

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 87308 OF 2015

[Arising out of Order-in-Original No: 26/ST/COMMR/2015 dated 12th June 2015
passed by the Commissioner of Central Excise & Service Tax, Aurangabad.]

Akshay Dry Cleaners
C-18 MIDC Industrial Area, Shivaji Nagar
Nanded

... Appellant

versus

Commissioner of Central Excise, Customs & Service Tax
N-5 Town Centre, CIDCO, Aurangabad - 431 030

...Respondent

APPEARANCE:

None for the appellant

Shri OM Shivadikar, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A/87668 / 2019

DATE OF HEARING:	16/10/2019
DATE OF DECISION:	16/10/2019

PER: C J MATHEW

This appeal of M/s Akshay Drycleaners arises from the
confirmation of tax liability on the consideration received from Indian

Railways that, as provider of service enumerated in section 65(105)(zt) of Finance Act, 1994, was not discharged between 1st October 2008 and 30th June 2012 as well as for the period thereafter till 31st December 2013, in accordance with the definition of 'taxable service' in 65B(44) of Finance Act, 1994, consequent upon introduction of 'negative list' regime. Before us is impugned order-in-original no. 26/ST/COMMR/2015 dated 12th June 2015 of Commissioner of Central Excise, Customs & Service Tax, Aurangabad which, besides confirming liability of ₹ 22,43,077 and ₹28,30,271 for the respective periods under section 73 of Finance Act, 1994, along with applicable interest under section 75 of Finance Act, 1994, imposed penalty of like amount under section 78 of Finance Act, 1994.

2. None appeared for the appellant. We have heard Learned Authorised Representative who took us through the findings of the adjudicating authority.

3. From the grounds of appeal, we observe that the primary cavil of the appellant is that the adjudicating authority had not considered their claim that part of the income is attributable to 'wet cleaning' which was not taxable and that income attributable to 'dry cleaning' was below the taxable limit.

4. In paragraph no. 7.2 of the impugned order, the adjudicating authority has recorded that

'As regards Wet cleaning, they are having four machines in which they use chemicals viz.and wash the clothes etc. with water is not taxable. It is alleged in Show Cause Notice that no separate receipts for dry cleaning and wet cleaning are shown in the Balance Sheet, but they have issued bills for wet cleaning as well as dry cleaning and figures can be separately identified.'

but held that

'9.3 The noticee had provided the services of cleaning i.e. laundry services and cleaning services to the Railway department and cleaning of woollen blankets for Railways are taxable under Dry-cleaning services category. The noticee has also accepted that they have been providing dry cleaning services. In Balance sheets, the noticee has mentioned Wet-cleaning and Dry-cleaning services: but has not shown income from Wet-cleaning & Dry-cleaning separately. The rates for wet cleaning as well as for dry cleaning were in the same range, which shows that they had wilfully shown 'wet cleaning' on all bills and not mentioned 'dry-cleaning' in any bill, so that all their income would get exempted from payment of service tax. The noticee has provided services to the individuals as well as to Indian Railways, Nanded Division. As regards, cleaning of coaches of Indian railways viz. Manual sweeping with broom etc., I find that it does not fall, under the category of Business support service, since the noticee has not given any support services for the business activity of the Indian Railways. However, it would fall under category of manpower services, because they have provided manpower to get the coaches cleaned.'

5. It is also seen from the impugned order that the appellant herein

had produced certificate of Chartered Accountant dated 14th May 2015 which segregated the amounts received for ‘dry cleaning’ service and ‘wet cleaning’ service.

6. In view of the above circumstances, it would be appropriate for the impugned order to be set aside and the matter remanded back to the original authority to consider the receipts which the appellant claims is evidence of segregation of ‘dry cleaning’ and ‘wet cleaning’ undertaken by them that supports the certificate of Chartered Accountant.

7. Appeal is, accordingly, disposed of.

(Pronounced in open court)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)