(2010) 02 P&H CK 0191

In the Punjab And Haryana At Chandigarh

Case No : Service Tax Appeal No''s. 19 and 25 of 2009

Commissioner of Central Excise APPELLANT

Vs

Vahoo Colour Lab. RESPONDENT

Date of Decision : 03-02-2010

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35G

Citation : (2010) 18 STR 548 : (2010) 25 STT 1 : (2010) 29 VST 371

Hon'ble Judges : Mehinder Singh Sullar, J;Ashutosh Mohunta, J

Bench : Division Bench

Advocate : H.P.S. Ghuman, for the Appellant;

Final Decision : Dismissed

Judgement

1. As common question of law and facts are involved, therefore, we propose to dispose of all the above-mentioned six appeals, by this order to avoid repetition of facts. However, for facilitation, the facts have been extracted from STA No. 19 of 2009.

2. The revenue has directed the present Service Tax Appeal against the impugned order dated 25.11.2008 (Annexure A4) of the Customs, Excise & Service Tax Appellate Tribunal, invoking the provisions of Section 35G of the Central Excise Act, 1944 ((for brevity "the Act").

3. The matrix of the facts, culminating in the commencement of, relevant for disposal of present appeals and emanating from the record, is that the respondent-assessee M/s Vahoo Colour Lab.,Fountain Chowk, Ludhiana (for short "the assessee") is engaged in rendering service relatable to photography, developing and printing. The revenue claimed that during the course of inquiry, it revealed that the assessee has not sold the material/goods to the recipient of service and availed the benefit of Notification dated 20.6.2003 and willfully suppressed the taxable value of material/goods consumed, during the process of providing the service. Consequently, a show cause notice was issued to the

assessee.

4. In the wake of show cause notice, the assessee filed the reply, inter-alia, explaining that the photography films, printing papers, chemical and envelopes are the integral and essential ingredients of their developing/printing job and without the use of the same, photography service cannot be provided. These expenses were stated to constitute a major portion of their expenditure, besides the expenditure of electricity, repair and maintenance of machines directly related to the processing of photography films. It was claimed that they have already paid the service tax on the value of service and are not liable to pay the remaining claimed service tax. According to the assessee, the material Service Tax Appeal No. 19 of 2009 and other connected appeals 3 brought and sold as such are chargeable to sales tax and is a State subject and Central Government has no power to tax purchase or sale of goods under the garb of service tax when they are not brought or sold in the course of Inter State trade.

5. The Adjudicating Authority relied upon the following clarification dated 7.4.2004 of the Central Board of Excise and Customs, in the matter of Punjab Color Lab Association:

I am directed to refer to your representation forwarded to Finance Minister vide letter dated 11th March 2003 and stated that in terms of the Notification dated 12/2003 Service Tax dated 20th June 2003 the exemption in respect of input material consumed sold by the service provider to the service recipient while providing the taxable service is available. However the exemption is available only if the service provider maintains the records showing the material consumed/sold while providing taxable service. The value of such material should also be indicated on the bill/invoice issued in respect of taxable service.

and dropped the proceedings initiated in pursuance of show cause notice to the assessee, vide order dated 2.3.2006 (Annexure A2).

6. The order of the Adjudicating Authority and the claim of the assessee did not find favour and revisional authority reviewed the order of Adjudicating Authority and confirmed the demand of service tax alongwith interest and also imposed a penalty, equal to the amount of service tax, vide impugned order dated 8.1.2008 (Annexure A3).

7. The assessee did not feel satisfied with the impugned order Annexure A3 and filed the present appeal before the Appellate Tribunal. The Appellate Tribunal accepted the appeal of the assessee, set aside the order of Commissioner and restored the original order of Adjudicating Authority, vide impugned order dated 25.11.2008 (Annexure A4). Service Tax Appeal No. 19 of 2009 and other connected appeals 4

8. The revenue did not feel satisfied with the impugned order of Appellate Tribunal (Annexure A4) and filed the present appeals.

9. The core question, that arises for determination, is whether the assessee is

liable to pay the service tax on the value of goods/material consumed, during the course of processing of photography or not?

10. Having heard the learned Counsel for the appellant-revenue and having gone through the record with his valuable help, we do not find any legal infirmity in the impugned order of the Appellate Tribunal (Annexure A4).

11. As is evident from the record that the assessee had already paid the service tax on the value of service, but the claim of the revenue is that the service tax is also leviable on the cost of material consumed during the course of processing of photography by the assessee. The Appellate Tribunal has relied on the order dated 22.10.2008 passed in ST Nos. 285 to 288 of 2008 in case Deluxe Colour Lab Pvt. Ltd., wherein it has been held that photography service is in the nature of works contract and it involves elements of both, sales and service and the service tax is leviable on the sale portion.

12. An identical question arose before the Hon''ble Supreme Court of India in case Bharat Sanchar Nigam Ltd. and Another Vs. Union of India (UOI) and Others, , wherein it has been held that if the nature of transaction involved is composite contract, of service and sale and if the components of sale element is discernible, then both the components cannot be re-mixed for the purpose of relevant tax.

13. It is not a matter of dispute that processing of photography cannot be completed without the developing and printing process, to provide the service to the recipient. The photography films, printing papers, chemicals and envelopes are the integral and essential ingredients to complete the process of photography. Meaning thereby, the components of sale of photography, developing and printing etc. are clearly distinct and discernible than that of photography service. Therefore, Service Tax Appeal No. 19 of 2009 and other connected appeals 5 we are of the view that as the photography is in the nature of works contract and it involves the elements of both sale and service, therefore, the service tax is not leviable on the sale portion, in the obtaining circumstances of the case.

14. No other point, worth consideration, has been urged or pressed by the learned Counsel for the appellant.

15. In the light of the aforesaid reasons, as no other infirmity has been pointed by the learned Counsel for the appellant, therefore, the impugned order of the Tribunal is hereby maintained. Consequently, the instant appeals are hereby dismissed, with no order as to costs.

