P.A.Augustian)**
**Member (Judicial)**

**(Pullela Nageswara Rao)**
**Member (Technical)**

Sasidhar