

AUTHORITY FOR ADVANCE RULINGS
(CENTRAL EXCISE, CUSTOMS & SERVICE TAX)
NEW DELHI

PRESENT

Mr.Justice P.V. Reddi (Chairman)
Mr.A. Sinha (Member)
Mrs. Chitra Saha (Member)

Tuesday, the Thirty First March of Two Thousand Nine

Ruling No. AAR/02/ST/2009

IN

Application No.AAR/44/15/ST/2008

Applicant	M/s Print Top Rubber Industries 1086, 1 st Floor, Bhandup Industrial Area, Pannalal Silk Mill Compound, LBS Marg, Bhandup (W) Mumbai, Maharashtra 400 078
Commissioner concerned	Commissioner of Service Tax, Mumbai, Maharashtra (Maharashtra)
Present for the applicant	-
Present for the Commissioner	Shri S.K. Panda, Jt. CTR, New Delhi Shri Sumit Kumar, SDR, New Delhi

R U L I N G

(by Mr. A. Sinha)

This application has been filed by Print Top Rubbers Industries, a proprietary concern, under section 96(C) of the Finance Act, 1994 (the **Act**). The applicant states that it proposes to set up a joint venture company in India in collaboration with Vagle Imports, USA to manufacture rubber rollers, rubber moulded goods and re-rubberising old and used rubber rollers of printing

machines. It is with respect to re-rubberising old and used rollers that the applicant sought ruling of the Authority on the following questions-

- (i) In the re-rubberising process, an invoice will be raised for full value of material used in rerubberising process and sales tax will be collected. The question of law arises as to on the re-rubberising charges to be collected any service tax is payable under section 65(64)(c) as amended to date under the head Management, Maintenance and repairs service as reconditioning of goods?
- (ii) Whether the sale of new material used for reconditioning of used old rollers is taxable under Service tax under the head Maintenance and Repairs as Reconditioning/Restoration of Goods. In the above circumstances whether rerubberising charges received can be classified as taxable service of Repairs?
- (iii) While calculating the value of taxable services under repairs and maintenance whether the value of material sold is outside the purview of Service Tax leviable under section 66 of the Finance Act 1994?

1.1 The questions have been recast by us as follows:

- (1) Whether service tax is payable under section 66 read with 65(64)(c) on the re-rubberizing charges collected for reconditioning of used old rollers.
- (2) Whether the sale of material used for reconditioning of old rollers attracts service tax under the head taxable service of 'repairs' or otherwise.
- (3) While calculating the value of taxable services under the head of repairs and maintenance, whether the value of material sold should also be taken into account for the purpose of levying service tax under section 66 of the Finance Act, 1994.

2. The applicant submits that as per the notification No.12/2003-S.T. dated 20.6.2003, the value of goods and materials sold in the course of re-rubberisation shall be outside the purview of service tax. The applicant has also referred to Circular No. 59/8/2003-S.T. dated 20.6.2003 of the Central Board of Excise & Customs (CBEC).

3. The applicant has filed a copy of the Memorandum of joint venture agreement said to have been entered into on 1.7.2008. It is stated therein that

the applicant has expertise in rubber rollers used for printing machines and Vagle is interested in investing foreign capital in India. Both the parties will have equal shares and voting rights in the proposed company.

4. The re-rubberising process has been explained in the application as follows-

- (i) Removing of the old rubber on Printing Machine Rollers completely.
- (ii) Binding the new rubber compound around the rubber rollers
- (iii) Vulcanising material used the steam of the boiler.
- (iv) Grinding the rollers for finishing purpose.

5. However, there is no clarity as to whether the applicant will undertake re-rubberisation on behalf of particular customers under some prior agreement with such customers, or one of its activities will be to buy old and used rubber rollers from the market, re-rubberise or recondition them and sell them, to whosoever buys them. The applicant has taken apparently conflicting positions in this regard.

5.1 In para 8 of the application, the applicant states as follows-

“..... This activity involves receiving used Rubber Rollers of printing machines, removing of old material completely and binding the rollers with new material around spindles received for rerubberising..... The goods are dispatched to the customers and sales invoice will be raised...”

The above statement suggests that the old rubber roller will be received from customers, the same will be re-rubberised/reconditioned and sent back to those customers. Thus re-rubberisation activity will be undertaken on behalf of particular customer pursuant to an order or agreement. However, in the statement of facts in Annexure-I of the application, the applicant has described the activity as follows-

“We will be receiving the old used rollers of printing machines for rerubberising from market places in India. Such used rollers are wornout and in damaged conditions. Such old rollers will be rerubberised by us.

It is further stated that *“the sale invoice for the above rubberized material will be raised on which sales tax will be charged on the full invoice amount for sale of material”*.

5.2 The Commissioner of Service Tax, Mumbai (Commissioner), who is the jurisdictional commissioner, in his comments sent to the departmental representative, a copy of which has been filed before us, has proceeded on the understanding that the applicant will be providing the service of re-rubberisation to its customers under some agreement with them. We are quoting below the relevant extracts of the Commissioner’s comments-

*“The nature of activity as mentioned in the application involves receiving used rubber rollers of printing machines, removing the old material completely, binding the rollers with new material (including rubber and chemicals) around the spindles received for rubberizing and grinding & finishing the rollers. Clearly, this activity involves reconditioning and restoration of used rollers under an **agreement** or **contract** which is covered under ‘Management, maintenance or repair’ service as defined under Section 65(64) of the Finance Act, 1994....”*

With reference to this factual aspect stated by the Commissioner, the applicant has not said anything in its comments dated 30.1.2009 to contradict the same.

5.3 In the proceedings dated 27.1.2009, we recorded as follows-

“ On a prima facie consideration of the matter, we feel that for a proper adjudication of the issue, it is desirable to have a copy of the draft/sample invoice proposed to be raised on the prospective customers and also the details of the ‘materials’ referred to in the application.”

The applicant was also given an opportunity for personal hearing. In response, the applicant filed a sample invoice along with its written submission dated 10.2.2009. In its written submission the applicant stated--

“We are enclosing a sample invoice proposed to be raised on the prospective customers. In the invoice we have mentioned that we will be charging VAT (Sales tax) on full value of the invoice. As full value of the invoice will be covered under the Sale of Goods Act on which VAT will be applicable, we will not be collecting service tax separately.”

“In the re-rubberising process, we will be using materials such as chemicals and rubber. We will be raising invoice for the full value of material as shown in the specimen invoice enclosed.”

5.4 In the sample invoice, the description given is ‘Re-rubberising charges for the material used for rollers’. Two types of rollers have been mentioned and some assumed amount has been shown against each of them. Contrary to what is stated in the written submission and in the application, there is no reference at all in the invoice to any material or the value thereof. There is a foot-note in the invoice saying ‘*As the full value of invoice is covered under VAT Act on which Vat tax is paid, service tax is not payable*’. We are unable to make out anything clearly from the sample invoice. The use of the expression ‘ Re-rubberising charges for the material used for rollers’ in the invoice is confusing. Re-rubberisation charges “for the material used” in the process of re-rubberisation is a contradiction in terms.

5.5. Even though we have given opportunity of personal hearing to the applicant, the applicant or its authorized representative has not chosen to appear.

6. We shall refer to the relevant provisions in Chapter V of Finance Act 1994 and the exemption notification. Section 66 is the charging provision which says that service tax shall be levied @ 12 per cent of the value of taxable services referred to in various sub-clauses starting from (a) to (zzzzj) of clause (105) of Section 65. The valuation of taxable services is provided for

by Section 67. The expression 'taxable service' is defined in section 65(105). Sub-clause (zzzg) is the relevant with which we are concerned here. The opening clause of part of clause (105) read with sub-clause (zzzg) reads as follows:

*“Taxable service means any service provided or to be provided -
XX XX XX XX XX XX XX XX
(zzzg) to any person by any person in relation to the management,
maintenance or repair”.*

The expression 'management, maintenance or repair' is defined in section 65(64) thus:

“management, maintenance, or repair” means any service provided by-
(i) *any person under a contract or an agreement, or*
(ii) *a manufacturer or any person authorized by him, in relation to:*
(a) *management of properties, whether immovable or not;*
(b) *maintenance of repair of properties, whether immovable or not;*
or
(c) *maintenance or repair including reconditioning or restoration,
or servicing of any goods, excluding a motor vehicle”.*

Re-rubberisation of used rollers of printing machines as stated in the application amounts to repair or reconditioning of goods falling under clause (c) above.

6.1 Notification No. 12/2003-Service Tax dated 20.6.2003 issued under section 93 of the Finance Act exempts:

“so much of the value of all the taxable services, as is equal to the value of goods and materials sold by the service provider to the recipient of service from the service tax leviable thereon under section 66 of the said Act, subject to condition that there is documentary proof specifically indicating the value of the said goods and materials”.

Provided that the said exemption shall apply only in such cases where-

(a) *no credit of duty paid on such goods and materials sold, has been taken under the provision of the Cenvat Credit Rules, 2004; or*

- (b) *where such credit has been taken by the service provider on such goods and materials, such service provider has paid the amount equal to such credit before the sale of such goods and materials.*

6.4 We may also refer to the Circular No. 59/8 2003-S.T. dated 20.6.2003 issued by the CBEC giving clarification of the said Notification. The relevant part of the circular is extracted below:

“..... In this regard, a general exemption under Notification No. 12/2003-Service Tax, dated 20.6.2003 has been issued exempting that part of the value of all taxable services from service tax, which represents the cost of goods or material sold by the service provider to the receiver of such services during the course of provision of the taxable services. This exemption would be available only in cases where the sale of such goods is evidenced and the sale value is quantified and shown separately in the invoice.”

7. The fundamental requirement for attracting the charging Section i.e. S. 66 is the provision of service by one person to another. The essence and substance of the transaction has to be judged on the facts of each case, whenever a question arises whether the transaction is one of service or some other jural relationship. The significant requirement is providing service and it should answer the description and definition of ‘taxable service’ falling within the purview of clause (105) of section 65. If the applicant undertakes reconditioning of the old rollers of printing machine pursuant to an order placed or instructions given by a customer and collects the re-rubberising charges, the service tax liability clearly arises. In such a case, the transaction amounts to a provision of service in the nature of repairing or reconditioning. The old rollers may be supplied by the customer himself or the old rollers of the dimensions specified by the customer may be procured by the applicant from the market. That does not make material difference.

8. In the light of the above analysis, if we look at the sample invoice furnished by the applicant and ignoring the inaccurate wording in the invoice, it

seems to us that the applicant is charging and the customer is paying for the service of re-rubberising the used rollers. An inference can be drawn therefrom that it is essentially a transaction of providing service on the basis of an agreement express or implied. If that be so, the applicant is liable to pay service tax for such charges. As already stated, it does not appear to be a case of outright sale and purchase of reconditioned rollers manufactured and stocked by the applicant and offered for sale as and when a buyer approaches the applicant. At any rate, in the absence of a clear assertion, we do not propose to give a ruling on the assumption that the proposed activity consists of selling the old reconditioned rollers off the shelf by including in the price the cost of reconditioning as well.

9. Coming to the exemption notification, in the first instance, we would like to make it clear that the question of invoking the exemption would arise only when the applicant is otherwise liable to pay tax under section 66 read with 67 of the Act, as explained in para 7 above. Secondly, to claim the exemption, documentary evidence specially indicating the value of the goods/materials sold has to be produced. Moreover, it has to be established that no Cenvat Credit of duty in respect of the said goods and materials has been availed of. On the facts presented by the applicant, it is difficult to conclude that the exemption envisaged by the notification is attracted. Though the applicant repeatedly stated that invoice will be raised for the full value of materials used in the process, the sample invoice does not show the material or its value. Only the charges for the re-rubberising process are reflected in the invoice. Therefore, going by the typical invoice furnished by the applicant, it is not

legally permissible to extend the benefit of exemption to the applicant. In view of this conclusion reached by us, it is not necessary to consider the true import of the expression “goods and materials sold”. Can it be said that the consumables such as chemicals in the instant case can be said to have been sold even if the value thereof is specified in the invoice separately? We need no deal with this aspect.

10. In view of the above discussion, the ruling with reference to various questions is given as follows:

Question No. 1:

Yes, service tax is payable on the re-rubberising charges collected. However, it is made clear that we are not dealing with a situation where the reconditioned rollers are stocked and sold in the market (as and when the buyers approach) on collecting the price thereof which might include the cost of reconditioning.

Question Nos. 2 & 3 :

Though on the facts presented by the applicant, the questions do not merit specific answers, it is stated broadly that the claim for exclusion of the value of material ‘sold’ can be sustained subject to the fulfillment of the conditions of notification No. 12/2003-S.T.

Accordingly, the ruling is given on this **31st** Day of March, 2009.

Sd/-
(A. SINHA)
MEMBER

Sd/-
(P.V. REDDI)
CHAIRMAN

Sd/-
(CHITRA SAHA)
MEMBER