CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 3

SERVICE TAX APPEAL NO. 50134 OF 2015

[Arising out of Order-in-Appeal No.MRT-EXCUS-002-APP-62/2014-15 dated 23.09.2014 passed by the Commissioner (Appeals), Customs & Central Excise, Meerut-II]

M/s. Century Pulp & Paper, **....APPELLANT**
Lalkuan, Distt. Nainital.

Versus

Commissioner of Customs & **.....Respondent**
Central Excise,
Delhi Road,
Meerut.

Appearance:
Present for the Appellant : Shri K. Vaish , Consultant
Present for the Respondent: Shri Shashank Yadav, Authorised Representative

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 50429/2025

Date of Hearing/Decision : 06/03/2025

BINU TAMTA:

1. The controversy centres round the demand of service tax on lease rent received on providing tissue paper cutting machine to M/s Scraft Products (P) Ltd. [1] under the heading "Supply of Tangible Goods" without transferring right to possession and effective control as per taxable entry 65 (105)(zzzzj) of the Finance Act, 1994[2]. The issue is no longer res-integra and has been decided in favour of the appellant itself for the preceding period November, 2010 to December, 2012. Since the facts in both the cases are identical the decision rendered with respect to the earlier period will squarely apply in respect of the subsequent period, i.e. January. 2013 to September, 2013. The earlier final order set aside the order-in-appeal no.61/2014–

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[1] **Lessee**
[2] **The Act**

15 dated 22.0 9.2014 and the present appeal has been filed challenging the order-in-appeal no.62/2014–15 dated 23.09.2014. Both the impugned orders were passed almost simultaneously deciding the same issue against the appellant. Therefore, the Final Order dated 17.01.2019 passed by the Tribunal and which remains unchallenged would govern the present appeal also.

2. Briefly stated, the appellant are engaged in manufacture of paper and paper board. They provided tissue paper cutting and packing machine to M/s. Scraft Product (P) Ltd, Sonepat on lease rent of Rs.1,00,000/- per month, as per the agreement dated 01.11.2010. On the allegations that the effective control and transfer of right of possession of machines were never transferred to lessee, service is rendered by the appellant which falls under the category of Supply of Tangible Goods Service, show cause notice dated 22.11.2013 was issued for recovery of service tax amounting to Rs.1,11,240/- along with interest and penalty. The show cause notice stands affirmed by the Adjudicating Authority as well as by the Appellate Authority by the impugned order [3].

3. The Tribunal has already recorded a finding that the appellant had delivered the effective possession and control of the machinery as the said machinery was installed in the premises of the lessee at Sonepat. The appellant has also placed on record the copies of invoices, challans, and the Chartered Accountant's certificate showing that they have paid VAT on the lease rent received in the category of right to use.

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[3] Order-in-Appeal No.MRT-EXCUS-002-APP-62/2014-15 dated 23.09.2014

4. Reference is invited to the 46th amendment, Article 366 (29A) of the Constitution of India, which reads as under:

> "tax on sale or purchase of goods "includes
> **(d)"**a tax on the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;"

5. We may also take note of the Circular dated 29.0 2.2008 clarifying that proposal is to levy service tax on such services provided in relation to supply of tangible goods, including machinery, equipment, and appliances for use, with no legal right of possession or effective control. Supply of tangible goods for use and leviable to VAT/Sales Tax as deemed sale of goods is not covered under the scope of the proposed service of supply of tangible goods for use. Whether a transaction involves transfer of possession and control is a question of facts and is to be decided based on the terms of the contract and other material facts.

6. Considering the facts of the present case, we find that as per the agreement dated 1.11.2010, the lessee was eligible to utilise the said machinery at their premises for the purpose of manufacturing and supplying products. On import of machinery, it was directly sent to the premises of lessee at Sonepat. The machinery was completely under the control and possession of the lessee, who themselves operated the machinery as the appellant had not provided any operator for operation of the said machine The appellant had been charging and paying VAT on lease rent. We therefore conclude, that the lease rent received from M/s. Scraft Products (P) Ltd, on providing machinery does not fall in the definition of Supply of Tangible Goods without transferring right of possession and effective control.

7. Consequently, the impugned order is unsustainable and is hereby set aside. The appeal is, accordingly allowed.

[Operative portion already pronounced in open court]

(BINU TAMTA)
MEMBER (JUDICIAL)

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

Ckp.