

2022 (64) G.S.T.L. 605 (Tri. - Bang.)

IN THE CESTAT, SOUTH ZONAL BENCH, BANGALORE

[COURT NO. I]

S/Shri Ramesh Nair, Member (J) and P. Anjani Kumar, Member (T)

KARNATAKA STATE BEVERAGES CORPORATION LTD.*Versus***COMMISSIONER OF SERVICE TAX, BANGALORE-I***Final Order Nos. 20205-20210/2022, dated 28-4-2022 in Appeal Nos. ST/805/2009 with ST/1703/2011, ST/331/2012, ST/25436/2013, ST/20326/2020 & ST/20120/2021*

ST : Demurrage fee charged by state beverages corporation from manufacturers of liquor in case stock of liquor was not lifted within 90 days, was not a charge for storage of goods as ownership of goods were vested in appellants themselves; such charge was not liable to Service Tax as no service was rendered by appellant

Storage and warehousing service - Appellant-Corporation was established for distribution of liquor, purchased liquor from distilleries, stored in hired storage bases/godowns, and thereafter sold same to licensed wholesale dealers keeping a profit margin varying depending on type of liquor as per rates fixed by Government - Demurrage fee @ ₹ 2 per carton charged by appellant from manufacturers in case stock of liquor was not lifted within 90 days, was not a charge for storage of goods as ownership of goods vested in appellants themselves - Payments received by appellants in form of commission or warehousing charges were not exigible to Service Tax as no services such as 'Business Auxiliary Service' and 'Storage and Warehousing Service' were being rendered by appellant-Corporation - Section 73 of Finance Act, 1994. [paras 1, 4, 4.1]

Assessee's appeals allowed/Department's appeal dismissed in favour of assessee**CASES CITED**

Commissioner v. Karnataka State Beverages Corporation Ltd. — [2011 \(24\) S.T.R. 405](#) (Kar.) — *Referred* [Para 2]
 Commissioner v. Karnataka State Beverages Corporation Ltd. — [2015 \(40\) S.T.R. 209](#) (S.C.) — *Referred* [Para 2]
 Commissioner v. Kerala State Beverages (Mfg. & Mktg.) Corpn. Ltd. — [2014 \(33\) S.T.R. 484](#) (Ker.) — *Referred* [Paras 2, 4.1]
 Commissioner v. Rajasthan State Beverages Corporation Ltd. — [2018 \(16\) G.S.T.L. J131](#) (S.C.) — *Referred* [Para 2]
 K.S.B. (Mfg. & Mktg.) Corporation v. Commissioner — [2013 \(31\) S.T.R. 565](#) (Tribunal) — *Referred* [Para 2]
 Karnataka State Beverages Corporation Ltd. v. Commissioner — [2007 \(8\) S.T.R. 481](#) (Tribunal) — *Relied on* [Paras 2, 4]
 Rajasthan State Beverages Corporation Ltd. v. Commissioner — [2018 \(11\) G.S.T.L. 157](#) (Raj.) — *Referred* [Paras 1, 2]
 Review Petition No. 110 of 2015, decided on 15-2-2022 by Rajasthan High Court — *Referred* [Para 2.1]
 Union of India v. Chhattisgarh State Beverages Corporation Ltd. — [2015 \(37\) S.T.R. 972](#) (Chhattisgarh) — *Referred* [Para 2]

REPRESENTED BY : S/Shri K.S. Ravi Shankar, Sr. Advocate and N. Anand, Advocate, for the Appellant.
 Mrs. D.S. Sangeetha, Addl. Commissioner, Authorised Representative, for the Respondent.

[Order per : P. Anjani Kumar, Member (T)]. - The appellants, M/s. Karnataka State Beverages Corporation Ltd., are a Government of Karnataka Undertaking and are wholly owned and controlled by the Government of Karnataka; the appellants are designated as a company for sole distribution of liquor in the State of Karnataka. The appellant purchases liquor from distilleries from in and outside State of Karnataka and distribute the same in the State. The appellants enter into agreement with distilleries and manufacturers and to sell the same to licensed wholesale dealers in accordance with Karnataka Excise Act and Rules framed thereunder. The appellants sell liquor to various license holders keeping a profit margin varying depending on the type of liquor as per the rates fixed by the Government. The appellants would also store liquor for a maximum period of 90 days without charging any storage fee. In case, the liquor is not sold within this period, the appellant is entitled to charge Rs. 2/- per carton. The Revenue was of the opinion that the amounts collected by the appellants are towards the services rendered by them under the category of 'Business Auxiliary Service' and 'Storage and Warehousing Services'. Periodical show cause notices have been issued and have been confirmed as follows :

Appeal No.	OIO/OIA	Period	Amount
ST/00805/2009	No. 26-28/2009, dated 29-6-2009	July. 2003 to Sept., 2008	Rs. 55,82,44,982/-
ST/01703/2011	No. 53/2011, dated 24-3-2011	Oct., 2008 to Sept., 2009	Rs. 28,47,01,583/-
ST/00331/2012	No. 188/2011, dated 24-11-2011	Oct., 2009 to Sept., 2010	Rs. 43,22,08,173/-

ST/25436/2013	No. 125/2012, dated 23-10-2012	Oct., 2010 to Sept., 2011	Rs. 20,86,77,740/-
ST/20326/2020	No. 26/2019-20, dated 27-2-2020	Apr., 2014 to Sept., 2016	Rs. 8,37,49,392/-

The appellants are before us challenging the above impugned orders. In respect of the period October, 2011 to September, 2012, the Commissioner (A) has dropped the demand following the ratio of Rajasthan High Court's decision in the case of *Rajasthan Beverages Corporation Ltd. v. CCE, Jaipur*. The Revenue is in appeal before us, against such setting aside by the Commissioner (Appeals) *vide* Appeal No. 20120/2021.

2. Learned Sr. Counsel for the appellants submits that the issue is no longer *res integra* being decided in number of cases *i.e.*, *Rajasthan State Beverages Corporation Ltd. v. CCE* : [2018 \(11\) G.S.T.L. 157](#) (Raj.); *Chhattisgarh State Beverages Corporation Ltd. v. CCE* : [2015 \(37\) S.T.R. 972](#) (Chhattisgarh); *Kerala State Beverages (M & M) Corporation v. CCE* : [2014 \(33\) S.T.R. 484](#) (Kerala); *K.S.B. (MGF. MKT.) Corporation v. CCE* : [2013 \(31\) S.T.R. 565](#) (Tri. - Bang.) and *Karnataka State Beverages Corporation Ltd. v. CST* : [2007 \(8\) S.T.R. 481](#) (Tri. - Bang.) (Revenue appeal dismissed by Hon'ble Karnataka High Court as reported in [2011 \(24\) S.T.R. 405](#) (Kar.), which was affirmed by the Supreme Court as reported in [2015 \(40\) S.T.R. 209](#) (S.C.). He further submits that decision of *Rajasthan State Beverages Corporation Ltd.* (supra) has been upheld by Supreme Court by dismissing the Special Leave Petition as reported in 2018-TIOL-270-SC-CX = [2018 \(16\) G.S.T.L. J131](#) (S.C.).

2.1 Learned Counsels for the appellant further submits that the Revenue appeal is on the ground that the Learned Commissioner (Appeals) has followed the judgment of Rajasthan High Court (supra) whereas the departmental Review Petition No. 110/2015 is pending before Rajasthan High Court. He submits that Rajasthan High Court *vide* order dated 15-2-2022 has dismissed the Review Petition.

3. Learned Authorised Representative for the Revenue reiterates the findings of impugned orders in respect of party appeals and grounds of appeal in the Revenue appeal.

4. Heard both sides and perused the records of the case. On going through the rival submissions and the records of the case, we find that the case is no longer *res integra* as submitted by the Learned Counsel for the appellant. We find that this very Bench in the appellant's own case finds as follows :

"6.5 On a very careful consideration of the entire issue, we find that the appellant-corporation has been established for the distribution of liquor within the State of Karnataka by purchase and sale of liquor from the various manufacturers and distilleries. Since the liquor is purchased by them, the same has to be stored also. Therefore, the appellants incur various expenditure towards the storage of the liquor. Only when the liquor is not lifted within 90 days, the demurrage charges are levied from the supplier. Strictly speaking, we cannot consider this as a charge collected for storage of the goods because ones the appellant-corporation purchases the goods, the ownership no longer vests with the manufacturer. So, even if it is considered that the appellants are rendering the services of storage and warehousing, such service is only in respect of the goods owned by them for which, no Service Tax can be levied. We also find that from the Bill of Karnataka State Warehousing Corporation raised on the appellant that they charge Service Tax at the rate of 10% and Education Cess 2% in respect of the charges collected from them for hiring the storage bases to them. In our view, the appellants are only recipients of the services of storage and warehousing and it cannot be said that they are providing the services of Storage and Warehousing so that they would be liable to payment of Service Tax under that category in terms of Finance Act, 1994. The fact that they record the charges collected as "storage charges" would alone be not a proper reason for treating them as storage charges in view of the decisions of the Hon'ble Apex Court holding that the substance of a transaction would prevail over the form. In view of our above observations, we do not find any merit in the impugned order. There is also no justification for imposing such a savage penalty on a State Government Corporation, in these circumstances, we allow the appeal with consequential relief, if any."

4.1 We find that *Kerala State Beverages Corporation Ltd.* (supra) has held as follows :

"18. As per Section 5(2C) of the KGST Act, sales tax is levied on the first sale by the appellant. This statutory requirement does not make the transfer of liquor by the distilleries to the Corporation, a transaction not constituting sale. In the *State Bank of India v. State of Kerala* reported as 2007 (7) VST 621 (Ker) dated 30-10-2006, facts were that the exporters received gold bullion under contract from the bank on substantial payment of the price. They were free to manufacture ornaments and sell/export the same. As the ultimate sale price was finalized in the subsequent year and invoice raised thereafter, the bank claimed that such sale should be assessed in the subsequent year. The authorities rejected this contention and the Tribunal confirmed such decision. The High Court held as follows : "Since the sale took place on delivery of goods under terms of contract, the transaction was rightly assessed in the year in which delivery was given". The above judgment supports our finding that the transfer of supplies to KSBC in terms of the rate contracts is pursuant to completed sale. The provisions of "The Sale of Goods Act" do not warrant a different inference in the facts of the case for the reason that payment of consideration is deferred as per contract."

In view of the above, we find that the appellants have discharged their statutory functions as the mandate given by the Karnataka State Excise Act and Rules thereunder and have not rendered any services such as 'Business Auxiliary Service' and 'Storage and Warehousing Service'. Therefore, the payments received by them in the form of commission or warehousing charges are not exigible to service tax. Therefore, we find that the impugned orders as far as they relate to the party's appeals are not sustainable and needs to be set aside. For the same reason, the department's appeal is not maintainable.

5. In the result, Appeals No. ST/805/2009; ST/1703/2011; ST/331/2012; ST/25436/2013 and ST/20326/2020 filed by M/s. Karnataka State Beverages Corporation Ltd. are allowed and Revenue's Appeal No. ST/20120/2021 is dismissed as not maintainable.

(Order pronounced in the open Court on **28-4-2022**)