(2007) 07 RAJ CK 0039

In the Rajasthan High Court

Western Rajasthan Colour Lab Association APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 20-07-2007

Acts Referred:
Finance Act, 1994 — Section 67

Citation : (2008) 9 STR 351

Hon'ble Judges : Rajesh Balia, J;Manak Lall Mohta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. After recalling the order dated 21st April, 2005, by a separate order passed in D.B. Civil Misc. Application No. DR(J)1203/06, we have heard learned Counsel for the parties on merit of the writ petition.

2. The petitioner No. 1 is an association of individuals and firms who are engaged in business of running Photo and Colour Labs and are also engaged in the business of processing (i.e. developing and printing) colour photographic films. The petitioner No. 2 is one of the member of the Association. The dispute relates to the manner in which the value of service, rendered by them is to be computed for the purpose of determining Service Tax payable by them.

Under Section 67 of the Finance Act, 1994, the value of taxable service is defined as gross amount charged by ''the service providers'' for such service rendered by them. In the wake of this general definition, an Explanation has been inserted u/s 67 specifying certain individual cases of different kinds of services for the purpose of determining taxable value of services provided but the same do not include any provision about the determination of valuation in case of ''photography service'', though the Explanation refers to the cost of unexposed photography film, unrecorded magnetic tape or such other storage device if any, not to be included for the purpose of calculating the taxable service. By Notification No. 12/2003, dated 20th June, 2003, which came into effect on

1-7-2003, it was envisaged that while rendering the service, the value of goods and material supplied by the Service provider to the recipient of Service shall be exempted from the levy of Service Tax, subject to condition that there is documentary proof specifically indicating the value of the said goods and material supplied.

The petitioner''s case is that these circular cannot control the provisions made substantively about the valuation of the taxable service to be the value of gross amount charged for the service rendered and the same can include the cost of material supplied while rendering the services, as property in goods passes to the customer by way of sale or transfer of property, which is not a part of Service provided but amounts to sales of those goods.

3. In raising this contention for claiming deduction of the value of photographic materials from the gross receipts by the service provider for determining taxable service turn over, the challenge was made to the aforesaid circular dated 20th June, 2003.

4. In this background, two circulars were issued by the Board in relation to computation of value of service in regard to service tax on photography service.

The circulars were captioned as instructions and clarifications. The validity of both circulars Annex. 1 and 2 have been challenged in this writ petition.

5. The learned Counsel for the parties are now in agreement that since filing of this writ petition, this issue has been finally settled by the decision of the Supreme Court in C.K. Jidheesh Vs. Union of India (UOI) and Others, . The Apex Court found that while considering the challenge to the letters of Finance Ministry clarifying doubts regarding interpretation of provision of Section 67, in regard to computation of value of service rendered in the case of photograph services, the real challenge was to amendment in the Finance Act, which the Supreme Court had already upheld in the case of Kerala Colour Lab. Association Vs. Union of India (UOI),

6. The claim to bifurcation of gross receipts of processing of photograph between goods supplied and service of processing, the Court rejected the same.

It referred to its earlier decision in case of M/s. Rainbow Colour Lab and Another Vs. The State of Madhya Pradesh and Others [OVERRULED], in which it was held by the Court, while considering the claim of Revenue to consider the photograph business to be execution of works contract involving transfer of property in goods used in execution of such work and that in such contracts there is no element of sale of goods. Rejecting the contention it was held that the contract of the type entered into by persons like the petitioner are nothing else but service contracts pure and simple.

7. In view of the aforesaid, the contention to bifurcate the gross receipt of the photographic service between the price of the goods supplied and services rendered was rejected by the Supreme Court.

8. As a result of the aforesaid, the petitioner is not entitled to any relief.

The writ petition is, therefore, dismissed. There shall be no order as to costs.

