CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 60074 of 2020

[Arising out of Order-in-Original No22/2019-20/Commr./PP/FBD dated 31.10.2019 passed by the Commissioner of Central goods & ST, Faridabad]

M/s Lindstrom Services India Pvt Ltd ......**Appellant**
133-A DLF Industrial Area Phase-I , Faridabad, Haryana- 121004

VERSUS

Commissioner of Customs, Excise and ST, Faridabad I ......**Respondent**
Block D, New CGO Complex NH-IV, NIT, Faridabad, Haryana, 121001

WITH
Service Tax Appeal No. 60075 of 2020

[Arising out of Order-in-Original No. 21/2019-20/Commr./PP/FBD dated 31.10.2019 passed by the Commissioner of Central goods & ST, Faridabad]

M/s Lindstrom Services India Pvt Ltd ......**Appellant**
133-A DLF Industrial Area Phase-I , Faridabad, Haryana- 121004

VERSUS

Commissioner of Customs, Excise and ST, Faridabad I ......**Respondent**
Block D, New CGO Complex NH-IV, NIT, Faridabad, Haryana, 121001

APPEARANCE:

Ms. Vandana Singh, Advocate for the appellant

Shri Aneesh Dewan, Authorized Representative for the respondent

CORAM: HON’BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON’BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NOs.60156-60157/2024

DATE OF HEARING: 27.03.2024
DATE OF DECISION: 27.03.2024

PER: S. S. GARG

These two appeals are directed against the common impugned order dated 31.10.2019 passed by the Commissioner whereby the Commissioner has confirmed the demand of Rs.1,41,95,265/- for the period from November 2014 to March 2016 and demand of Rs.2,35,06,488/- for the period from April 2016 to June 2017. The issue involved in both the appeals is identical and therefore, both the appeals are taken up together for discussion and disposal.

2. Briefly the facts of the present case are that the appellants are registered under Service Tax registration under Section 69 of the Finance Act, 1994 for providing/ receiving various services under the provisions of Finance Act, 1994. The appellant is a subsidiary of Lindstrom OY Finland and is engaged in leasing work-wear to their clients on the conditions mentioned in the agreements with their clients. During the financial year 2013-14, Service Tax Audit of Chennai Branch of appellant was conducted by the officials of Service Tax Department which was shortly followed by a visit at the premises of the appellant at Faridabad branch also. Based on the information provided and statements given, a Show-Cause Notice dated 12.02.2015 was issued for the period 2010-11 to 2014-15 (till October 2014). The Show-Cause Notice was adjudicated vide Order-in-Original dated 27.11.2015. The appeal against the said order was filed before the Tribunal on 24.02.2016 with the contention, *inter alia*, that the appellant had transferred the Right to Use the work-wears to its customers. The possession and effective controls remained with the customers. Accordingly, the transaction between the appellant and the customer was a deemed sale liable to VAT and not to service tax. The Tribunal vide Final Order No.A/60716/2019 dated 02.08.2019 allowed the appeal of the appellant and set aside the Order-in-Original

dated 27.11.2015. Similarly, two more Show-Cause Notices dated 30.01.2017 for the period 2015-16 and SCN dated 11.10.2018 for the period 2016-17 to 2017-18 were issued which was adjudicated by the impugned Order-in-Original No.21-22/2019-20 dated 31.10.2019 against which the appellant has filed the present appeals.

3. Heard both sides and perused the records of the case.

4. Learned Counsel for the appellants submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law. She further submits that this issue is no more *res integra* and various Benches of the Tribunal in the appellant's own case for the earlier period has allowed the appeal of the appellant/ assessee. She further submits that the Revenue has filed appeal before the Hon'ble Apex Court and the appeal of the Revenue was dismissed and consequently, the issue stands finally settled in favour of the appellant. She further submits that the various Benches of the Tribunal, after considering the facts of the case and also various clauses of the agreement between the appellants and its customers, has come to the conclusion that the transaction between the appellant and its customers is not amenable to service tax and this issue has been finally settled in favour of the appellant.

5. Learned Authorized Representative for the Department reiterates the findings of the impugned order.

6. After considering the submissions of both the parties and perusal of the material on record, we find that the issue involved in the present case has earlier been considered in the appellant's own case for the earlier period by various Benches of the Tribunal and has held in favour of the appellant/ assessee. In support of her submission, she produced the

following orders of the Tribunal:

- Lindstrom Service India Pvt. Ltd. Vs CCE & ST, Faridabad- Final Order No.60716/2019 dated 02.08.2019.
- Lindstrom Service India Pvt. Ltd. Vs Principal Commissioner of GST, Chennai- Final Order No.42148/2021 dated 25.08.2021.
- Lindstrom Service India Pvt. Ltd. Vs CCE & ST, Vadodara – Final Order No.10091-10092/2023 dated 23.01.2022.
- Principal Commissioner of GST and Central Excise Vs Lindstrom Service India Pvt. Ltd. – Civil Appeal No.6459/2021 (SC).

7. We also find that the issue involved in the present case has also been considered by the Chennai Bench of the Tribunal in the case of Lindstrom Service India Pvt. Ltd. (supra) and the Tribunal has held as under:

> 7. The issue as to whether the activity of renting of workwear is a service or deemed sale has been analyzed by this Tribunal in the appellant's own case for a different period. The Tribunal in the said order followed the decision rendered by the Chandigarh Bench of the Tribunal in the appellant's own case. It is also noted in paragraph 8 of the said order that Commissioner (Appeals), Hyderabad vide Order in Appeal dated 26.12.2017 has also held that renting of workwear does not amount to supply of tangible goods / services to attract levy of service tax. The relevant paragraphs of the above said final order is reproduced as under:-
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> 6. The issue that arises for consideration is whether the activity of work wear rental falls under the category of supply of tangible goods so as to attract service tax. The terms and conditions of the agreement has been briefly incorporated in the order in original which is as under:- "The terms and conditions of the agreement are as follows:-
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> a. The assessee will only lease the work wear to their customers / clients
>
> b. The assessee arranges the fittings which finally determine the needed number of specific work wear and service free per product is charged for the same. LSIP is entitled to take an inventory of all products.
>
> c. The assessee owns the leased work wear and keeps the exclusive right of washing, maintenance, repairing, alteration etc. of work wear with itself and their customers are not free to avail these services from any third party.

d. The assessee shall collect the work wear for Servicing, Packing and Transportation on weekly basis. Thereafter, they wash, inspect and repair and finish them industrially.

e. In case of termination of the contract, customers / clients shall redeem from the assessee, the work wear that have been in the use.

f. In all circumstances like cancellation of agreement, the work wear remains the property of LSIP."

7. The Chandigarh Bench of the Tribunal had occasion to analyse very same issue and terms and conditions of similar agreement entered into by the appellant with clients. After analysis of the transaction as seen from the agreements, the Tribunal held as under:- 5

"26. Accordingly, we find that in the instant case, in terms of agreement work-wear rented out always remains with the exclusive possession of their clients and nobody else can use those work wear at the same time and hence effective control to lie with the user / clients. The appellant, therefore, does not have control over the use of the work-wear. Thus the activity is not in the nature of 'service' under the Finance Act in both during the period prior to negative list regime and thereafter as held in the impugned order. The order under challenge is therefore not sustainable"

8. Further, the Commissioner (Appeals) vide Order-in-Appeal dated 26.12.2017 of Hyderabad Commissionerate has also held in the appellant's own case that work wear does not amount to supply of tangible goods so as to attract service tax. From the decisions cited above, we think it is not necessary to take up the detail discussion of the issue since the same has been already analysed by the Chandigarh Bench.

9. Following the said decision, we are of the considered opinion that the impugned order cannot sustain. The same is set aside and the appeal is allowed with consequential relief, if any."

8. Following the decisions, we are of the considered opinion that the demand raised cannot sustain and requires to be set aside, which we hereby do. The impugned order is set aside. The appeal is allowed with consequential relief if any, as per law.

8. We also find that the two final orders of Chennai Bench of CESTAT were appealed by the Revenue before the Hon'ble Supreme Court vide Civil Appeal Nos. 6459/2021 and 4491/2022. We also find that the Hon'ble Supreme Court has dismissed the appeals of the Revenue vide

Order dated 09th October 2023 as being without merit and the copy of the order is also placed on record.

9. In view of these facts, we are of the considered opinion that the issue has finally been settled by the Hon'ble Supreme Court in favour of the appellant and therefore, by following the ratio of the above said decisions, we are of the considered opinion that the impugned orders are not sustainable in law and therefore, we set aside the same by allowing the appeals of the appellant with consequential relief, if any, as per law.

(Operative part of the order pronounced in the open court)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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