CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 88304 of 2018
And
Service Tax Cross Objection No. 86826 of 2018

(Arising out of Order-in-Appeal No. CD/TR(Appeals)/ME/185/2017 dated 05.03.2018 passed by the Commissioner of Service Tax, IV Mumbai.)

Commissioner of Central Goods and Service Tax, Mumbai East .... Appellant
9th Floor, Lotus Infocentre
Near Parel Station, Parel (E), Mumbai-400 012.

Versus

M/s Gillette India Ltd. .... Respondent
P & G Plaza, Cardinal Gracias Road,
Chakala, Andheri (E), Mumbai-400 099.

Appearance:

Shri Nitin Ranjan, Authorized Representative for the Appellant
Shri Sanjeev Nair, Advocate for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86076/2023

Date of Hearing: 03.03.2023
Date of Decision: 03.07.2023

Per: M.M. Parthiban

This appeal is directed against an Order-in-Appeal passed by Commissioner of CGST & Central Excise, Thane Rural, Mumbai in Order reference No.CD/TR(Appeals)/ME/185/2017 dated 05.03.2018 (for short, herein referred to as 'impugned order').

2.1. Briefly stated, the facts of the case are that the M/s Gillette India Limited, Mumbai (herein after referred to as 'respondent-assessee', for short) are engaged in manufacture of male grooming products and in providing the services of Business Auxiliary Service,

Consulting Engineers' service and Intellectual Property service, as recipient of service from overseas service provider for which they are registered with the jurisdictional Service Tax Commissionerate under Registration No. AAACI3924JST003.

2.2. The respondent-assessee is one of the group companies of M/s. Procter and Gamble group along with M/s. Procter and Gamble Hygiene and Health Limited, M/s. Procter and Gamble Home Products Limited. These three companies are subsidiaries of M/s. Procter and Gamble, USA, who is the owner of various brand names such as "Ariel, Whisper, Vicks, Tide, Gillette" etc. During an investigation by the department it was identified that the respondent-assessee is making payment for royalty fee to their group company situated abroad for using their technology, Brand name etc. Further, respondent-assessee were found to be wrongly claiming exemption from payment of service tax under notification No.17/2004-ST dated 10.09.2004 without paying applicable service tax in respect of services received from the overseas service provider as per provisions of section 66A of the Finance Act, 1994. Accordingly show cause notice proceedings were initiated for recovery of service tax for the period 2007-2008 to 2011-2012 vide SCN No. 612/COMMR/ 2012-13 dated 19.10.2012 and for the period 01.04.2012 to 30.06.2012 vide SCN No. 124-ADDL/COMMR/2013-14 dated 11.11.2013 for Rs.92,21,884/- and Rs.13,62,519/- respectively. The original authority i.e., Additional Commissioner Service Tax-V, Mumbai had considered the written submission of the respondent-assessee dated 20.02.2013 and after giving a personal hearing on 23.01.2017, had adjudicated the case confirming the service tax demands proposed in the show cause notices, besides imposition of penalties under section 76 and 78 of the Finance Act, 1994 vide Order-in-Original No. 65&66/ST-V/ADC/RS/Gillette/16-17 dated 30.01.2017. Feeling aggrieved the respondent-assessee had appealed before the first appellate authority. The learned Commissioner of CGST & Central Excise, Thane Rural, Mumbai in terms of CBEC Order No.17/2017-S.T. dated 28.11.2017, this case having been assigned to him for passing an Order-in-Appeal had given a personal hearing on 08.02.2018 to the respondent-assessee

and decided the case by passing the impugned order, setting aside the Order-in-Original dated 30.01.2017, and by allowing the appeal with consequential relief to the respondent-assessee.

2.3. Being aggrieved against the impugned order dated 05.03.2018, the Revenue have filed this appeal before the tribunal.

3. The Learned DR appearing for the Revenue reiterated the submissions made in the grounds of appeal and further submitted that since the exemption provided in the notification No.17/2004-ST dated 10.09.2004 is in relation to the taxable services provided by the holder of 'intellectual property right', the same is not available to the respondent-assessee, who has discharged the service tax liability in the capacity of 'receiver' of such service under Section 66A ibid. The Ld. AR also relied upon the decision of the Hon'ble High Court of Bombay in the case of *Indian National Shipowners Association Vs. Union of India, Central Board of Excise & Customs [2008-TIOL-633-HC-MUM-ST]* for pressing the point that the levy of tax under Section 66A was essentially different from the levy of tax under Section 66 of the Finance Act, 1994.

4. On the other hand, the Learned Advocate appearing for the respondent-assessee submitted that since as per the deeming fiction provided under Section 66A ibid, the respondent-assessee is required to pay service tax and accordingly had discharged the service tax under reverse charge mechanism, inasmuch as the said legal provisions state that *"for the purposes of this section, be taxable service, and such taxable service shall be treated as if the recipient had himself provided the service in India, and accordingly all the provisions of this Chapter shall apply".* Hence, the Ld. Advocate pleaded that respondent-assessee has to be construed as the service provider and the provisions of Chapter V of the Finance Act should be applicable, including the exemption contained in the Notification dated 10.9.2004 to the recipient of service. To support the stand that the respondent should be eligible for exemption Notification No. 17/2004-S.T., dated 10-9-2004, the Ld. Advocate has relied on the decision of Principal Bench of this Tribunal in the case of

Commissioner of Central Excise & Service Tax, Indore Vs. Cummins Technologies India Ltd., [2017 (7) G.S.T.L. 69 (Tri.-Del.)].

5. Heard both the sides and perused the records.

6. Section 66 of the Finance Act, 1994 is the charging Section, which provides that in respect of taxable services mentioned therein, service tax shall be levied and collected in such manner as may be prescribed. Even for the import of service, the service tax has to be levied under Section 66 ibid. Since a deeming fiction was created in Rule 66A ibid, providing for payment of service tax by the recipient of service, such levy is in consonance with the charging provisions contained in Section 66 ibid. Thus, all the provisions of Chapter V of the Finance Act should also be applicable in respect of the service tax paid under Section 66A ibid. In the present case, since the appellant is liable to pay service tax as a recipient of the taxable service, the provision of Section 66 ibid should also be applicable to it. In other words, upon fixing the responsibility for payment of service tax under reverse charge mechanism, no distinction can be placed between the service receiver and service provider for the purpose of Section 66 ibid. Therefore, we are of the view that the benefit of exemption Notification No. 17/2004-S.T., dated 10.9.2004 should also be available to the respondent.

7. We find that the issue before us in the present case has already been decided by the Co-ordinate Bench of the Tribunal in the case of *United News of India Vs. CST New Delhi, Final Order No.50320/2017 dated 04.01.2017 [2017(51) S.T.R.23 (Tribunal)].* While interpreting the provisions of Section 66A ibid, it has been held that the benefit of the exemption should also be available to the recipient of service. The relevant paragraph in the said order is extracted herein below:

> *"5. Heard both sides and perused the appeal records. The only dispute in the case is that the eligibility of the appellant for the exemption under Notification cited above as a recipient of service. A plain reading of Section 66A brings out the legal obligation of the recipient of service in certain situations. The*

said Section stipulates that taxable service shall be treated as if provided by the recipient of service in India and accordingly, all the provisions of Chapter V shall apply. We find that the tax liability is put on the appellant on such legal fiction. It is not legally tenable to hold that such legal fiction will have limited application only for payment of service tax and not with reference to any concession available to such service tax. No such implication can be read from the provisions of Section 66A. Further, we also note that the conditions mentioned in the Notification 13/2010 have been fulfilled and there is no dispute on that score. When the provider of service is put to liability to discharge service tax as per provisions of Section 66A all the provisions of Chapter V shall have full force for charge and collection of service tax. The exemption now claimed is part and parcel of the provisions of service tax as the Notification has been issued under the powers vested under Section 93 of the said Act. Section 68(2) specifies the person to pay service tax as per the rate prescribed under Section 66. We note that Section 66A is applicable to all services which are specified under clause (105) of Section 65. However, no rates are specified. Considering the legal position as stipulated clearly in Section 66A, we find that the legal fiction cannot be restricted only to collection of tax without applying any concession of the notification applicable thereto when the conditions of the said Notifications are fulfilled by the recipient of such service. Accordingly, the finding in the impugned order on this issue is not sustainable. The appeal is allowed on this issue."

8. We also notice that the Hon'ble High Court of Bombay, in the case of *Indian National Shipowners Association (supra),* had held that the law laid down by the Hon'ble Supreme Court in its judgement in *Laghu Udyog Bharati Vs. Union of India, 1999 (112) ELT 365(S.C.)* is squarely applicable to Rule 2(d)(iv), whereby issue of notification dated 31.12.2004, any taxable service provided by a person who is a non-resident or is from outside India is notified for payment of service tax by a person who receives such taxable

service in India. It was held by Hon'ble High Court of Bombay that the Union of India got the legal authority to levy service tax on the recipients of the taxable service, first time when the Finance Act, 1994 was amended by inserting section 66A through the Finance Act, 2006 w.e.f. 18.4.2006. In other words, it is only after enactment of Section 66A that taxable services received from abroad by a person belonging to India are taxed in the hands of Indian residents. Hence, we are unable to agree with the ld. AR in his claim that charge of service tax under section 66A is distinguished, as the said order of the Hon'ble High Court of Bombay nowhere states that 66A is a charging section distinctively different from Section 66; in fact it is very clearly stated in the said order, that charge of service tax in respect of services rendered is provided under section 66 of the Finance Act, 1994.

9. We further find that the decision of the Tribunal in the case of *United News of India (supra)* has also been reiterated in the case of *Commissioner of Central Excise & Service Tax, Indore Vs. Cummins Technologies India Ltd., (supra).* The relevant paragraph in the said order is extracted herein below:

> *"6. Section 66 of the Finance Act, 1994 is the charging Section, which provides that in respect of taxable services mentioned therein, service tax shall be levied and collected in such manner as may be prescribed. Even for the import of service, the service tax has to be levied under Section 66 ibid. Since a deeming fiction was created in Rule 66A ibid, providing for payment of service tax by the recipient of service, such levy is in consonance with the charging provisions contained in Section 66 ibid. Thus, the provisions of Chapter V of the Finance Act should also be applicable in respect of the service tax paid under Section 66A ibid. In the present case, since the appellant is liable to pay service tax as a recipient of the taxable service, the provision of Section 66 ibid should also be applicable to it. In other words, upon fixing the responsibility for payment of service tax under reverse charge mechanism, no distinction can be placed between the service receiver and service provider for the purpose of Section 66 ibid. Therefore,*

we are of the view that the benefit of exemption Notification No. 17/04-ST dated 10.09.2004 should also be available to the respondent. We find that the Tribunal in the case of United News of India (supra) while interpreting the provisions of Section 66A ibid, has held that the benefit of the exemption should also be available to the recipient of service."

10. In view of above, we do not find any infirmity in the impugned order passed by the Ld. Commissioner of CGST & Central Excise, Thane Rural, Mumbai. Accordingly, the appeal filed by the Revenue is dismissed.

11. Cross objection filed by the respondent-assessee also stands disposed of.

(Order pronounced in open court on 03.07.2023)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha