

IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

Appeal No. ST/00199/2010

(Arising out of Order-in-Original No. 60/2009 dated 28.10.2009 passed by the Commissioner of Service Tax, Chennai)

M/s. Mail Related Services : Appellant

Vs.

Commissioner of Service Tax, Chennai : Respondent

Appearance:-

Ms. Radhika Chandra sekhar, Advocate
for the Appellant

Shri S. Govindarajan, AC (AR)
for the Respondent

CORAM:

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Hon'ble Shri P Dinesha, Member (Judicial)

Date of Hearing/Decision:20.06.2018

Final Order No. 41849 / 2018

Per Shri Madhu Mohan Damodhar,

The appellants are engaged in providing mailing services using franking machines obtained on licence from the postal department. In this exercise, appellants collect the mail from their clients, frank them as per weight and then mail the documents/packets concerned. For this activity, appellants collected certain service charges from the clients. The

appellants were discharging tax liability in respect of service charges received from their clients with effect from 16.06.2005, namely, from the date from which "Mailing List Compilation and Mailing Services" became taxable under the Finance Act, 1994.

2. In respect of franking cost, the clients take out demand drafts in favour of the Post Master General. In some cases, appellants pay the franking cost on behalf of their customers, however, get it reimbursed from the latter subsequently. Appellants also receive a rebate of 3% on the franking charges from postal department. Department took the view that these activities will fall within the scope of business auxiliary services as under Section 65(19) of the Finance Act, 1994; that the franking charges are required to be taken into account for arriving at taxable value and that rebate received from postal department is nothing but an amount paid for promoting or marketing of postal service and, hence, will also be taxed under BAS; that reimbursement of cost of postage received from the clients cannot be termed as pure agent expenditure. Accordingly, a Show Cause Notice dated 29.05.2008 was issued to appellants, inter alia, proposing demand of an amount of Rs. 51,22,977/- with interest thereon and imposition of penalties under various provisions of the Act. In adjudication, the Commissioner, vide the impugned order No. 60/2009 dated 28.10.2009, dropped the demand

for tax liability prior to 16.06.2005, however, confirmed the liability subsequent to that date as proposed in the notice. Penalties under Section 77 and 78 of the Act were also imposed. Hence, this appeal.

3. Today when the matter came up for hearing, on behalf of the appellants Ld. Advocate Ms. Radhika Chandra Sekhar made oral and written submissions, which can be broadly summarized as under:

(i) That the postage is a 'statutory duty' as defined by the Indian Post Office Act and that this statutory duty is permitted to be paid to the Government of India by way of affixing physical postage stamps and by franking of the appropriate postage on the letters by making use of the licensed franking machines.

(ii) As per Section 17 (2) of the Indian Post Office Act, 1898 postage franked through Franking Machine is a statutory levy and therefore it cannot be considered as a consideration for the purpose of Section 67 of the Finance Act, 1994 as amended to impose Service tax.

(iii) The clients of the Appellant had taken the demand draft for the franking charges directly in the name of Post Master General and the same cannot be considered as a consideration.

(iv) In case of the shortage if any in the franking charges the Appellant takes a DD in favour of the postmaster general and is reimbursed by the client.

(v) As there is nothing flowing from the service recipient to the service provider there is no question of inclusion of franked postage in the value.

(vi) As per Section 67 the gross amount charged by the service provider has to be for the service provided. Any amount received which has no nexus with the taxable service and is not a consideration cannot be taxed.

(vii) That the Tribunal in the case of *United Mailing Services (2016) 42 S.T.R. 924* has held that rebate received from the postal department on franking charges is not liable to be taxed. Further, the Tribunal has held that rebate cannot be designated as commission or remuneration for a service. Further, the Tribunal has observed that inclusion of franking cost in the service charges receivable by the Appellant from the client would be contrary to Post Office Act. The Supreme Court in the case of *CST Vs. Bhayana Builders (Civil Appeal nos. 1335-1358 of 2015 dated 19.02.2018)* has held that therefore, any amount charged which has no nexus with the taxable service and is not a consideration for the

service provided and does not become part of the value which is taxable under Section 67.

(viii) The Supreme Court in the case of *UOI Vs. Intercontinental Consultants and Technocrats Pvt. Ltd. (Civil Appeal No. 2013 of 2014 dated 07.03.2018)*, has struck down Rule 5(1) of the Valuation Rules, 2006 which provides for inclusion of expenditure or costs incurred by the service provider in the course of providing taxable service in the value on the ground that it is ultra vires Section 66 and Section 67 and travels much beyond the scope of the said Sections.

(ix) The postal department gives the rebate to encourage the use of franking machine and there is no service provider-client relationship between appellant and the post office and according to the Memo of the postal department, the 3% rebate for the use of the franking machines is an "independent concession". Franking machine is used to avoid pasting of postage stamps, avoid pilferage and thereby make the work much convenient and easier way.

4. On the other hand, Ld. AR supports the impugned order.

5. Heard both sides.

6. It is not disputed that the costs related to franking are paid directly to the Post Master General by the appellant's clients or are otherwise paid by the appellant and subsequently, reimbursed by the said clients. Therefore, it cannot be alleged that the said charges are accruing to the appellants. Hence, in our view, they cannot be made part of the value of taxable service. Even in cases where the appellants pay the franking cost to the postal department on behalf of their clients, they get reimbursed for the same by the said clients. In the latter cases, the situation will be fully covered by the ratio laid down by the Hon'ble Apex Court in *Union of India Vs. Intercontinental Consultants and Technocrats Pvt. Ltd., 2018 (10) G.S.T.L. 401 (S.C.)*. We are, therefore, of the firm view that the franking cost cannot be made part of the value of taxable service.

7. Coming to the controversy on rebate received from the postal department, it cannot be treated as a commission or an amount received for promoting the postal services. Such incentives are given by the postal authority to encourage use of franking machines, especially where the volumes are above a certain threshold level. We, therefore, do not find any merit in the adjudicating authority's stand that these are required to be taxed under Business Auxiliary Services.

8. In arriving at these conclusions, we draw sustenance from the decision of the Tribunal in *United Mailing Services (supra)* relied upon by

the Ld. Advocate where these very issues have been addressed. The relevant portions of that decision are as under:

“7. Having heard the rival contentions, we cannot but be surprised by the discriminatory approach in the two impugned orders situated in identical circumstances by the same appellate authority. The more specific taxable service of ‘mailing list compilation and mailing’ was notified only from 16th July, 2005 and taxing that very service under any other entry that existed till then is an act of overreach contrary to legislative intent of taxing the rendering of that service only with effect from 16th June, 2005. The later order in the matter of M/s. Sai Mailing Service was decided without taking into account the benefit of enlightenment in the form of the order in the matter of M/s. United Mailing Service and has, therefore, erred in upholding the decision of the lower authority for the demand prior to 16th June, 2005.

8. We note the attempt to tax the rebate/commission received from the Department of Posts in the hands of the appellants and the manner in which the appellate authority has handled the matter. Both the impugned orders appear to have neglected to explain their reasons for upholding the finding of the original authority that appellants are taxable for ‘provision of service on behalf of client.’ It would appear that the Department of Posts are the clients of the appellants and, by franking the envelopes for dispatch, have rendered service otherwise to be rendered by that Department to those who contracted with the appellants.

9. In our opinion, this is a superficial and casual view of the transaction. The Central Government alone can, under Section 16 of the Indian Post Office Act, 1898, cause postage stamps to be provided and also prescribe the duties and remuneration of persons selling postage stamps, Franks are an alternative means of paying postal charges and franking machines are provided to bulk mailers. It would appear that a casual and superficial examination of the activity has been undertaken by the original and appellate authority in scrutinizing the taxability. The nature of the transaction between the appellants, the entities that contracted with the appellants and the Department of Posts is essential to the task at hand considering the statutory nature of carriage of postal articles. The appellants enter into a contract with certain business entities to facilitate bulk mailing. The entire activity of dispatch is effected by the appellants on behalf of the business entities and the appellants re, therefore, the users of the post office. The business entities that contract with the appellants do not approach the post office for any service. This

has been acknowledged by the original and appellate authorities in accepting the reimbursements as precisely that; they ignored this finding of theirs and merely concerned themselves with deeming the rebates as the consideration obtained by the appellants from the post office. The appellants have the status of bulk mailers in relation to the post office and, as is the usual practice in dealing with bulk customers, franking machines are offered as a facility instead of being made to purchase stamps at the vending counter and affixing them on the postal articles. Rebates are offered as an incentive for the reduced workload on the post office staff. Such a rebate can hardly be designated as commission or remuneration for a service. Indeed, no service is apparent in this transaction. It is the appellant who is the customer of the post office and not the clients of the appellant and franks are used by the appellant to complete the task that they have undertaken in the agreement with the client, i.e., to despatch the articles. The franking charges are collected as reimbursement because the statutory mandates in the Post Office Act do not permit them to act as agent unless specifically designated under the corresponding Rules as agent. That is an entirely different function and has a statutory sanction accorded to it. Inclusion of franking cost in the service charge receivable by the appellant from the client would be contrary to the Post Office Act. Thus, the transaction of franking or usage of the postal service is solely between the appellants and the post office with the former as a customer of the latter. The depiction of the latter as a client is not consistent with this reality and the categorization under Section 65(19)(vi) fails the test of rationality. Accordingly, that demand cannot survive in the appeals."

9. In the circumstances, we find that the impugned order cannot sustain and will have to be set aside, which we hereby do. Appeal is, therefore, allowed with consequential benefits, if any, as per law.

(Dictated and pronounced in open Court)

(P Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

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