IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

Appeal No.	Arising out of
ST/157/2007	Order-in-Original No.15/2007 dated 30.4.2007 passed by the Commissioner of Service Tax, Chennai
ST/3 & 4/2012	Order-in-Appeal No. 50 & 51/2011 (MST) dated 25.4.2011passed by the Commissioner of Central Excise (Appeals), Chennai
ST/41856/2014	Order-in-Original No. 1/2014 dated 16.6.2014 passed by the Commissioner of Service Tax, Chennai

M/s. Premier Garment Processing Appellant

Vs.

Commissioner of Service Tax, Chennai Respondent

Appearance

Shri V. Ravindran, Advocate for the Appellant
Shri K.P. Muralidharan, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **12.02.2018**

Final Order Nos. **41401-41404 / 2018**

Per Bench

Brief facts of the case in all appeals is that the appellants herein were providing bed rolls to upper class railway passengers of Southern Railways as per contracts awarded to them by the latter. Department took the view that the said activity would be in the nature of a customer care service provider on behalf of the Railways and hence would fall within the ambit of Business Auxiliary Service as defined under section 65(19) during the periods of dispute. Accordingly, show cause notices were issued for different periods. In respect of period July 2003 to September 2006, show cause notice dated 27.12.2006 was issued which culminated in an adjudication order No.15/2007 dated 30.4.2007 inter alia demanding tax liability of Rs.74,35,664/- with interest. Aggrieved, appellants have filed Appeal No. ST/157/2007. For the immediately subsequent period October 2006 to September 2007, two more show cause notices dated 1.4.208 and 20.10.2008 were issued, which resulted in adjudication orders dated 20.9.2008 and 16.2.2009 respectively, *inter alia* confirming service tax liability of Rs.28,87,329/- and Rs.2,03,748/- respectively. Appeal against these adjudication orders were rejected vide a common appellate order No. 50 & 51/2011 dated 25.4.2011. Hence Appeals Nos. 3 & 4/2012. In respect of a later period April 2010 to March 2011, show cause notice dated 22.10.2011 was issued inter alia proposing service tax demand of Rs.92,23,567/- with interest thereon, which was confirmed by the adjudication authority vide Order No. 1/2014-15 dated 16.6.2014. Hence Appeal No. ST/41856/2014.

1.1 In ST/3 & 4/2012, vide order impugned herein (Order-in-Appeal No. 50 & 51/2011 dated 25.4.2011), the Commissioner (Appeals) dismissed the appeals for non-compliance of predeposit. These appeals were filed by appellant along with applications seeking to condone the delay. The COD applications were dismissed by the Tribunal, against which, the appellant approached the Hon'ble High Court and vide judgment dated 27.2.2015, the Hon'ble High Court directed the Tribunal to take up the appeals and stay applications and dispose the same on merits. Subsequently, the stay applications in these appeals were heard and disposed along with stay applications in ST/157/2007 and ST/41856/2014 granting waiver of predeposit, vide Stay Order dated 15.10.2015. Thus, these appeals are taken up for disposal on merits as per directions of the Hon'ble High Court.

2. The details of these appeals as submitted by the appellants are as follows:-

Appeal No.	Period of Dispute	SCN	OIO	Service Tax Demanded	HC Order
ST/157/2007	7/2003 to 9/2006	74/0 – 27.12.06	15/07 – 30.4.07	74,35,664	HC Order dt. 7.12.2011 in 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 vide 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 & 32/08 dt. 20.10.08	72/08dt. 20.9.08 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

3. When the matter came up before this Tribunal, vide Final Order Nos. 40568 & 40569/2014 dated 27.6.2014, the appeals were rejected as time-barred. The appellants filed CMA No. 164 & 165/2015 before the Hon'ble High Court of Madras. The Hon'ble Court vide order dated 27.2.2015 ordered as follows:-

> *"11. It is trite law that limitation has to be reckoned only from the date when the actual service has been effected, subject to fulfilling the mandatory requirement of showing proof of delivery. In the case on hand, the service of notice was effected on the appellant only on 23.12.2011 and there is nothing on the record to show that it was served on 9.5.2011. Further, the order has been dispatched through speed post on9.5.2011 as is evident from the letter of the Superintendent (Appeals). However, prior to 10.5.2013, service through speed post having not been a recognized / approved mode of service, it cannot be treated as service for reckoning the period of limitation. For the sake of argument, even if the order is said to have been delivered by RPAD on 9.5.11, which apparently has not happened in this case, no proof having been filed to support such delivery, which is the mandatory requirement as per Section 37(1)(a) of the Act, it is clear that the service of notice in the manner as prescribed under section37C(1)(a) has not been effected.*
>
> *12. Further, it appears that the appellant was informed vide letter of the Superintendent (Appeals) dated 22.12.11, wherein he was informed about the order dated 25.4.11. Only thereafter, the appellant preferred the appeals on 4.1.12. In such circumstances, the appeals filed is very much in time. Therefore, in such view of the matter, this Court is of the considered opinion that question of delay does not arise in this case, as the filing of the appeals are well within time. Accordingly, the substantial question of law is answered in favour of the appellant/ assessee and against the respondent / Revenue.*
>
> *13. In the result, the order of the Tribunal is set aside and the appeals are allowed. The Tribunal is directed to take up the appeals and stay eptitions on file and dispose of the same on merits and in accordance with law at an early date. Consequently, connected miscellaneous petitions are closed. However, in the circumstances of the case, there shall be no order as to costs."*

Hence appellants are once again before this Tribunal.

4. Today, when the matter came up for hearing, ld. counsel Shri V. Ravindran made oral and written submissions which can be summarized as follows:-

4.1 Activity of supply of bed rolls to select category of passengers of railways is not taxable for levy of Service Tax- for reasons-

(a) It is not "Customer care service" under entry 65 (19)(iii) of the FA,'94-

(b) Customer care service provided on behalf of the client would only mean those who have paid the cost for goods or service and require the continued technical/professional support of the supplier of the goods or service.

(c) Since FA has not defined the term "Client", the definition of this expression as ordinarily understood / dictionary mean has to be considered. This term as per Black's Law dictionary means "an individual, corporation, trust or estate that employs a professional to advice or assist it in the professional's line of work, professionals include but are not limited to attorney, accountants, architects etc."

(d) Rest of the submissions reiterated – as per grounds of appeal, written submissions dated 03.06.2015 and 04.12.2017

4.2 Ld. Advocate made these submissions:-

a) Assuming but not admitting even if the activities of the appellant are taxable, the same would be exempted upto 01.10.2012 as per under Sec.99 of the Finance Act, 2013. The Hon'ble High Court recognized this contention in para 4 of its order dated 20.11.2015 in WP No. 13262 of 2015 and

WA No. 744 of 2015. The department did not object to this, but only countered about the delay in the High Court proceedings.

b) Service tax being destination based tax, the above provisions would squarely insulate the appellant, as he cannot pass on service tax to either railways or to the passengers of railways.

c) There were decisions to confirm that the department elsewhere attempted to classify the very same activity under Business Support Service and later confirmed under Business Auxiliary Service. This was not permissible under law and was rejected in decisions 2014-TIOL-2284 CESTAT- DEL &2015(38) STR 1010 (Tri. Del.)

d) The issue involved is one of interpretation and therefore longer limitation cannot apply. Moreover, the agreement of the appellant was with the President of India owning the Indian Railways.

e) The appellant is an individual and cannot be equated with commercial concern. Demands prior to 01.05.2006 are not legally tenable based on plethora of decisions including those reported under 2009 (16) S.T.R. 61 (Tri.-Del.); 2017 (49) S.T.R. 454(Tri.-Del.); 2017 (49) S.T.R. 552 (Tri.- Del.); 2017 (51) S.T.R. 312 (Tri. –Del.) and 2017 (3) G.S.T.L. 452 (Tri. –Del.)

4.3 The activities cannot be called customer care because to satisfy that criteria, "client" is required to be a professional.

4.4 The ld. counsel takes us to the DGST Order dated 13.12.2005 wherein in para 14 it is mentioned that 'client' has not been defined under the Act. Hence the dictionary meaning of the word is to be taken. Ld. counsel contends that the word "client" defined in the dictionary means "a person or entity that employs a professional for advice or help in that professional line of work". Being engaged in supply of bed rolls after duly laundered and cleaned, they cannot be called as a professional.

4.5 The ld. counsel also draws attention to section 99 of the Finance Act, 1994 which was inserted on 10.5.2013 which provides that no service tax shall be levied or collected in respect of taxable services provided by Indian Railways during the period prior to 2011 – 2012.

5. On the other hand, ld. AR supports the impugned orders. He takes us to the agreements entered into by the appellant with the Railways wherein it is clearly mentioned that they are supposed to supply bed rolls on behalf of the Railways. Ld. AR also takes us to Order-in-Original passed by the Commissioner wherein he has extracted the conditionalities of the contract. From the contracts, it is very clear that the appellants have been outsourced the customer care service otherwise required to be provided by the Railways to their upper class passengers. He also relied on the decision of the Tribunal in the case of

Doon’s Caterers Vs.. Commissioner of Service Tax, Delhi – 2018 (8) GSTL 220 (Tri. Del.)

6. Heard both sides and have gone through the facts on the matter.

6.1 To understand the disputed issue in perspective, it would be useful to recapitulate the definition of “Business Auxiliary Service” in Section 65 (19) of the Finance Act, 1994 which was in force during the relevant period. The definition as it stood vide amendment on 10.9.2004, made by Finance Act (23 of 2004), 2004 reads as under :

> “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).

> Explanation.—For the removal of doubts, it is hereby declared that for the purposes of this clause, "information technology service" means any service in relation to designing, developing or maintaining of computer software, or computerised data processing or system networking, or any other service primarily in relation to operation of computer systems;”

6.2 The department is seeking to bring the activities of the appellant under Section 65(19)(iii) namely, as a service in relation to “Customer Care Service” provided on behalf of the client. Department has taken the view that the activity of supplying bed rolls to the upper class passengers of railways without collecting fees / charges directly from the passengers is tantamount to providing provision of Customer Care Service on behalf of the Railways and hence the appellants are exigible to service tax liability under BAS. Discernably, Railways supply bed rolls to upper class passengers without collecting any fees. This supply is understood to be as a customer care initiative on the part of railways for the upper class passengers who obviously pay much higher ticket / service charges compared to second class passengers. Very possibly, Railways may well have included the cost of supply of such bed rolls into the cost of the railway ticket prices. However, there is no such assertion or allegation made in the SCNs or, for that matter, even by the appellant. For the second class passengers however, there is no such free supply and in fact, they have to pay separate charges in addition to ticket prices, in case they require bed rolls. The activities of supply of fresh bed rolls to passengers, their laundering and resupply have been outsourced to service providers like the appellants herein.

6.3 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". 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 Ld. Advocate on this point. It is not that parameters of every customer care activity involves technical or professional expertise. Ld. 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 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, <u>customer-focused</u> 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 <u>caring</u> for its <u>customers</u> 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 its 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 the scope of "Customer Care Services" provided on behalf of the client" and hence will be exigible to service tax under "Business Auxiliary Service" as defined under Section 65 (19) of the Finance Act, 1994.

6.8 Ld. Advocate has also contended that even if it is considered that the services rendered by the appellants are taxable, the same would be exempted by virtue of Section 99 of the Finance Act, 2013 w.e.f. 10.05.2013 which has exempted taxable services provided by Indian Railways during the period prior to 1.10.2012. We are unable to agree with such a contention. The services in question are not those directly provided by the Railways but they have been outsourced to the appellant and provided by the latter. The activities, if provided by Railways themselves would not be brought under the category of "Customer Care Service provided on behalf of the client", that categorization will kick in only when such customer care services are outsourced and they are provided by a service provider like the appellants herein on behalf of Railways. Hence Section 99 will not help the case of the appellant.

6.9 Ld. Advocate has drawn our attention to number of case laws. However, we find that in *Doon's Caterers Vs CST Delhi* (supra), *RC Goel Vs CCE New Delhi* and *Deepak & Co. Vs CCE Delhi* upon by the appellant, the dispute therein concerns the department having sought to bring the similar service under the scope of "Support Service of Business or Commerce" under

Section 65 (105) (zzzq) read with Section 65 (104c) of 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 by 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.

(Operative portion of the order was
pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

Rex