CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 20.07.2017

S. T. Appeal No. 1361 & 04 of 2011

(Arising out of order-in-appeal No. 270 (DKV) ST/JPR-I/2011 & 354(DKV)ST/JPR-I/2010 dated 17.06.2011 & dt. 7.10.2010 passed by the Commissioner (Appeals), Jaipur-I)

M/s Rajasthan Chemist Association Appellant

Vs.

CCE, Jaipur-I Respondent

Appearance:

Sh. Alok Kothari, C. A. for the appellant
Sh. Sanjay Jain, AR for the Revenue

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order Nos. 55600 – 55601/2017

Per: **Justice (Dr.) Satish Chandra**:

The present appeals have been filed against the order-in-appeal No. 270 (DKV) ST/JPR-I/2011 & & 354(DKV)ST/JPR-I/2010 dated 17.06.2011 & dt. 7.10.2010 passed by the Commissioner (Appeals), Jaipur-I.

2. During the period under consideration (01.10.2004 to 22.07.2009), the appellant have carried out the activity of chemist association and was charging some amount from the manufacturers to circulate the product information among its members. The Department is of the view that the activity carried out by the appellant is under "Business Auxiliary Service" and is subject to service tax. Being aggrieved, the appellant have filed the present appeals.

3. With this background, we heard Sh. Alok Kothari, ld. C.A. for the appellant. He submits that before issuing the show cause notice an amount of Rs.15,21,570/- was deposited as service tax under “Business Auxiliary Service”. Further, he has not pressed the amount of Rs. 11,585/- pertaining to the Club and Association Service. However, he emphasised that the amount of Rs.15,21,570/- which was deposited as “Business Auxiliary Service”. It is the submission of the ld. Counsel that the appellant was helping to the manufacturer by circulating the product information among its members. He also submits that some amount was charged from the manufacturer. He submits that the same is not subject to service tax and refund may be granted.

4. Sh. Sanjay Jain, ld. AR appearing for the Revenue justified the impugned order.

5. After hearing both parties and on perusal of record, it appears that the identical issue has come up before the Tribunal in the case of ***Federation of Gujarat State Chemist & Druggist Assn. Vs. CCE, Rajkot – 2012 (27) STR 292 (Tri. Ahmd.)*** where it was observed that-

> “5. *The first submission made by the ld. Counsel was that this cannot be considered as a business auxiliary service at all. It was submitted that the activity undertaken by the appellant cannot be considered as promotion or marketing or sale of goods produced or provided by or belonging to the client which attracts service tax as per the definition of business auxiliary service under Section 65(19) of the Finance Act, 1994. The ld. Additional Commissioner (A.R.) on behalf of the Revenue vehemently argued that the publication of the details of the medicines/ products of the manufacturers in the monthly news magazine amounts to business auxiliary service. Without the support of chemists and druggists and the sale of products by them. The medicines cannot be marketed at all. It was submitted that by publishing these details in the monthly news, the sale of the products was promoted by the association and therefore it has to be considered as business auxiliary service. On the other hand ld. Counsel submitted that the marketing and promotion of sale of pharmaceutical products is undertaken by the publication of pamphlets, brochures, advertisement in the print media and by contact with doctors*

through medical representatives of the manufacturers. The purpose of publication of these details in the monthly news is only to show what is the price the company charges to the stockist and what the stockist charges to the retailer and ultimate MRP. It was submitted that these details are of use only to the chemists and druggists. They would know what is the margin available to them by the sale of the product and what price the stockist is required to sale it to them according to the policy and if the person is a stockist he would know what would be the price that will be charged to the stockist by the company. The purpose is to help the members of the association to know the margins and also to ensure that buy at correct price and get the proper margins in their business. The main purpose is to provide information and the manufacturers also benefit since the price would be known to all the chemists and druggists and stockists also cannot over charge. In the absence of any information regarding the product such as its application, its utilisation, its efficacy and the benefits that arise from the use of the medicine, no promotion of sale or marketing would be possible. The information given by the appellant is limited to the name of the product and the name of the company and it would not indicate how the product was developed, how it can be used and who should use it and in what quantity. Mere publication of name of the company and the details explained above cannot amount to sale or promotion. We find ourselves in agreement with these submissions since mere publication of name of the company and name of the product along with details relating to price, packaging and dosage would not promote the sale or marketing of the product but the information would be of use only for the chemists/ druggists. In fact this information would not be of use even to the chemist who is required to dispense medicines in the shop. As submitted, the medicines are marketed and promoted through medical representatives and other means. Therefore we are not able to agree with the view that the service provided by the appellants amounts to business auxiliary service.

6. The second submission in support of the claim that the service is not a business auxiliary service is that there is a separate service which was introduced w.e.f. 1.6.2007. Taxable service provided by any person to any other person in relation to sale of space or time for advertisement is covered under this category of service and leviable to service tax but the definition specifically excludes sale of space for advertisement in print media and sale of time in broadcasting agency or organization. It was submitted that according to the explanation, the print media means the newspaper and book as defined in the Press and Registration of Books Act, 1967. He submits that the monthly news published by the appellant is nothing but a newspaper and relies on the decision of the Hon'ble Supreme Court (Manu/SC/0013/1988) in CA No. 8440/1983, dated 2.5.1988 in the case of All India Reporter Karmachari Sangh & Ors to support this decision. He also relies on the details of "Chemist News" submitted by them for the purpose of registration to support this submission that the monthly news is nothing but a newspaper. He relies on the observation of the Apex Court in para 11 "The contents of these law reports constitute news in so far as the subscribers and the readers of these reports are concerned. It is by reading these law reports they come *to know of the latest legal position prevailing in the country on any question decided in the decisions reported in the said reports". He submits that All India Reporter is monthly magazine meant for advocates and courts but nevertheless it was considered as a newspaper. In this case also monthly news published by them provides information useful to chemists & druggists. Therefore it has to be considered as a newspaper and therefore considered as a part of print media. He submits that the very fact that sale of advertising space service was brought into the net from 1.6.2007, would show that it would not be covered by business auxiliary service, prior to that date. He relies on the decision of the Tribunal in the case of BCCI reported in 2007 (7) STR 384 (Tri. Mum) to submit that imposition of tax on a particular activity from a specified date would mean that the impugned activity is not taxable prior to specified date under existing entries and heads. He submits that the activity undertaken by them is nothing but sale of space in monthly news to the manufacturers and therefore it could not be levied to service tax prior to 1.6.2007. We find considerable force in these arguments advanced by the ld. Counsel. It is quite clear that the activity undertaken by the appellant is nothing but sale of space, in view of the fact that we have already concluded that the activity is not promotion of sale or marketing of goods. Another reason that the service cannot be classified under business auxiliary service is that the service is more specifically covered under the heading sale of space as observed by us since the activity undertaken is only sale of space in monthly news. We need not have to go into this aspect as to whether the monthly news published by the appellant can be considered as a newspaper or a book since the issue before us is only whether the service provided can be categorised under business auxiliary service or not even though prima facie it appears to us that the submissions made by the ld. Counsel to consider the monthly news as a part of print media is correct*".

6. By following our earlier decision (supra), we set aside the impugned order and allow the appeals.

6. In the result, the appeals filed by the appellant are allowed with consequential relief.

(Dictated and pronounced in the open Court).

(V. Padmanabhan)
Member (Technical)

Justice (Dr.) Satish Chandra)
President

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