CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 88140 of 2019

(Arising out of Order-in-Appeal No. PVNS/381/APPEALS THANE/TH/2018-19/206 dated 04.01.2019 passed by the Commissioner (Appeals Thane), GST & Central Excise, Mumbai)

Popin Wedding House **…. Appellant**
11/B, Super Shopping Centre, Bajaj Cross Road,
Kandivali (West), Mumbai – 400 067.

Versus

Commissioner of Central Goods and Service Tax, Thane **…. Respondent**
3rd and 5th Floor, ACCFL House Road, No.-22,
Wagale Industrial Estate, Thane,
Mumbai – 400 0604.

APPEARANCE:

Shri Mayur Shroff and Shri Saurabh Mashelkar, Advocates for the Appellant

Shri S.B.P. Sinha, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/87595/2023

Date of Hearing: 08.03.2023
Date of Decision: 05.07.2023

Brief facts of the case are that the appellants are engaged in the business of providing dress materials on rental basis for the purpose of wedding. During the disputed period 2014-15, the appellants did not pay service tax attributable to such activities undertaken by them, on the ground that such activity of renting does not amounting to provision of any taxable service and that considering such activity as 'deemed sale', they had discharged the VAT liability thereon. However, the department did not accept the contentions of the appellants and initiated show cause proceedings, alleging that transfer of goods by

way of hiring, leasing, licensing or in any such manner, without transferring of right to use such goods, constitute as a 'declared service' under Section 66E(f) of the Finance Act, 1994. Further, it has also been contended by the department that activities of providing wedding dresses etc., are taxable under the category of 'Supply of Tangible Goods Service', defined under Section 65 (105) (zzzzj) and as a 'Service' under Section 65B (44) of the Act of 1994. The show cause notice issued in this regard, was adjudicated vide the original order dated 19.12.2006, in confirming the proposals made therein. On appeal against the said original order, the learned Commissioner of GST & Central Excise (Appeals), Thane vide the impugned order dated 04.01.2019 has upheld confirmation of the adjudged demands and rejected the appeal filed by the appellant. Feeling aggrieved with the impugned order dated 04.01.2019, the appellants have preferred this appeal before the Tribunal.

2. Heard both sides and perused the case records.

3. Section 65B (44) ibid defines the phrase 'Service' to mean any activity carried out by a person for another for consideration, and includes a declared service. The activities of hiring/leasing/licensing of goods, without transfer of right to use such goods constitute as a declared service. On reading of the statutory provisions, it transpires that if the right to use of the goods has not been transferred by the transferor to the transferee, then such transaction should fall under the purview of service, leviable to service tax thereon. On the contrary, if the right to use of the goods has been transferred, then there is no element of service and the transaction would be termed as a 'deemed sale', within the meaning of clause (29A) of Article 366 of

the Constitution of India, on which instead of service tax, the liability for payment of VAT/Sales Tax would be fastened with the transferor.

4. I have examined the conditions agreements indicated in the booking receipts issued by appellants at the time of renting of dresses. The conditions therein *inter alia*, provided that – '*the renting is for 24 hour period; the delay in return will be liable to additional rent; damaged or soiled dresses will be charged extra; damage on account of flower, haldi or oil stains will be charged; no delivery of goods without providing receipt; ensure that no valuable belongings are contained in the returned dresses; in case the booked piece is damaged or soiled, alternate piece can be taken'*. On reading of the contractual norms agreed upon by the transferor and the transferee, it transpires that the manner of use or effective control over the dresses during the period of renting were with the transferee and during the currency of that contractual period, the transferor (appellants herein) cannot question the manner and purpose for which, the dress material would be used by the transferee. Since, the effective control or right to use, was exclusively vests with the transferee, during the contract period, it can appropriately be concluded that the control over the dress material was never with the transferor i.e., appellants herein. Thus, the appellants are liable for payment of VAT/Sales Tax, on consideration of such transaction as 'deemed sale'. I also find that in the certificates dated 10.12.2016, M/s N.B. Vayeda & Co., Chartered Accountants have confirmed that the appellants are registered with the Maharashtra Value Added Tax Act, 2005 and issued the bills without charging MVAT separately and for the purposes of determining the MVAT liabilities; that the amount of bills were treated as inclusive of taxes.

5. In view of the foregoing discussions, I do not find any merits in the impugned order, insofar as it has rejected the appeal filed by the appellants. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellants.

(Order pronounced in open court on 05.07.2023)

(S.K. Mohanty)
Member (Judicial)

SM