Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No. 10718 of 2021
(Arising out of OIO-VAD-EXCUS-001-APP-443-2019-20 dated 07.11.2019 passed by Commissioner(Appeals), Commissioner of Central Excise, Customs & Service Tax-VADODARA-I)

LINDSTORM SERVICES INDIA PVT LTD **.....Appellant**
PLOT No. 931,
MAKARPURA-GIDC
VADODARA-GUJARAT

VERSUS

C.C.E. & S.T.-Vadodara-I **.....Respondent**
1ST FLOOR... NEW CENTRAL EXCISE BUILDING,
RACE COURSE CIRCLE, VADODARA, GUJARAT-390007

AND
Service Tax Appeal No. 11134 of 2019
(Arising out of OIO-VAD-EXCUS-001-COM-29-18-19 dated 18.03.2019 passed by Commissioner(Appeals), Commissioner of Central Excise, Customs & Service Tax-VADODARA-I)

C.C.E. & S.T.-Vadodara-I **.....Appellant**
1ST FLOOR... NEW CENTRAL EXCISE BUILDING,
RACE COURSE CIRCLE, VADODARA, GUJARAT-390007

VERSUS

LINDSTORM SERVICES INDIA PVT LTD **.....Respondent**
MAKARPURA-GIDC
VADODARA-GUJARAT

APPEARANCE:
Ms Vandana Singh (Advocate) appeared for the Appellant
Shri Tara Prakash, Assistant Commissioner(AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/ 10091-10092 /2023

DATE OF HEARING: 21.12.2023
DATE OF DECISION: 23.01.2022

RAMESH NAIR

The brief facts of the case are that the appellant is a subsidiary of Lindstrom OY Finland and is engaged in leasing workwear (uniform) to their clients on the conditions mentioned in the agreements with their clients. The salient features of the agreement are as under:

(i) That the Assessee undertook to deliver, wash and service individually customised workwear to the clients. Each worker will be provided with the workwear of his size which will be measured by the Assessee along with logo and labels as specified.

(ii) The Assessee would own the workwear and will have exclusive right to wash and service the same.

(iii) If the delivery is delayed or defective, the same shall be compensated by Lindstrom.

(iv) The workwear shall be collected by the customer once a week for being sent to Lindstrom for servicing.

(v) If the workwear cannot be leased because of wear and tear, it will be returned to Lindstrom but the customer shall pay the price as per the price list (depreciated price). If the workwear is to be replaced by the customer, the same is to be redeemed at agreed upon price.

(vi) Retail Price will increase every year by 8%.

(vii) VAT is being charged on the rental charges (see invoice reproduced at Para 4.3 Page 4 of the SCN).

(viii) There are separate provisions for pricing of replacement and valuation of redemption price.

On the basis of the above activities under the agreement and conditions therein, it appears that the appellant is engaged in supply of Work-wear on rent/ lease basis as per the requirement of each customer. The activity rendered by the appellant includes renting/ leasing of Work-wear, washing, maintenance, repairing, alteration, designing of Work-wear, providing lockers and transportation of Work-wear. The revenue after discussing the definition of 'Supply of Tangible Goods Service' as incorporated in Section 65(105)(zzzzg) before the introduction of negative list and definition of 'Service' under Section 65(B)(44) read with declared service under Section 66 of Finance Act, 1994, it appears that the nature of services involved supply of Work-wear for use while transferring possession only without transferring rights of effective control and thus appeared to be falling under the scope of declared service. Accordingly, the adjudicating authority was of the opinion that since the effective control of the goods has not been transferred, the activity of leasing of Work-wear falls under the category of taxable service i.e. supply of tangible goods service prior to introduction of negative list and declared service post negative list regime, therefore, the demand of service tax was dropped in relation to appeal No. ST/107182021. Being aggrieved by order in original No. DIV-

V/ADJAC/RV/02/LINDSTORM/19-20 dated 08.05.2019, the Revenue filed appeal before the Commissioner (Appeals) who vide order-in-appeal No. VAD-EXCUS-001-APP-443-2019-20 dated 07.11.2019 allowed the appeal of the department setting aside the order-in-original, against this order-in-appeal, the assessee filed appeal bearing No. ST/10718/2021. As regard the appeal No.ST/11134/2019 filed by the Revenue, the adjudicating authority has dropped the demand vide Order-in-Original No. VAD-EXCUS-001-COM-2918-19 dated 18.03.2019 against which the Revenue has filed appeal bearing No. ST/11134/2019. Since both the appeals involving a common issue, they are taken up for disposal together.

2. Ms. Vandana Singh, learned Counsel appearing on behalf of the assessee, at the outset submits that the similar issue arose out of the identical service agreement with various service recipient at Chandigarh and Chennai Bench, which was decided in favour of the assessee at the following order:

- Service Tax Appeal No. 99 of 2016 vide final order No. 60716 of 2019 dated 02.08.2019. [CESTAT Chandigarh]
- Service Tax Appeal No. 40498 of 2017 vide final order No. 40818 of 2020 dated 29.10.2020. [CESTAT Chennai]
- Service Tax Appeal No. 41249 of 2019 vide final order No. 42148 of 2021 dated 25.08.2021. [CESTAT Chennai]

She submits that with the above Tribunal orders as of now, the issue stand decided in favour of the assessee. Following the same, these appeals also deserve to be decided in favour of the assessee.

3. On the other hand, Shri Tara Prakash, learned (Assistant Commissioner) Authorized Representative appearing for the Revenue reiterates the findings of the impugned order in appeal No. ST/10718/2021 and reiterates the grounds of appeal in respect of Appeal No. ST/11134/2019. He further submits that in the appellants case against the Chennai Tribunal order, the Revenue has filed appeal before the Hon’ble Supreme Court which is pending. On the query from the bench, he fairly concedes that as of now there is no stay against the Chennai Tribunal’s order from the Hon’ble Supreme Court.

4. We have carefully considered the submissions made by both the sides and perused the records. We find that Tribunal's two benches one from Chandigarh and one form Chennai all the three orders decided the similar matter in the appellant's own case in their favour. The said Tribunal's Order are reproduced below:

CESTAT Chandigarh Order No. 60716 of 2019 dated 02.08.2019

> *"18. We have heard Ld. Advocate for the appellant and Ld. DR for Revenue and also perused the appeal records.*
>
> *19. The appellant is engaged in providing work-wear solution to the various industrial customers in terms of various agreements where there is transfer of effective control to the client. For the better appreciation the issue involved, it will be appropriated to extract the relevant provisions of the agreement entered by the appellant with their customers. A perusal of the agreement which has been placed on appeal record between the appellant and Mother Diary Fruits and Vegetables indicates that the agreement is for;*
>
> - *Supply of work-wear on rental basis as per the requirement of¬ customers;*
> - *Selection and fitting of individualise work-wear dying of¬ garments as per the requirements;*
> - *Period of washing of the garments (that is includes removal of¬ hazardous material etc.,)*
> - *Transportation of the garments*
>
> *20. The agreement has the terms conditions with the customers for the lease the work-wear from the appellant and the appellant owns the lease product, will have exclusive right to wash the work-wear and also the Noticee shall have exclusive right to serve the work-wear.*
>
> *21. The relevant paragraph of other agreement entered between the appellant M/s Eco Cat (India) Private Limited also reads as under;*
>
> ***Object of agreement:***
>
> *Ecocat (India) Pvt. Ltd. shall lease from Lindstrom Services India Pvt. Ltd. the work-wear and Lindstrom engaged in delivering, washing and servicing the work-wear and taking care of the required replacement of the work-wear in accordance with their purpose of use. Lindstrom owns the leased products and shall have the exclusive right to wash and service them.*
> *.....*
>
> *.....*
>
> - *Servicing Packing and transportation of the work-wears:*

Lindstrom shall place the packing and transport equipment needed for the deliveries at the disposal of the customer and the customer shall use the equipment only for such as purpose.

Work-wear to a named collection point in accordance with the schedule agreed; Lindstrom shall collect the work-wears for servicing once a weak. The work-wears shall be inspected and repaired in connection with their servicing; In case of any nonconformance with the agreed quality after the servicing of the work-wear, Lindstrom shall replace the work-wear.

- *Measurement changes, logos and name tags:*
- *Measurement changes and other changes shall be separately agreed upon.*
- *The work-wear can under a separate agreement be provided¬ with logos and name tags. The sewing work of the workwears is made by Lindstrom and charged at the process valid at any given time.*

.....

.....

22. Ld. Adjudicating Authority has treated this to be a pure service relying on the conditions of the agreement and also various other information available on the website of the appellant.

23. It was held that the work-wear always in the control of appellant and hence there is no transfer of effective control by the appellant hence out of the purview of the deemed sale as per the Article 366 (29A)(d) of the Constitution of India. It is necessary to have transfer of right to use involving both transfer of possession and also effective control of the goods by the user of the goods. The transaction for allowing another person to use the goods without giving legal right of possession cannot be treated as deemed sale of the goods, and thus has to be treated as service only. It is also the contention of the Department that after introduction of the negative list based tax regime, the activity of the supply of goods without transfer of right liable to tax by virtue of Section 66E (f) of Finance Act. On the other hand, we find that Ld. Advocate as relied upon the Hon"ble Supreme

Court"s decision in case of ***Bharat Sanchar Nigam vs. Union of India****, wherein it is held under;*

91. To constitute a transaction for the transfer of the right to use the goods the transaction must have the following attributes:

a. There must be goods available for delivery;

b. There must be a consensus ad idem as to the identity of the goods;

c. The transferee should have a legal right to use the goods-consequently all legal consequences of such use including any permissions or licenses required therefor should be available to the transferee;

> *d. For the period during which the transferee has such legal right, it has to be the exclusion to the transferor this is the necessary concomitant of the plain language of the statute - viz. a "transfer of the right to use" and not merely a licence to use the goods;*
>
> *e. Having transferred the right to use the goods during the period for which it is to be transferred, the owner cannot again transfer the same rights to others.*
>
> *92. In my opinion, none of these attributes are present in the relationship between a telecom service provider and a consumer of such services. On the contrary, the transaction is a transaction of rendition of service.*

24. It is the contention of the Ld. Advocate that simply retaining the right to wash and maintain work-wear for the clients would not make it as if the effective control on these goods has been retained by the appellant. We are in agreement with the contention made by Ld. Advocate as the same as got approval from Hon"ble Supreme Court in BSNL case(supra). We also find that the similar issue come up for consideration before this Hon"ble Tribunal in case of ***Gimmco Limited vs. Commissioner of Central Excise and Service Tax, Nagpur [2017 (48) STR 476 (Tri.- Mum)****. The issue involved in that case was regarding the renting of earth moving equipments to various Customers by the M/s Gimmco Limited and based on the clauses in the agreement, there was restriction of use by the lessee as skilled workers to operate the equipment was being provided by the lessor and maintenance and repair of the equipments were also by the lessor in para 5.1, 5.3, 5.4 and 5.6 of the order it has been held that there is no service involved in this case relying on yet another decision of Hon"ble High Court of Andhra Pradesh in case of M/s G S Lamba. The paragraph 4 which is relevant is reproduced as below;*

> *"4. The Petitioners' counsel contends that five eventualities to infer the transfer of the right to use goods are not completely present in the transaction between the Petitioners and Grasim. He would urge that the Tribunal was wrong in relying on Clauses (A), (B) and (D) of the contract in concluding that the Petitioners had transferred the right to use Transit Mixers to Grasim. According to him, these clauses would not lead to any such conclusion and that there was no intention to create exclusive right to use the vehicles by Grasim. The clause for providing dedicated fleet of vehicles with Grasim's logo "Birla Concrete" being painted on them is no indication that the intention was to transfer the right to use Transit Mixers. The RMC is a product with short shelf life and its marketability depends on the quality. So as to assure the product quality to end-user, it was agreed to paint the brand name on the vehicles. The same, however, does not lead to an inference that there is consensus ad idem; and that the Petitioners should keep ready the dedicated fleet of eight vehicles to be used by Grasim. In the absence of transfer of possession and effective control, Section 5-E of the Act is inapplicable. Lastly it is urged that the Tribunal was in error in not*

> *recording findings on all the issues raised by the Petitioners. The Counsel relied on various precedents to which a reference would be made at the appropriate place."*

25. From the perusal of these judgments, it is evidently clear that the some of the activities of regarding the maintenance and washing of work-wear rented to the clients, by the appellants will not mean that effect control as been retained by the appellant. Further, we have also considered the criteria laid down by the Apex Court in case of BSNL, (supra) regarding transfer of effective control in terms of the provisions of Section 366 (29A)(d) of the Indian Constitution.

Further, we also find that Apex court in case of Rashtya Ispat Nigam Limited has explained the similar issue as well;

> *"5.4 The Apex Court in case of Rasthya Ispat Nigam Limited ahs explained the issue in lucid language. "The essence of transfer is passage of control over the economic benefits of property which results in terminating rights and other relations in one entity and creating them in another. While construing the word "transfer" due regard must be had to the thing to be transferred. A transfer of the right to use the goods necessarily involves delivery of possession by the transferor to the transferee. Delivery of possession of a thing must be distinguished from its custody. It is not uncommon to find the transferee of goods in possession while transferor is having custody. When a taxi cab is hired under "rent-a-car" scheme, and a cab is provided, usually driver accompanies the cab; there the driver will have the custody of the car though the hirer will have the possession and effective control of the cab. This may be construed with the case when a taxi car is hired for going from one place to another. There the driver will have both the custody as well as possession; what is provided is service on hire. In the former case, there was effective control of the hirer (transferee) on the cab whereas in the latter case it is lacking. We may have many examples to indicate this differences." If we equate the observations of the Court and the activities of the noticee, it would be seen that the „possession" and „custody" of the work-wear always lies with the user. Once the work-wear/clothing is „delivered/handed over to a particular user, it is up to the user how to put the same to use as per his choice. There remains no „control" of the noticee over the user so as to restrict or compel a user to use the articles of clothing in a particular manner. This proves that the „possession" and „custody" of goods practically remains with the user."*

26. Accordingly, we find that in the instant case, in terms of agreement work-wear rented out always remains within the exclusive possession of their clients and nobody else can use the those workwear at the same time and hence effective control to lie with the user/ clients. The appellant, therefore, does not have control over the use of the work-wear. Thus the activity is not in the nature of „service" under the Finance Act in both during the period prior to negative list regime and thereafter as held in the

impugned order. The order under challenge is, therefore, not sustainable.

27. In view of above the impugned order is set aside and appeal is allowed."

Subsequently in appellant's appeal before the Chennai Cestat was decided vide Final Order No. 40818 /2020 dated 29.10.2020, following the decision of CESTAT Chandigarh Bench is as under:

"6. The issue that arises for consideration is whether the activity of work wear rental falls under the category of supply of tangible goods so as to attract service tax. The terms and conditions of the agreement has been briefly incorporated in the order in original which is as under:-
"The terms and conditions of the agreement are as follows:-

a. *The assessee will only lease the work wear to their customers / clients.*

b. *The assessee arranges the fittings which finally determine the needed number of specific work wear and service free per product is charged for the same. LSIP is entitled to take an inventory of all products.*

c. *The assessee owns the leased work wear and keeps the exclusive right of washing, maintenance, repairing, alteration etc. of work wear with itself and their customers are not free to avail these services from any third party.*

d. *The assessee shall collect the work wear for Servicing, Packing and Transportation on weekly basis. Thereafter, they wash, inspect and repair and finish them industrially.*

e. *In case of termination of the contract, customers / clients shall redeem from the assesse, the work wear that have been in the use.*

f. *In all circumstances like cancellation of agreement, the work wear remains the property of LSIP."*

7. The Chandigarh Bench of the Tribunal had occasion to analyse very same issue and terms and conditions of similar agreement entered into by the appellant with clients. After analysis of the transaction as seen from the agreements, the Tribunal held as under:-

> *"26. Accordingly, we find that in the instant case, in terms of agreement work-wear rented out always remains with the exclusive possession of their clients and nobody else can use those work wear at the same time and hence effective control to lie with the user / clients. The appellant, therefore, does not have control over the use of the work-wear. Thus the activity is not in the nature of „service" under the Finance Act in both during the period prior to negative list regime and thereafter as held in the impugned order. The order under challenge is therefore not sustainable"*

> *8. Further, the Commissioner (Appeals) vide Order-in-Appeal dated 26.12.2017 of Hyderabad Commissionerate has also held in the appellant's own case that work wear does not amount to supply of tangible goods so as to attract service tax. From the decisions cited above, we think it is not necessary to take up the detail discussion of the issue since the same has been already analysed by the Chandigarh Bench.*
>
> *9. Following the said decision, we are of the considered opinion that the impugned order cannot sustain. The same is set aside and the appeal is allowed with consequential relief, if any."*

On the similar issue, the CESTAT Chennai in an another appeal, following their own above order and CESTAT Chandigarh order once again decided vide Final Order No. 42148 / 2021 dated 25.08.2021 whereby the demand on the identical service was set aside and appeal was allowed.

5. From the above decision, it is observed that the CESTAT's two benches have taken a consistent view that the service in question is not taxable under supply of tangible goods for use or under the declared service. Therefore, following the aforesaid decisions in the present cases also, the issue deserve to be decided in the favour of the assessee. As regard, the submission of learned Authorized Representative that against the aforesaid two Chennai Tribunal's order, the Revenue has filed appeal bearing No. Civil Appeal No. 6459 of 2021, we find that as of now either side could not produce any stay order staying the operation of the Chennai Tribunal's Order, therefore, mere filing of appeal before the Hon'ble Supreme Court will not of any help to the Revenue.

6. Accordingly, in appeal No. ST/11134/2019, the impugned order is upheld and Revenue's appeal is dismissed and in appeal No. ST/10718/2021, the impugned order is set aside and assessee's appeal is allowed.

(Pronounced in the open court on 23.01.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha