CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Appeal No. ST/53649/2015 -[DB]

(Arising out of Order-in-Original No. 23/SG/ST/DL-IV/2015-16 dated 27.07.2015 passed by the Commissioner of S.T., Delhi-IV)

M/s Xerox India Ltd. **......Appellant**
(Block One, 5th and 6th Floor, Vatika Business Park,
Sector 49, Sohna Road Gurgaon, Haryana)

VERSUS

Commissioner of C.E. & S.T., Gurgaon-II **......Respondent**
(Plot No. 36-37, Sector 32, Near Medanta Hospital,
Gurgaon, Haryana)

WITH

Appeal No. ST/54354/2015 -[DB]

(Arising out of Order-in-Original No. 23/SG/ST/DL-IV/2015-16 dated 27.07.2015 passed by the Commissioner of S.T., Delhi-IV)

Commissioner of C.E. & S.T., Delhi-IV **......Appellant**

VERSUS

M/s Xerox India Ltd. **......Respondent**

APPEARANCE:

Mr. Amrinder Singh, Advocate for the Appellant/Respondent

Mr. Atul Handa, Authorised Representative for the Respondent/Appellant

CORAM: **HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)**
HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60595-60596/2019

DATE OF HEARING: 23.05.2019
DATE OF DECISION: 23.05.2019

PER ASHOK JINDAL:

Both sides are in appeal against the impugned order.

2. As both the appeals are arising out of a common order, therefore both the appeals are taken up for disposal by a common order.

3. The brief facts of the case are that M/s. Xerox India Limited (Xerox for short) is engaged in the business of manufacture/ import and sale of photocopiers, printers, scanners, fax machines, MFDs, etc., their parts and accessories and are providing the service of maintenance of the said products. The assessee has undertaken the service activities of Maintenance and Repairs as per the contract of Full Service Maintenance Agreements (FSMA), Spares and Service Agreements (SSMA), Volume Based Service Agreements (VBSA) and Annual Maintenance Contracts (AMC). For the above said agreements, M/s. Xerox charged service tax on the standard percentage of labour deduction allowed under State Sales Tax/ VAT provisions and depositing the same. The assessee has also undertaken the activity of printing of the bills and the Revenue entertained the view that the said activity falls under the Business Auxiliary Service, therefore, a show cause notice was issued to the assessee and the adjudicating authority dropped the demand under the category of Business Auxiliary Service. Therefore, both sides are in appeal against the impugned order.

4. Heard both the sides.

5. Considering the fact that both the issues have been settled by this Tribunal vide Final Order No. 61306-61307/2018 dt. 13.03.2018, wherein this Tribunal observed as under:-

> ***"9.*** *(a) <u>Whether the activity undertaken by M/s. Xerox for various contracts for Maintenance and Repairs do qualify as Maintenance or Repair Service, or not</u>? – It is a fact that appellant is engaged in the activity of Maintenance and Repair of equipments supplied by them under various contracts. M/s. Xerox is required to replace the parts and accessories at the time of repair or maintenance and the Hon'ble Apex Court has examined the contract of M/s. Xerox and held that these contracts i.e. FSMA, SSMA, AMC etc. are Works Contracts and*

M/s. Xerox is liable to pay VAT/Sales Tax on the material portion of the said contract, as per various State VAT Act. Therefore, as it has been held by the Hon'ble Apex Court these are the Works Contracts and M/s. Xerox is paying VAT on the portion of materials supplied, therefore in the light of the decision in the case of Wipro GE Medical Systems Limited (supra) M/s. Xerox is liable to pay service tax only on Labour Portion. In the said case, it Tribunal observed as under:-

> **"8.** On a very careful consideration of the fact, we find that there is no dispute with regard to the leviability of service tax on the maintenance and repair services. The main point of dispute is with regard to the valuation. However, Section 67 of the Finance Act clearly provides for the abatement of the value of the goods sold in the course of the carrying out of the service. The point is whether the goods are actually sold. According to the department, the contract is only for the maintenance and repair. Therefore, it cannot be said that the spare parts were sold. This view is not correct. The chartered accountant has actually given a certificate with regard to the consumption of materials. It is also not denied that in the course of the maintenance no material was used. In several decisions it has been held that service tax cannot be levied on that portion of the value on which sales tax has been charged. This position has been elaborately dealt with in the decision of the *Shilpa Colour Lab* case decided by this Bench and cited supra. This view has been affirmed in many decisions. Once, the sales tax has been paid on the materials, then on the same service tax also cannot be charged. In fact, the appellants had relied on the decision of the Hon'ble Karnataka High Court which has been upheld by the Hon'ble Supreme Court. In the *Modi Xerox* case it has been clearly held that in the Annual Maintenance Contract, the replacement of spares etc. would be considered as sale. Even in the present case, on 70% of the value sales tax has been paid and this has been accepted by the Government of Karnataka. This fact also cannot be ignored. Moreover, Notification No. 12/2003 dated 20-6-2003 clearly provides for exempting the value of the materials sold during the provision of the service. Whenever, any service is provided if in the course of the provision of the service certain materials are used they will definitely be considered as sale. This is clearly covered by the Constitutional Article 366 (29) (B) cited by the learned Advocate. We do not agree with the learned Commissioner that the said Constitutional provision has no application here. The Maintenance and Repair Contract entered by the appellant with their customers has been recognized as Works Contract by the Government of Karnataka and the registration has been obtained for payment of sales tax. When that is the case, it cannot be said that the spare parts received by the clients of the appellant have not been sold to them. We hold that in any Annual Maintenance Contract the spare parts etc. which have been used in the course of the maintenance service are definitely to be considered as sold and when sales tax has been paid on the value of such goods, simultaneously one cannot charge them to the service tax. In view of these clear legal provisions, there is absolutely no justification for levy of service tax beyond 30% of the value of the total contract. We would like to state that the data provided by the appellant shows that the adoption of 30% of the value of the contract towards value of services rendered appears to be reasonable in the light of the payment of sales tax on the 70% value

which has also been accepted. Therefore, this valuation cannot be said to be arbitrary. In these circumstances, we do not find any merit in the impugned orders. Since, the demand of duty is not sustainable the demand of interest, penalty etc. also are not justified. Hence, we allow the appeals with consequential relief.**"**

The said order was affirmed by the Hon'ble Apex Court reported as 2012 (28) STR J44 (SC).

11. *-----*

*Further, we find that the appellant is engaged in the activity of printing of bill and not 'Billing'. Therefore, the said printing of bill is altogether a different activity from the billing and cannot be termed as 'Billing'. In that circumstances, we hold that the services in question do not qualify under the category 'Business Auxiliary Service'. Therefore, the Revenue's appeal deserves no merits hence, the same is dismissed.***"**

6. As the issues have already been settled by this Tribunal in assessee's own case, therefore, we hold that the assessee is not liable to pay the service tax under the category of Maintenance or Repair Service and the learned Commissioner has rightly dropped the demand under the category of Business Auxiliary Service.

7. In view of the above, the assessee's appeal is allowed and the Revenue's appeal is dismissed.

(Dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMEBR (JUDICIAL)

(BIJAY KUMAR)
MEMBER (TECHNICAL)

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