

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 55447 of 2013 [DB]

[Arising out of Order-in-Original No. 10-13/SA/CCE/ST/2012 dated 15.10.2012 passed by the Commissionerate of CE, Delhi-III, Gurgaon]

M/s Easy Bill Limited

Mr. Neeraj Sharma,
51, 3rd Floor, Okhla Industrial Estate-III
New Delhi – 110 020.

...Appellant

Vs.

The Commissioner of Central Excise

Delhi-III, Commissionerate,
Udyog Minar,
Vanijya Nikunj, Phase-V
Gurgaon – 122 016.

...Respondent

WITH

Service Tax Appeal No. 50262 of 2017 [DB]

[Arising out of Order-in-Appeal C. No. 115/ST/Appeal-I/2016-17/14648 dated 31.10.2016 passed by the Commissioner (Appeals) ST, New Delhi]

M/s Easy Bill Limited

51, 3rd Floor,
Okhla Industrial Estate-III
New Delhi – 110 020.

...Appellant

Vs.

The Additional Commissioner of

Service Tax, Delhi-II
14-15, Farm Bhawan,
Nehru Place
New Delhi – 110 019.

...Respondent

APPEARANCE:

Shri Tarun Chatterjee, Ms. Binita Pandey, Advocates for the Assessee
Mr. R.K. Manjhi, Authorised Representative for the Department

**Coram: HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)
HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)**

DATE OF HEARING : 11.12.2019

DATE OF DECISION : 07.01.2020

FINAL ORDER No. 50004-50005/2020**RACHNA GUPTA**

This order disposes of two appeals, the appellant and the issue involved being same for both the appeals.

2. The relevant factual matrix is that :

The appellant M/s Easy Bill Ltd. is engaged in providing an efficient and easily assessable payment collection services for the bill issuers for the collection of payments from the customers who wish to settle their bills from the bill issuer over the counter. On the basis of specific intelligence gathered by the Service Tax Commissionerate the records of the appellant were checked and it was observed that they have entered into Retail Agent Agreements with various retailers for providing licenses for opening shops in its names i.e. Easy Bill Ltd. and have collected the service fee from them. It is alleged that the said service fee is taxable under the category of 'Franchise Service' as defined under Section 65 (47) of the Finance Act, 1944. Alleging that the appellant has evaded payment of service tax on the amount collected by them that 4 different show-cause notices were issued to the appellant. The respective details are as follows:

Sr. No.	Show Notice Date	Cause No. &	Period Involved	The Amount (Rs.) in Question	Appeal No.	Order Challenged
1.	9042 24.04.2009		16.06.2005 to 31.03.2008	54,51,428/-	55447/2013	10-13 15.10.2010
2.	389/091385 14.10.2009		01.04.2008 to 31.03.2009	11,00,040/-	50562/2017	116/2016-17 31.10.2016
3.	1689-1693		01.04.2010	1,65,799/-	50562/2017	116/2016-17

	23.08.2011	to 31.03.2011			31.10.2016
4.	340/2012-13 21.05.2013	April, 2011 to March, 2012	1,48,44,500/-	50562/2017	116/2016-17 31.10.2016

The recovery of aforesaid amounts alongwith appropriate interest and the proportionate penalty at the respective was proposed vide the aforesaid show-cause notices for the respective period. The proposal was confirmed vide the orders as mentioned above (the entire period is post year 2005). Being aggrieved thereof the appellant is before this Tribunal.

3. It is submitted on behalf of appellant that the appellant has entered into Retail Agent Agreement, as the name specifies the agreement is to appoint the agents and is not to mean to appoint a franchisee. No representational right has been given to the agents vide the said agreement. It is impressed upon that Section 9.2 of Article 9 of this agreement categorically restricts the retail agent to make representations or incur any liability on behalf of the company. It is submitted that since there is no representational right given the activity between the Appellant and his agent cannot be termed as Franchise Service. The one-time non-refundable fee of Rs. 15,000/- along with refundable security of Rs. 50,000/- as received by the Appellant from its agent is impressed upon to be an amount as indemnity towards the amount as would have been collected by those agents on behalf of the Appellant. The same, therefore, cannot be called as Franchise fee. Thus, no question of taxing the same under Section 65(105)(zze) of Service Tax Act at all arises.

The order in appeal No. 55447 has also been assailed on the ground that the adjudicating authority has wrongly construed the impugned agreement as amounting to the grant of license from the Appellant to his agent for the agent to act in representational capacity. Challenging the findings of orders in question as wrong being based merely on presumptions, the orders are prayed to be set aside both the appeals, accordingly, are prayed to be allowed.

4. While rebutting these arguments, learned DR has impressed upon that to complete a transaction of 'Franchise' the agreement has to have following four features :

1. The franchise is granted representational right to sell or manufacture goods or to provide service or undertake any process identified with franchiser, whether or not a trade mark, service mark, trade name or logo or any such symbol, as the case may be, is involved;
2. The franchisor provides concepts of business operation to franchisee, including know-how, method of operation, managerial expertise, marketing techniques or training and standards of quality control except passing on the ownership of all know-how to franchisee;
3. The franchisee is required to pay to the franchisor, directly or indirectly a fee; and
4. The franchisee is under an obligation not to engage in selling or providing similar goods or services of process, identified with any other per [CBE&C. Circular No. 59/8/2003-ST dated 20.06.2003]

5. It is submitted that one-time fee of Rs. 15,000/- as sign up fee to the Appellant is agreed to be paid by the agent as per Section 4.1 of Article 4 of the impugned agreement. Learned DR has also laid emphasis on section 5.1(d) of Article 5 thereof where the agent is restricted to have the control on the Appellant's apparatus/the terminal in this case. Under article 5.2 thereof the agent was made duty bound to allow the company, its affiliates and auditors access to the premises to enable the Appellant to monitor the retail agents' compliance with the agreement and to enable it to access its rights or perform its obligations under this agreement. Section 5.6 is also impressed upon which burdens the agent to take all precautions to protect the intellectual property rights owned by the Appellant. Training was also agreed to be provided to the employees of the agent by the appellant company in furtherance of Article 6.1 of the Agreement. Finally impressing upon article 9 Section 9.1 that the agreement is entered on principle to principle basis, learned DR has impressed upon that all the above four elements of constituting the franchise service stands fulfilled from the Appellant's own documents. Hence, there appears no infirmity in the orders under challenge. Appeal are accordingly prayed to be dismissed.

6. After hearing the party at length and perusing the record of both the Appeals we find that the issues to be adjusted are as to:

- (i) Whether the relationship between the Appellant and the agents who are collecting money as against a bill of Bill issuer (public utility services) from the customers on behalf of Appellants, who is actually engaged in providing such Bill collection services to such customers amounts to providing Franchise Service by such agents to the Appellant.

- (ii) Whether onetime fee/security deposit collected by the Appellant from the said agents is the Franchisee fee taxable under Section 65 105(zze) of Finance Act, 1994.

7. For the purpose, we foremost need to look into the meaning of Franchise Service. The definition of Franchise service w.e.f 16.05.2005 as per Section 65 (47) of the Finance Act is as follows:

"franchise means an agreement by which the franchisee is granted representational right to sell or manufacture goods or to provide service or undertake any process identified with the franchisor whether or not a trademark, service mark, Trade name or logo or any such symbol, as the case may be, is involved".

8. It becomes clear from the above definition that the franchisee has to represent the franchisor in such a way that the former loses its own individual identity as would perhaps be known only by the identity of the later.

If we look into the dictionary meaning of word 'franchise'

1. The Cambridge Business English defines 'franchise' to mean to sell a person or company the right to sell the products and services of your (seller) company.

2. As per Cambridge Academic content dictionary franchise is an arrangement in which a company sells to another business a right to sell its products or services in return for payment.

3. Collins Dictionary defines 'franchise' as a right to sell a company's products in a particular area using the company's name.

9. All these definitions along with the definition given in Finance Act, the conjoint reading thereof, is sufficient for us to form an opinion that the most important characteristics for any service to be called as 'Franchise Service' is the right of representation given by one company to another business company against the consideration paid by the later (franchisee) to the former (franchisor) for the same.

Representational right has been defined by the **Hon'ble High Court, Delhi in the case of Delhi internal airport Pvt. Ltd. Vs. Union of India 2017(50) S.T.R 275 (Delhi)** the meaning thereof in following words :

The term "representational right" would necessarily qualify all the three possibilities i.e. (i) to sell or manufacture goods, (ii) to provide service, and (iii) undertake any process identified with the franchisor.

A representational right would mean that a right is available with the franchisee to represent the franchisor. When the Franchisee represents the franchisor, for all practical purposes, the franchisee loses its individual identity and would be known by the identity of the franchisor. The individual identity of the franchisee is subsumed in the identity of the franchisor. In the case of a franchise, anyone dealing with the franchisee would get an impression as if he were dealing with the franchisor".

Reference to the meaning of the words 'Represent' and 'Representational' given in Oxford English Reference Dictionary and the Law Lexicon have been perused. Some of the meaning of "represent" in Oxford Dictionary are "stand for", "corresponds to", "be example of", "symbolize", "make out", "portray" be entitled to act or speak for etc. Meanings of the word "represent" in Law Lexicon are same/similar to those given in Oxford Dictionary. The aforesaid meaning of the word "represent" are in fact far wider (in scope) than required to hold on the basis of aforesaid cannot be faulted for concluding accordingly on the basis of the Amway Business Starter Guide, Distributor Application and Terms and Conditions etc.

10. The relevant period for four of these show cause notices is beyond April, 2005. Apparently and admittedly, the definition of 'Franchise Service' got amended on 16.05.2005 in the words as mentioned above. Prior to this date, Section 65 (47) of Finance Act,

1994 used to define 'Franchise Service' as an agreement having various ingredients as follows:

For the period 1st July, 2003 to 15th June, 2005 to qualify as a franchise, the following four conditions had to be cumulatively fulfilled.

- (i) *Franchise is granted representational right to sell or manufacture goods or to provide service or undertake any process identified with franchisor, whether or not a trade mark, service mark, trade name or logo or any such symbol, as the case may be, is involved;*
- (ii) *The franchisor provides concepts of business operation to franchisee, including knowhow, method of operation, managerial expertise, marketing technique or training and standards of quality control except passing on the ownership of all knowhow to franchisee;*
- (iii) *The franchisee is required to pay to the franchisor; directly or indirectly, a fee; and*
- (iv) *The franchisee is under an obligation not to engage in selling or providing similar goods or services or process, identified with any other person.*

11. Learned DR has impressed upon these four ingredients to exist so as to suffice a 'Franchise Service' but that argument is not sustainable in the view that the definition characterizing the franchise service with four of these ingredients stands amended. Many of the erstwhile requirement i.e. prior 16.06.2005 for a transaction to constitute 'Franchise' were done away with the amended definition. However, the authorities below are of the opinion that the agreement between the Appellant and its agent because of the contents therein amounts to an agreement as that of franchise service.

12. Now reverting to the facts of this case, specifically, the agreement which is the part of the record (The copy thereof has also been made available by the Counsel for the Appellant and has been acknowledged). Perusal thereof shows that the agreement is titled as "Retail Agent Agreement" which has been executed by the Appellant with an intention to provide an efficient and easily assessable payment collection services for the bill issuers (as defined in the agreement itself) for the collection of the payments from the customers (who are

also defined in the agreement itself), who wish to settle their Bills from the Bill issuer over the country. All such persons who wish to become the part of the company's network of retail agents through which the company shall provide such payment collection services may be appointed as the agent of the company. This objective in itself is sufficient for us, when looked into in relation to the definition of franchise service and the meaning of representational right as discussed above, to hold that the agreement is to appoint someone who may undertake to collect the impugned bills payment not absolutely on his own but who undertake to collect the same on behalf of the Appellant. Scope of words on behalf of has been explained by **Hon'ble High Court Mysore in the case of State Vs. Gangana reported as 1964 SCC online Kar. 148** as something altogether different from what is called as Representational Right. Thus, we are of the view that the objective of the agreement is to merely appoint the agents as different from the franchisee.

13. Further perusal of agreement shows as follows:

Section 4.1

The company shall pay to the retail agent the service fee for each transaction resulting in a receipt of collected amount by the retail agent as per the rate set up and in the manner as described in schedule 3 . A perusal of schedule clarifies that the appellant agreed to pay a fix amount of Rs. 3 per as service fee for the Bills process by the retail agent as per the provisions of section 2.2(c) of this Agreement. The payment per transaction made by the appointing/main company made to the person acting on its behalf is absolutely contrary to the concept of franchise. Accordingly to our opinion, the security deposit of Rs. 50,000/- as per Section 4.2 of the

agreement is an amount as have been collected as indemnity against the money to be collected by these agents for the Appellant as Section 11.3 makes the said security returnable to the retail agent upon termination of this agreement that too with the interest @ 5%. Section 5.1 (c) provides for an acknowledgement by the retail agent to the fact that the title and ownership in the terminal vest with the company.

14. We further observe that Section 9.1 thought talks about the agreement to be on principle to principle basis as impressed upon by learned DR but perusal of this section reveals the subsequent portion explains that word principle to principle mean that the agreement is not intended to constitute a partnership, joint venture or employer employees relationship between the company and the retail agent. Thus we are of the opinion that mere use of word 'principle to principle' basis cannot be read for the impugned arrangement between appellant and his agents to be called as franchise service. More so for the reason that Section 9.2 of the same article categorically restricts the agent to acquire any representational right in the following words:

" Nothing contained in this agreement shall authorise the retail agent to make representations or incur any liability on behalf of the company".

15. Perusal of the above discussed terms of the agreement give us a clarity to hold that the payment of Rs. 15000/- is not at all the consideration towards the purchase of Representational Rights by the agent from the Appellant. Contrary thereto the arrangement herein is that payment to be made by the Appellant to the agent per Bill

basis. This particular term of agreement is absolutely against the intent of what can be called as franchise service.

16. In view of entire above discussion, we hold that the adjudicating authority below have committed an error while giving interpretation to the word 'franchise service'. The authorities have failed to observe the actual intent of the agreement involved. The order-under-challenge, therefore, is held as not sustainable in the eyes of law. The same, accordingly, are hereby set aside. As a result two of these appeals stand **allowed**.

[Pronounced in the Open Court on **07.01.2020**]

(BIJAY KUMAR)
MEMBER (TECHNICAL)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

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