IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Service Tax Appeal No. ST/574/2010-[DB]
[Arising out of Order-In-Revision No. 01/2010 dated 03.02.2010 passed by CCE Raipur]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon’ble Mr. B. Ravichandran, Member (Technical)

M/s. Bakliwal Brothers ...Appellant

Vs.

C.C.E. Raipur …Respondent

Appearance:
None for the Appellant
Mrs. Neha Garg, DR for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon’ble Mr. B. Ravichandran, Member (Technical)

Date of Hearing.24.01.2017
Date of Decision.02.02.2017

Final Order No. 50587 /2017

Per B. Ravichandran:

The appeal is against order in revision dated 3.02.2010 of Commissioner Central Excise Raipur. The dispute in the present case is relating to appellant’s liability to pay service tax with reference to their activity of promoting sale of “Koutons” brand of readymade garments supplied by M/s. Charley Creations Pvt. Ltd., the owner of said brand. The department entertained a view that the appellants are not eligible for exemption under notification 6/2005-ST as they have been rendering service of business promotion and marketing of branded products. The said notification providing for turnover based exemption for small scale service provider and the same is not available when the said service provider provides taxable service under a band name or trade name of another person.

2. The original authority dropped the demand against the appellant and held they are entitled for the said exemption. On revision in terms of Section 84 of Finance Act, 1994, The Commissioner passed the impugned order holding that the appellant have received consideration for service of promoting, marketing and sale of branded products "Koutons" and hence barred in availing the above exemption. The appellant in the present appeal contested the findings in impugned order on the ground that the original authority properly examined the scope of service and concluded that selling branded goods cannot be considered as providing service with brand name of another person. Reliance was also placed on the decision of the Tribunal in Fashion Square 2011 (24) STR 421 (Tri. Del.).

3. We have heard the Ld. AR.

4. None appeared on behalf of the appellant however, the order dated 19.01.2017 was received from the appellant stating to decide the case on merits.

5. We have perused, carefully, the impugned order, the original order as well as the grounds of appeal.

6. The Revision Authority (Commissioner) did not record any detailed reasons for reversing the decision of the original authority. He simply recorded that the appellant received value of service for promotion, marketing and sales of branded product acting as commission agent. He relied on the fact that huge advertisement boards were displayed by the appellant for the branded garments and also appellant advertised in newspapers and periodicals with the address and location of their shop displaying the brand name of the garments. We find that the impugned order fell in error in appreciating the scope of Notification 6/2005.

7. In our opinion, the original authority correctly examined the issue involved. The findings of the original authority, with which we are in agreement, are reproduced below:-

> "8. It is clear from the above that the services provided under a brand name of other persons are not eligible for the exemption under the aforesaid Notification. The show cause notice alleges that the Noticee are using the brand name "KOUTONS" owned by other, for providing the service, whereas the Noticee are contesting this. As stated earlier "KOUTONS" is brand name of goods that are sold in the sales outlet being operated by the Noticee for the client. I am unable to accept that this tantamounts to the use of brand name for provision of service by the Noticee to the client. The mere fact that a certain brand of goods are being sold through sales outlet of the service providers, would not automatically conclude that the said brand is used for providing business auxiliary services to the client by the service provider. Such a suggestion with reference to many service like cargo handling, C&F, Business Auxiliary, GTA etc. would make all such service providers out of the purview of Notifn. 6/2005-ST, as all of them handle goods bearing the brands of other, which certainly is not the intent of the legislature.

> 9. Coming to the facts of the instant case, I find that the Noticee have only handled the goods bearing the brand name of the client in the course of providing the business auxiliary services to the client and except this there has been no other evidence to substantiate the charges of the show cause notice. There is no evidence whatsoever to indicate that the Noticee are providing the business auxiliary service under any brand name owned by other. I find substantial force in the defence arguments of this account. The contention that when the service recipient is the owner of brand name than how can the Noticee use the same brand name for providing service to the owner of the brand, also deserves acceptance on merits.

8. We also note the Tribunal examining similar set of facts, allowed the exemption and under notification 6/2005-ST to the assessee in the case of Fashion Square (supra).

9. In view of the discussion of analysis as above the impugned order is set aside and the appeal is allowed.

(Pronounced in open court on 02.02.2017)

(B. Ravichandran)
Member(Technical)

(S. K. Mohanty)
Member (Judicial)

Neha