

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH – COURT NO. IV

SERVICE TAX APPEAL No. 52954 OF 2018

[Arising out of Order in Appeal No. 64(SJ)/ST/JPR/2018 dated 16.05.2018 passed by Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jaipur]

**M/s. Rajasthan Co-Operative Dairy
Federation Limited**

Saras Sankul, JLN Marg,
Jaipur.

...Appellant

Versus

Commissioner of Central GST, Jaipur

New Central Revenue Building
Statue Circle, C-Scheme,
Jaipur - 302005

....Respondent

APPEARANCE:

Ms. Shagun Arora, Advocate for the appellant

Mr. S.K. Meena, Authorized Representative for the Respondent

Coram:

HON'BLE DR.RACHNA GUPTA, MEMBER (JUDICIAL)

HON'BLE MRS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 22/07/2024

DATE OF DECISION: 06/11/2024

FINAL ORDER NO.59418/2024

DR. RACHNA GUPTA

M/s. Rajasthan Co-Operative Dairy Federation Limited, the appellant filed a refund claim for Rs.56,37,495/- in respect of service tax paid for services provided by them to their milk unions during the period 01.04.2014 to 30.06.2014 on 27.03.2015.

2. On scrutiny of the said Refund claim filed by the assessee, department observed that the assessee has sought refund of service

tax paid by them on the taxable value Rs. 5,44,29,757/- charged as service fee (cess) from their 21 milk unions during the period 01.04.2014 to 30.06.014, for which they issued invoice no. 79 to 96 all dated 20.07.2014 and issued debit note no. 50648-65 to milk unions. The assessee also recovered service tax Rs.56,37,495/- by issuing general voucher No. 270 dated 07.11.2014 from milk unions and issued debit note No. 50666-83 for the same.

3. However, as per decision in proposal No. 23(7) of Annual General Meeting of RCDF held on 26.09.2014 with the share holders (Unions) unanimously decided to waive of service fee (cess) the taxable value charged from milk unions for the period 01.04.2014 to 30.06.2014 and orders for waiver of the same were issued vide letter No. 28809-63 dated 13.10.2014 and letter No. 28754-808 dated 13.10.2014. Therefore, this refund claim has been filed by the assessee.

4. Department served the Show Cause Notice No.18/48/2015 dated 24.06.2015 proposed to reject the said refund claim dated 27.03.2015 on the following grounds:

- a) Noncompliance of consideration of returning the amount of service tax by service provider to service recipient as required under section 118 of Central Excise Act (CEA)
- b) Noncompliance of Rule 6 (3) of Service Tax Rules, 1994.
- c) No information about availment of Cenvat Credit either by the appellant or by its Member unions.

5. This proposal has been accepted by Order-in-Original (O-I-O) No.69/2016 dated 13.06.2016. Appeal against the said order has been dismissed vide Order-in-Appeal No.64/2018 dated 16.05.2018.

6. We have heard Ms. Shagun Arora, Id. Counsel for the appellant and Mr.S.K. Meena, Ld. Authorised Representative for the Revenue.

7. Ld. Counsel for the appellant has submitted that the appellant renders marketing support to the milk unions, coordinates with the State / Central Government and other financial institutions, assists in business planning, extends working capital support, etc. In lieu of the services rendered to milk unions, the Appellant collected 'milk cess' from the milk unions, on which service tax was discharged by the Appellant under the Finance Act, 1944 (hereinafter referred to as the 'Act'). For the period 01.04.2014 to 30.06.2014, the Appellant charged a service fee of Rs. 5,44,29,757/-. However, vide decision of Annual General Meeting dated 26.09.2014, as was documented through Order No. 28809-63 dated 13.10.2014, it was decided that the milk cess charged from the milk unions for the period 01.04.2014 to 30.09.2014 be waived off. In compliance with the order, the Appellant issued a Journal Voucher No. 271 dated 07.11.2014 for reversal of service fee of Rs. 5,44,29,757/- and credited this amount to the accounts of the milk unions. Further, Credit Note Nos. 50702-19 dated 23.03.2015 were issued to the milk unions to refund the amount of Rs. 67,27,520/-, which was recovered as service tax. Consequently, the Appellant filed the impugned refund claim on

27.03.2015. Ld. Counsel further submitted that no service tax was payable by the appellant as the transaction does not qualify as a service', hence, the refund claim was rightly filed. Refund is available to the appellant in terms of rule 6(3) of the Service Tax Rules read with section 11B of the Excise Act. It is submitted that the case of the appellant falls under case (iv) of Rule 6(3) of the ST Rules. A service has been rendered but the invoice value was renegotiated due to terms of contract. Service tax has been refunded to the milk unions.

8. Ld. Departmental Representative reiterated the findings of Commissioner (Appeals) and prayed for the dismissal of appeal.

9. Having heard the parties at length and perusing the record, we observe as follows:-

In the present case, the Appellant was charging a fixed amount of service fee from the milk unions in lieu of its services. However, consequent to the AGM, it was decided that no service fee would be recovered, from the milk union member.

10. This waiver of service fee must be understood as the re-negotiation of the invoice value, which has been reduced from a fixed amount to NIL. Further, the fact that the waiver of service fee was in pursuance of an AGM, which was documented vide the written order, indicates that the re-negotiation was in the nature of an amendment in the service contract between the Appellant and the milk unions.

11. In this regard, the Appellant submits that as per the Black's Law Dictionary (Eighth Edition, 2004), the term 'renegotiate' means the act or process of negotiating again or on different terms; a second or further negotiation. In the present case, the consideration for promotion and marketing services has been negotiated again from a pre-decided amount to NIL.

12. The present refund application pertains to the period when the negative list regime was in force, where the levy of service tax under Section 66B required the presence of a 'service' as defined under Section 65B(44) of the Act. In order for a transaction to qualify as a 'service', it is the prerequisite that there is a service provider, a service recipient and 'consideration'.

13. In the present case, we observe that the Appellant had rendered services to milk unions in the nature of promotion, marketing, business analysis, etc. Against these services, the Appellant collected a service fee on which service tax was discharged on the applicable rate. However, on account of an AGM and resulting order dated 13.10.2014, the service fee was entirely waived on a retrospective basis for the period 01.04.2014 to 30.06.2014. Pursuant thereto the Appellant refunded the entire service fee to the milk unions along with the service tax recovered from them. There is no dispute on this fact. The present refund of service tax paid by the Appellant was filed on account of such waiver of consideration.

A 'service' in terms of Section 65B(44) of the Act mean :

"(44) "Service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

(a) An activity which constitutes merely,--

(i) A transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

(ii) Such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or

(iii) A transaction in money or actionable claim;

(b) A provision of service by an employee to the employer in the course of or in relation to his employment;

(c) Fees taken in any Court or tribunal established under any law for the time being in force.

Explanation 1.—For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply to,--

(A) The functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or

(B) The duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

(C) The duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee before the commencement of this section.

Explanation 2. - For the purpose of this clause, transaction in money shall not include any activity relating to the use of money or its conversion by cash or by any other mode, from one form,

currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

Explanation 3.-- For the purposes of this Chapter,—

(a) An unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;

(b) An establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons.

Explanation 4.—A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory;”

14. As provided above, once the consideration (service fee) was refunded by the Appellant to the milk unions, the transaction between the two parties no longer qualified as a 'service' and no service tax would be leviable thereupon.

15. Reliance is placed on the following decisions wherein it has been held that service tax can be charged only when services have been provided against a consideration:

(i) East India Technologies Private Limited vs. CC & CE, Noida, 2018

(8) TMI 27-CESTAT Allahabad

(ii) Commissioner vs. Larsen and Toubro Limited, 2016 (44) STR 391
(Gujarat)

(iii) Raje Vijaysingh Dafale SSK Limited vs. CCE, Kohlapur, 2015 (38) STR 1056 (Tribunal-Mumbai)

16. It is already observed that prior to the waiver of service fee, the activities undertaken by the Appellant qualified as a taxable service in terms of Section 65B(44) of the Act, wherein the Appellant carried on the promotion, marketing, analysis, etc, of the business of the milk unions. Further, the Appellant also discharged service tax on the service fee received from the milk unions. Since, preceding the full waiver of service fee, there is no dispute that the Appellant was rendering a 'service' to the milk unions and that post waiver the appellant has issued credit notes to all milk union members for the amount of service tax as was collected from them, the appeal the service tax so paid is refundable to the appellant.

17. With these observations, the order under challenge is set aside and the appeal is allowed.

[Pronounced in the open Court on 06/11/2024]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)