IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Service Tax Appeal No.41249 of 2019

(Arising out of Order-in-Original No. 116/2018 CH. N. GST (Commr.) dated 6.12.2018 passed by the Principal Commissioner of GST & Central Excise, Chennai North)

M/s. Lindstrom Services India Pvt. Ltd. **Appellant**
No. 68A, SIDCO Industrial Estate
Ambattur, Chennai – 600 098.

Vs.

Principal Commissioner of GST & Central Excise **Respondent**
Chennai North Commissionerate
No. 26/1, Mahatma Gandhi Road
Nungambakkam, Chennai – 600 034.

APPEARANCE:

Shri B.K. Singh, Advocate and
Ms. Vandana, Advocate for the Appellant
Ms. T. Sridevi, ADC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri P. Venkata Subba Rao, Member (Technical)

Final Order No. **42148 / 2021**

Date of Hearing: 25.08.2021
Date of Decision: 25.08.2021

Per Ms. Sulekha Beevi C.S.

The ld. Counsel shri B.K. Singh appeared on behalf of the appellant. His arguments are summarized as under:-

2. The appellant is a subsidiary of Lindstrom OY Finland and is engaged in leasing workwear to their clients on the conditions mentioned in the agreements entered with their clients. Terms and Conditions of sample agreements is as under:-

(i) That the appellant undertook to deliver, wash and service individual customized workwear to the clients.

Each worker will be provided with the workwear of his size which will be measured by the appellant along with logo and labels as specified.

(ii) The appellant would own the workwear and will have exclusive right to wash and service the same.

(iii) The workwear shall be collected by the customer once a week for being sent to Lindstrom for servicing.

(iv) If the workwear cannot be leased because of wear and tear, it will be returned to Lindstrom but the customer shall pay the price as per the price list (depreciated price). If the workwear is to be replaced by the customer, the same is to be redeemed at agreed upon price.

(v) Retail price will increase every year by a previously agreed upon percentage.

(vi) There are separate provisions for pricing of replacement and valuation of redemption price."

3. The appellant is engaged in supply of workwear on rent / lease basis as per the requirement of each customer. The activity rendered by them includes renting / leasing of workwear, maintenance, repairing, alteration, designing of workwear, providing lockers and transportation of workwear. The department was of the view that the activity amounts to service in the nature of supply of tangible goods and that appellants are liable to pay service tax on the services rendered by them. The assessee contended that the activity is 'deemed sale' and that they are discharging VAT on the value received. Show Cause Notice was issued for different period proposing to demand service tax along with interest and for imposing penalty. The Tribunal in the appellant's own case had analysed the very same issue for the period 2010 – 11 to 2014 – 15 and held that the activity of workwear on rental does not amount to supply of tangible goods so as to attract

the levy of service tax. The period involved in the present case is from 2015 – 16, 2016 – 17 and April 2017 to June 2017.

4. It is submitted by learned counsel that in the activity carried out by the appellant, the right of possession of garments is fully transferred to the client and goods are under effective control of the clients. The clients could use the garments at their own free will. The supplier has not imposed any restriction in use of the garments. The ownership always remained with appellant. The law distinguishes between ownership and possession. Till the garments are redeemed, the ownership of the workwear remains with the appellant. However, possession and the right to use is transferred to the buyer or the lessee. As the ownership of workwear remains with the appellant, it is his discretion and duty to maintain the same properly. Washing and proper upkeep of the workwear, which is essential for the maintenance of the workwear is being done by the appellant. The findings given by the adjudicating authority that appellants have provided the workwear to the customers with the transfer of right to use such goods and there is no transfer of possession and effective control is erroneous. He referred to the judgment of the Hon'ble Supreme Court in the case of BSNL Vs. Union of India reported in 2006 (2) STR 161 (SC) and argued that the test laid down in the said judgment would establish that the activity of leasing of workwear by the appellant is 'deemed sale' and not 'service'. He prayed that the decision of the Tribunal for the earlier period may be followed.

5. The learned AR Ms. T. Sridevi appeared for the department. She supported the findings in the impugned order.

6. Heard both sides.

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:-

> *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:-*
>
> *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 assesse, 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:-*

> *"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.

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

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

(**P. VENKATA SUBBA RAO**)
Member (Technical)

Rex