CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 88020 OF 2019

[Arising out of Order-in-Appeal No: Order-in-Appeal No: PVNS/89/Appeals Thane/TR/2019-20 dated 17th July 2019 passed by the Commissioner of CGST & Central Excise (Appeals Thane), Mumbai.]

Century Rayon
Murbad Road, Shahad, Kalyan, Thane - 421103 … ***Appellant***

versus

Commissioner of Central Excise
Thane Rural
Abha bldg, Valipeer Road, Kalyan (W) - 421301 ***…Respondent***

APPEARANCE:

Shri Nazir K Shaikh, Advocate for the appellant

Shri SBP Sinha, Superintendent (AR) for the respondent

CORAM:

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

FINAL ORDER NO: 85316/2025

DATE OF HEARING: 04/03/2025
DATE OF DECISION: 04/03/2025

M/s Century Rayon is in appeal against order[1] of Commissioner of CGST & Central Excise (Appeals Thane), Mumbai for having upheld the order of the original authority confirming recovery of ₹

[1] [Order-in-appeal no. PVNS/89/Appeals Thane/TR/2019-20 dated 17th July 2019]

1,68,091 under section 73 of Finance Act, 1994, along with appropriate interest under section 75 of Finance Act, 1994, besides imposing penalty of like amount under section 78 of Finance Act, 1994 on ₹ 13,09,633 alleged to have been chargeable to tax owing to coverage within section 66(E)(e) of Finance Act, 1994 for the period from April 2013 to March 2016.

2. Learned Counsel for appellant submitted that, in terms of personnel policy of the appellant-company, employees wishing to sever their contract were required to pay an amount equivalent to three months of salary in lieu of notice and that such payments were not liable to tax as set out by the Hon'ble High Court of Madras in *GE T&D India Ltd v. Deputy Commissioner of Central Excise, Chennai [2020 (35) GSTL 89 (mad.)]* which was followed by the Tribunal in *Shriram Pistons and Rings Ltd v. Commissioner of CT, Ghaziabad [2020 (42) GSTL 79 (Tri.-All.)]*

3. Learned Authorised Representative reiterated the findings in the impugned order.

4. It is seen that the Hon'ble High Court of Madras, in identical facts and circumstances, has held that

> *'10. The provisions of Section 66E(e) appear to have given rise to some ambiguity, on this very issue, clarified by the Central Board of Excise and Customs (C.B.E. & C.) in C.B.E.*

& C.s' Guidance Notes dated 20-6-2012. At para 2.9.3 the Board states as follows :

> *2.9 Provision of service by an employee to the employer is outside the ambit of service.*
>
> *2.9.3. Would amounts received by an employee from the employer on premature termination of contract of employment be chargable to service tax?*
>
> *No. Such amounts paid by the employer to the employee for premature termination of a contract of employment are treatable as amounts paid in relation to services provided by the employee to the employer in the course of employment. Hence, amounts so paid would [not] be chargeable to service tax. However any amount paid for not joining a competing business would be liable to be taxed being paid for providing the service of forbearance to act.*

11. The query raised relates to a contra situation, one, where amounts have been received by an employee from the employer by reason of premature termination of contract of employment, and the taxability thereof. The Board has answered in the negative, pointing out that such amounts would not be related to the rendition of service. Equally, so in my view, the employer cannot be said to have rendered any service per se much less a taxable service and has merely facilitated the exit of the employee upon imposition of a cost upon him for the sudden exit. The definition in Clause (e) of Section 66E as extracted above is not attracted to the scenario before me as, in my considered view, the employer has not 'tolerated' any act of the employee but has permitted a sudden exit upon being compensated by the employee in this regard.

12. Though normally, a contract of employment qua an employer and employee has to be read as a whole, there are situations within a contract that constitute rendition of service such as breach of a stipulation of non-compete. Notice pay, in lieu of sudden termination however, does not *give rise to the rendition of service either by the employer or the employee.'*

5. Following the above decision, the impugned order is set aside to allow the appeal with consequential relief.

(Dictated and pronounced in open court)

(C J MATHEW)
Member (Technical)

**/as*