**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**West Block No. 2, R.K. Puram, New Delhi – 110 066.**

**Date of Hearing/Order: 30.11.2017**

## Appeal No. ST/1491/2010-DB

(Arising out of Order-in-Appeal No. 291(DKV)ST/JPR-I/2010 dated 4.8.2010 passed by the Commissioner of Customs, Central Excise & Service Tax, Jaipur-I)

M/s Brindco Sales Ltd. Appellant

Vs.

CCE, Jaipur-I Respondent

**Appearance**

Shri Arshad Hidayalullah, Advocate - for the appellant
Ms. Surbhi Sinha, Advocate

Shri Sanjay Jain, D.R. - for the respondent

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

## Final Order No. 58180/2017

**Per B. Ravichandran :**

The appeal is against the order dated 4.8.2010 of Commissioner (Appeals), Jaipur.

2. The brief facts of the case are that the appellants in pursuance of an agreement entered into with M/s United Breweries Ltd., Bangalore undertaken various activities in connection with receipt, storage, sale and sale promotion of the goods manufactured and sold by their principal. The dispute in the present case relates to tax liability of the appellant for these activities under the category of Business Auxiliary Service as defined under Section 65(19) read

with Section 65(105)(zza) of the Finance Act, 1994. On verification of the record, the Revenue held a view that the appellants are covered by the said tax entry and are liable to pay tax on the whole of the amount received from M/s United Breweries Ltd. for discharging these functions. The lower authorities confirmed the liability of the appellant for service tax and also imposed penalties.

3. The ld. Counsel appearing for the appellant submitted that there are two issues involved for decision. The first one is with reference to availability of the exemption to the appellant under Notification No. 13/2003-ST dated 20.6.2003. The second one is with reference to valuation of taxable services after the withdrawal of the said notification. The ld. Counsel submitted that the appellant is covered by tax entry 'Business Auxiliary Service'. However, for the period during which Notification No. 13/2003-ST was in existence they are not liable to pay tax as they were essentially a 'commission agent' rendering 'Business Auxiliary Service'. Such services provided by a commission agent were exempted during the material time.

4. On the second issue, he submitted that in terms of the agreement with the principal, they have undertaken various activities which promoted and facilitated the sales of goods manufactured and cleared by the principal. They are liable to pay tax only on the amount relatable to the activity as a commission

agent for which the rate has been specified. They incur various other expenditures with reference to infrastructure, sales promotion, replacement of defective goods etc. These expenses are actually met by the principal on actual basis without any mark up. In other words, these expenditures are purely in the nature of reimbursable expenditure which otherwise would have been spent by the principal in the course of their business. The ld. Counsel relied on various decided cases to support his contentions as above.

5. The ld. AR contested the appeal on both the grounds. On the first issue, he submitted that the appellant is not a mere commission agent. He is actually appointed as a *del credere* agent as referred to in various clauses of the agreement. The ld. AR strongly contested the claim of the appellant that they will be covered by the Notification No. 13/2003-ST. The said notification exempts only the services rendered by the commission agent and not by a *del credere* agent. The scope of work and responsibility *del credere* agent are entirely different.

6. On the second issue, it is the submission of the ld. AR that the appellants have split up the various amounts received from the principal and accounted separately. Such a type of split up by itself will not justify any exclusion from the taxable value in terms of Section 67 of the Act. The expenses for merchandisers are all with

reference to promotion of sale of goods received from the principal. These are essential expenses to be included in the taxable value in terms of clear provisions under Rule 5 of the Service Tax Valuation Rules. There can be no exclusion from the gross value for tax purposes. Accordingly, he supported the findings of the lower authority.

7. We have heard both the sides and perused the appeal records.

8. On the first issue, we note that almost similar set of facts came up for consideration before the Tribunal in ***Premier Enterprises Vs. CCE, Hyderabad*** – 2009 (16) STR 158 (Tri.-Bang.). In the said case, the appellant was again in a similar arrangement with the same principal for sale of liquor etc. The Tribunal examined the scope of the agreement which referred to the appellant as *del credere* agent. It was concluded that the appellant received commission based on sales of goods and looking the totality of the agreement, it was held the appellants cause sale of the goods. The Tribunal rejected the contention of Revenue that the appellants are not commission agent. Accordingly, exemption available under Notification No. 13/2003-ST was extended to the appellant for the relevant period. In the present case also, the appellants are engaged *del credere* agent and are causing sale of goods received from the principal. The amount paid to the appellant is linked with the sales quantum. The same is pre-

determined as per the agreement. As such, applying the ratio of the above mentioned Tribunal's decision, we hold that the appellants are eligible for exemption as commission agent under Notification No. 13/2003-ST. In this connection, we also refer to the decision of the Tribunal in appellant's own case – 2015 (40) STR 986 (Tri.-Del.). In the said case also, the Tribunal examined the applicability of Notification No. 13/2003-ST and held in favour of the appellant.

9. On the second issue, we note that the appellants did incur various expenditures which they claim are reimbursable in nature. We have gone through the terms of the agreement and also certain illustrative documents available in the appeal papers. It is clear that the various expenditure which were claimed on actual basis to be reimbursed by M/s United Breweries Ltd. are in effect reimbursable expenditures which are incurred on behalf of the principal. These are in terms of pre-arrangement with the principal. It is clear such expenditure which are on behalf of the principal in accordance with agreement which are reimbursed on actual basis without any mark up are not to be included in the assessable value. In this connection, we also refer to the decision of Hon'ble Delhi High Court in the case of ***Intercontinental Consultants & Technocrats Pvt. Ltd. Vs. Union of India*** – 2013 (29) STR 9 (Del.) and the decision of Hon'ble Madras High Court in ***CST, Chennai Vs. Sangamitra Services Agency*** **–** 2014 (33) STR 137 (Mad.). Considering the ratio in these decisions which

have been followed in various decisions of this Tribunal, we find no justification to tax the reimbursable expenditures which are based on pre-arrangements with the principal and are received on actual basis.

10. In view of the above discussion and analysis, we find no merit in the impugned order. Accordingly, the same is set aside and the appeal is allowed.

(Dictated & pronounced in open Court)

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| (S.K. Mohanty)<br>Member (Judicial) | (B. Ravichandran)<br>Member (Technical) |

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