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

COURT-I

Date of hearing: 13.11.2017
Date of Decision: 17.11.2017

Appeal No. ST/52249/2014- [DB]

[Arising out of the Order-in-Original No. 08/ST/SRB/2013-14 issued vide C.No. IV (16) Hqrs/Adj/BIL/402/2011/107 dated 09/01/2014, passed by The Commissioner (Adjudication), Service Tax Commissionerate, Delhi, New Delhi.]

M/s Bata India Ltd. … Appellant

Vs.

CCE ST Delhi … Respondent

Appearance:

Present Shri Manish Gaud, Advocate for the appellant
Present Shri Amresh Jain, DR for the respondent

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

FINAL ORDER No. 57943/2017

Per: V. Padmanabhan

1. This appeal is against the Order-in-Original No. 08/2014 dated 09/01/2014

2. The appellant is engaged in the business of footwear and related accessories. They are already registered for payment of Service Tax. During the course of audit of the books of the appellant, the Department noticed that the appellant was engaged in providing the service of repairing of footwear in various parts of

the country, but did not discharge Service Tax liability on the income realized from this service. But the appellant claim is that they were paying VAT on the full amount of income so generated and that they have supplied the material wherever necessary to complete the repairing service. It was further claimed by them that the activity of the appellant was essentially that of sale of material required in the repair of footwear such as soles, Velcro, scrap, elastic etc. While undertaking the said sale, the appellant also performed the incidental activity of fixing the footwear by carrying out the process of replacement of defective material with a new material. Accordingly, the appellant submitted that the transaction is a sale transaction and no Service Tax is liable to be paid.

3. The Department, however, took the view that the activity undertaken by the appellant was in the nature of service covered under the heading 'management, maintenance or repair service' falling under Section 65 (105) (zzzg) of the Finance Act, 1994. readwith Section 65 (64) *ibid*. Accordingly, show cause notice dated 24/10/11 was issued to the appellant and the impugned order was passed confirming the demand of Service Tax amounting to Rs. 46,53,610/- along with interest and penalties under various Sections. Aggrieved by the impugned order the present appeal has been filed.

4. With the above background we heard Shri Manish Gaud, Ld. Advocate for the appellant as well as Shri Amresh Jain, Ld. DR for the Department.

5. The argument advanced by Shri Manish Gaud, Ld Advocate is summarized below.

   i. The activity undertaken by the appellant is essentially that of sale of repaired materials. The activity of fixing such material onto the footwear is incidental. Since VAT has been paid on the full value of consideration received by the appellant there is no justification to demand service tax.

   ii. If the above argument is not accepted, he submitted that the activity involves transfer of both material as well as service and hence is to be classified under 'Works Contract Service' falling under Section 65 (105) (zzzza). The Hon'ble Supreme Court in the case of *Larsen and Toubro 2015 (39)STR 913 (SC)* has held that no Service Tax can be charged under WCS for the period prior to 1/6/2007. Accordingly, out of the demand raised by the Department in the present case, for the period April, 2006 to September, 2010, the demand prior to 01/06/1007 will have to be set aside.

   iii. In any case, the appellant claimed that they are eligible for the benefit of Notification No. 12/2003.-ST dated 20/6/2003 according to which the value of material supplied while performing the service can be excluded for purpose of payment of Service Tax. He further added that out of the total value of consideration received, 75 per cent will be excludable on account of supply of material and Service Tax will be payable on 25 per cent of the total consideration received.

6. The Ld. DR justified the impugned order. He submitted that if the appellant had paid VAT on the full value by mistake, that doesn't justify non-payment of Service Tax. He argued that the activity performed is in the nature of repair services and service tax will be liable to be paid. He also added that the appellant will not be eligible for benefit of Notification No. 12/2003 for failure to satisfy the conditions specified therein.

7. We have heard both sides and perused the record. The appellant is in the business of footwear. They have also undertaken the activity of repair of footwear. The Adjudicating Authority has examined the nature of activity carried out by the appellant and after perusal of copies of invoices raised by the appellant, he has recorded the finding that the same have been issued only for repair services. Further, he has recorded that there is no bifurcation of amount being charged into repair charges and material used in the repair. Accordingly, he has concluded that the activity carried out is in nature of repair of footwear and further that the cash receipt issued is only for gross charges for repair of footwear payable by the customer. It does not specifically mention sale of any material as is required for availment of benefit of Notification No. 12/2003.

8. He has recorded detailed findings in para 17.4 of the impugned order. After carefully considering the same in relation to the relevant records, we are of the view that such activity cannot be considered purely as sale of repair materials but is an activity covered under sec 65 (105) (zzzg) under the heading 'management, maintenance of repair service'. Consequently, appellant is liable for payment of Service Tax as demanded by the lower Authorities.

9. Next we turn to the claim of appellant that they are entitled to benefit of Notification No. 12/2003–ST dated 1/3/2006. Upon perusal of the same, we find that the benefit is available only subject to satisfaction of conditions specified therein. One of the conditions is that the assessee should be in possession of documentary evidence indicating of value of goods/materials sold along with the provision of service. Further, no Cenvat Credit of duty in respect of such goods and materials should have been availed. The Adjudicating Authority has recorded the finding that the appellant has failed to substantiate that they have fulfilled these conditions. They have also not placed any evidence to justify the benefit of notification as above. Consequently, we find no reason to interfere with the finding of Adjudicating Authority that the appellant is labile to pay Service Tax on the consideration received as well as will not be tangible for benefit of Notification No. 12/2003-ST.

10. The appellant also advanced the argument that the activity rendered by them will be covered under Works Contract Service specified in Section 65 (105) (zzzza). After perusal of the definition prevalent during the relevant time, we find that activity carried out is not covered within the meaning of the term 'Works Contract' as defined therein. Accordingly, we dismiss this argument raised by the appellant.

11. The appellant has also relied on several case laws. After perusing the same we find that none of the cases cover the issue which is before us.

12. In view of the above discussion we find no reason to interfere with the impugned order. Same is upheld and appeal is dismissed.

[Order Pronounced in the open court on__17/11/2017_]

(Justice Dr. Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

Rekha