CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing: 18.07.2017
Date of Pronouncement: 02.08.2017

Application No. ST/MISC/53109-53113/2014
Appeal No. ST/2444-2446, 3323-3324/2012-ST[DB]

[Arising out of the Order-in-Appeal No. 104-106/GB/2012 dated 31/05/2012 and 161-62/GB/2012 dated 28/09/2012, passed by the Commissioner of Central Excise, Delhi]

M/s. R.C. Goel … Appellant

Vs.

C.C.E. New Delhi-I ... Respondent

Appearance:

Present Shri Atul Gupta, Advocate for the appellant
Present Shri Sanjay Jain, DR for the respondent

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

FINAL ORDER No. 55661-55665/2017

Per V. Padmanabhan:

These five appeals are against the orders in original no. 104-106/2012 dated 31/05/2012 and 161-62/2012 dated 28/09/2012.

2. The dispute covers the period April 2006 to March 2012. Since these appeals cover the same dispute these are disposed of through this common order. The appellant is engaged in supplying food to train passengers. Apart from this activity, they

are also engaged in supplying bed rolls to passengers and cleaning of the coaches and toilets of the trains. The period of dispute in this case is from April 2006 to August 2009, July 2009 to March 2010, October 2010 to September 2011. Prior to 1999-2000, the Indian Railway itself used to give contracts to various persons like the appellant for supply of food on board the trains, supply of bed rolls etc. Subsequently Indian Railways Catering and Tourism Corporation Ltd. (IRCTC) was set up which is fully owned by the Ministry of Railways. W.e.f. September 1999, IRCTC was responsible for organizing the catering and hospitality services on board the trains. They act as a licensing authority of Indian Railways to arrange for private entrepreneurs to undertake various onboard activities relating to the services to be provided on board the trains. The appellant was awarded licence by IRCTC to supply food and bed rolls to passengers in certain trains and also for cleaning of the coaches and toilets in those trains. For cleaning of coaches and toilets, the appellant received an amount from IRCTC on per coach basis which varies according to the duration of the journey from the starting station to the terminus. For supplying bed rolls to non-ACs coaches, the appellant were charging a specified amount from the passengers, 12% of which was being paid to IRCTC as licence fee and the balance was being retained by them in respect of supply of bed rolls to passengers. In respect of AC coaches, the appellant were receiving a specified amount per bed roll from IRCTC. The Department was of the view that the appellant are providing the "support services of business or commerce" taxable under Section 65(zzzq) read with Section 65(104c) of the Finance Act, 1994 and accordingly they would be liable to pay service tax on the amount being received by them from IRCTC.

3. On this basis, show cause notices were issued from time to time and the issue came to be decided in the above impugned orders in which the demand of service tax was confirmed under the "support services of business or commerce". Interest under section 75 of the Finance Act 1994 as well as imposition of penalty under various sections of Finance Act were also ordered. Aggrieved by the impugned orders the present appeals have been filed.

4. With the above background, we have heard Shri Atul Gupta, Advocate for the appellant and Shri Sanjay Jain, DR for the respondent.

5. The Ld. Counsel on behalf of the appellant made the following submissions:

i) The appellant submits that the activity of supplying of bed rolls and cleaning of coaches etc. does not amount to taxable service under the category of business support service. It is further submitted that as per section 65A which says that the most specific description shall be preferred to sub-clauses providing a more general description, the aforesaid service provided by the appellant does not get covered under the category of Business Support Service.

ii) The appellant in no case is providing the support service to IRCTC in relation to managing distribution and logistics, customer relationship management services and infrastructural support services. It is further submitted that the appellant has neither provided any infrastructural service to IRCTC nor is maintaining the stock of bed rolls belonging to IRCTC and moreover did not maintain any customer relationship on behalf of IRCTC.

iii) If the activity of the appellant is to be made taxable it should be made taxable under the category of "supply of tangible goods" 65(105) (zzzzj) as the appellant is supplying bed rolls (goods).

6. Ld. DR supported the impugned order. He argued that supply of bed rolls to passengers as well as cleaning of coaches will be covered within the definition of support services of business or commerce. It will be covered under "operational or administrative assistance in any manner as well as infrastructure support services". Accordingly, he argued that the impugned orders may be sustained.

7. Heard both the sides and perused the appeal record.

8. The dispute is regarding levy of service tax on cleaning of coaches / toilets of trains as well as supply of bed rolls to passengers. In the impugned orders such services have been classified under section 65 (zzzq) read with section 65 (104)(c) of the Finance Act 1994. The relevant definition is reproduced below for ready reference:

> **“"*Support Services of Business or Commerce*"** *means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfilment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational assistance for marketing, formulation of customer service and pricing policies, infrastructural support services and other transaction processing.*
>
> ***Explanation*** *-For the purposes of this clause, the expression "infrastructural support services" includes providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security.”*

9. The adjudicating authority has classified the services rendered by the appellant under the above by taking the view that said services are provided by the appellant in support to the business entrusted to IRCTC by the Indian Railways. However, the appellant has argued that said services will not be covered by said section 65 (zzzq) since it is not in the nature of support services to IRCTC in relation to managing distribution and logistics, customer relationship management services or infrastructure support services. They have further claimed that the supply of bed rolls can be brought under the services of supply of passenger goods under section 65(105)(zzzj). Since both the show cause notices as well as impugned orders

classified the services under business support services, they have argued that the demand merits to be set aside.

10. On carefully considering the submissions made by both the sides and on perusal of the records, we are of the view that the supply of bed rolls as well as cleaning of coaches and toilets of trains are not covered within the meaning of support services of business or commerce. The services have been rendered by the appellant to the passengers on behalf of IRCTC / Indian railways. We are of the view that such services are more appropriately classifiable under business auxiliary services under the category of "Customer care services provided on behalf of the client under section 65(11) of the Finance Act 1994". Since the show cause notice as well as the impugned orders have classified the services under business support services, these orders cannot be sustained and are required to be set aside.

11. In view of the above, impugned orders are set aside and appeals are allowed.

[Order Pronounced in the open court on 02.08.2017]

(V. Padmanabhan) Technical Member	(Justice Dr. Satish Chandra) President

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