**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. 1

**SERVICE TAX APPEAL NO. 52606 OF 2016**

[Arising out of the Order-in-Original No. ALW-EXCUS-O-I-O-COM-11/2016-17 dated 16/05/2016 passed by Commissioner of Central Excise, Chandigarh - II.]

**M/s D&G Packaging,** **...Appellant**
G-12, RIICO Industrial Area, Phase – I,
Bhiwadi.

**Versus**

**Commissioner of Central Excise and Service Tax,** **...Respondent**
A Block, Surya Nagar,
Alwar – 301 001.

**APPEARANCE:**

None for the appellant.
Shri Rajeev Kapoor, Authorized Representative for the Department

**CORAM:**
**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**
**HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 51234/2022**

**DATE OF HEARING/DECISION : 19.12.2022**

**P.V. SUBBA RAO**

This appeal is filed by the appellant assailing order-in-original[1] dated 16.05.2016 passed by the Commissioner of Central Excise and Goods and Service Tax, Alwar, the operative part of which is as follows :-

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[1] **impugned order**

> "I. Service Tax amounting to Rs. 80,84,451/- (Service Tax Rs. 78,48,981/- + Education Cess Rs. 1,56,980/- + Secondary and High Education Cess Rs. 78,491/-) is confirmed and demanded from them under proviso to Section 73 (1) of the Finance Act, 1994 ;
>
> II. Interest at applicable rates is recoverable from them under section 75 of the Finance Act, 1994 on the Services Tax amounting to Rs. 80,84,451/- not paid by them ;
>
> III. Equal Penalty of Rs. 80,84,451/- is imposed upon them under section 78 of the Finance Act, 1994 for willful mis-statement and suppression of facts;
>
> IV. Since equal penalty is being imposed under section 78. I refrain from imposing penalty under section 76 in view of proviso to section 78 of the Finance Act, 1994 for failure to pay Service Tax.
>
> V. I impose penalty of Rs. 10,000/- (Rupees Ten Thousand only) under section 77 of the Finance Act, 1994 for non registration under Service Tax and for non filing of returns".

2. The facts of the case, in brief, are that the appellant is registered with the Central Excise Department and manufactures Razors and Blades for M/s Gillette India Ltd. under an agreement. The appellant has been paying appropriate central excise duty on the goods cleared by it. During audit, it was observed that as per the profit and loss account and balance sheet for the financial year 2010-2011, 2011-2012, 2012-2013 and 2013-2014, the appellant received Management Fees and other recoverable expenses on monthly basis from M/s Gillette India Ltd., Bhiwadi in terms of the agreement dated 10.11.2010. The agreement referred to the appellant as the seller and M/s Gillette India Ltd. as the buyer. As per Clause 5 of the agreement, the appellant received certain amounts as indicated Annexure I to the agreement. It appeared to the Department that these amounts are in the nature of management fees and other recoverable

expenses which are classifiable under Management or Business Consultant Service as per section 65 (105) (r) of the Finance Act, 1994. Accordingly, an amount of Rs. 80,84,451/- was proposed to be recovered as service tax from the appellant under the proviso to section 73 (1) of the Finance Act, 1994 along with applicable interest. It was also proposed to impose penalties on the appellant under section 76, 77 and 78 of the Finance Act, 1994. It needs to be pointed out that extended period of limitation has been invoked in this case. The Commissioner, Alwar passed the impugned order, as reproduced in paragraph '1' above. Aggrieved, the appellant has filed this appeal.

3. Learned Counsel for the appellant submits that the only amounts in dispute are the amounts paid to it by M/s Gillette India Ltd. as per the purchase agreement dated 10 November 2010 and indicated in Annexure I to the agreement. There is no allegation or evidence that any amount other than this is received by the appellant. He took us through the purchase agreement which indicates that the appellant is the seller and M/s Gillette India Ltd. is the buyer. Clause II of the agreement indicates the nature of goods to be purchased, the specifications, the production process to be followed and the raw materials to be used. Clause III of the agreement deals with the acceptance, return, revoke, scrapping, quality control, third party testing, quality assurance elements. Clause IV of the agreement deals with the quantity to be purchased, reduction or discontinuance of

the purchases etc. Clause V deals with prices and taxes. Clause VI deals with the contract period and termination. Clause VII deals with the shipment, payment and delivery. Clause VIII deals with the representation and warranties. Clause IX deals with the indemnification and insurance and Clause X deals with miscellaneous provisions such as, confidentiality, force majeure assignment etc.

4. Annexure I to the agreement indicates the amounts to be paid under the heads Salaries, Rent, Depreciation, Interest, Profit, Stationery, Water Bill, Generator etc. Learned Counsel submits that there is nothing in the entire agreement to show that the amounts which were received under the agreement are for anything but the job work which they did for M/s Gillette India Ltd. It is undisputed that the activity which they had undertaken for M/s Gillette India Ltd. amounted to manufacture and that they have paid appropriate excise duty. While assessing the ER-1 returns, the Department has, at no stage, indicated that the activity undertaken by them is not manufacture but is a service. Therefore, no service tax can be charged from them on the amounts received as per the purchase agreement with M/s Gillette India Ltd. The mere fact that some of these amounts have been recorded as management fees, in its books is no ground to charge service tax.

5. Learned Authorized Representative appearing for the Revenue supports the impugned order.

6. We have gone through the records of the case and considered the submissions on both sides.

7. For service tax to be payable there must be (a) service provider; (b) service recipient; (c) service (d) a consideration for such service and (e) such service must be taxable service. The case of the Revenue in this appeal is that the appellant received amounts from M/s Gillette India Ltd. under the head Management Fees, which is chargeable to service tax under section 65 (105) (r) of Finance Act, 1994. The amounts in question, were received undisputedly in terms of Annexure I to the purchase agreement between M/s Gillette India Ltd. and the appellant. The nature of the agreement makes it clear that it was an agreement for sale of goods by the appellant to M/s Gillette India Ltd. as per the specifications of the latter. To sell these goods the appellant manufactured them on which the appellant has been paying appropriate central excise duty. We do not find anything in the entire agreement including the Annexures that any amount was paid for service separately. In any contract of job work, an agreement is entered into whereby an amount is paid to the job worker by the principal. If the job worker undertakes an activity which amounts manufacture, it has to pay appropriate central excise duty. In this case, the appellant has paid central excise duty. Thereafter, the appellant sold the goods to M/s Gillette India Ltd. in terms of the purchase agreement. Such sale or purchase is not a taxable service and no service tax can be

charged on it. The entire case of the Revenue rests on the fact that in the books of account the appellant has recorded the amounts received on account of job work as per the agreement under the head "Management Fees". Even if such entries are made by the appellant, it does not convert what is essentially an agreement for manufacture and sale of Razors and Blades into an agreement for rendering services. Thus, none of the elements required for levying service tax viz., a service provider, a service recipient, a taxable service and a consideration are present in the case. Therefore, the impugned order cannot be sustained and needs to be set aside. The impugned order is set aside and the appeal is allowed with consequential relief.

(Order dictated and pronounced in open court.)

**(JUSTICE DILIP GUPTA)**
**PRESIDENT**

**(P.V. SUBBA RAO)**
**MEMBER (TECHNICAL)**

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