

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
CHENNAI**

REGIONAL BENCH – COURT NO. I

**Service Tax Appeal No. 41651 of 2013**

(Arising out of Order-in-Appeal No. CMB-CEX-000-APP-157-13 dated 23.04.2013 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), 6/7, A.T.D. Street, Race Course Road, Coimbatore – 641 018)

**M/s. Molax Powder Coating**

No. 55, SIDCO Industrial Estate,  
Kurichi, Coimbatore – 641 021

**: Appellant**

**VERSUS**

**The Commissioner of Central Excise and  
Service Tax**

6/7, A.T.D. Street, Race Course Road,  
Coimbatore – 641 018

**: Respondent**

**APPEARANCE:**

Shri R. Balagopal, Consultant for the Appellant

Smt. Sridevi Taritla, Additional Commissioner for the Respondent

**CORAM:**

**HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)**

**HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 40296 / 2023**

DATE OF HEARING: 31.03.2023

DATE OF DECISION: 24.04.2023

**Order : [Per Hon'ble Mr. P. Dinesha]**

This appeal has been filed by the assessee against the Order-in-Appeal No. CMB-CEX-000-APP-157-13 dated 23.04.2013 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore.

2. After hearing both sides, we find that the only issue that is to be decided by us is: whether the activity of job work, as involved in the present case, rendered by the appellant would amount to manufacturing activity so as to

take the same out of the purview of 'business auxiliary service' under Section 65 (19) of the Finance Act, 1994?

3.1 Brief and undisputed facts, which are relevant for our consideration, as could be gathered from the documents placed on record including the orders of the lower authorities, are that the appellant is engaged in the process of "powder coating" on job work basis to M/s. Kanchi Fabrications (P) Ltd. (hereinafter referred to as 'KFPL') and this prompted the Revenue, for the period from July 2006 to October 2008, to issue a Show Cause Notice dated 06.07.2009 thereby proposing to demand Service Tax under the category of 'business auxiliary service'.

3.2 Thereafter, Order-in-Original No. 05/2011 (ADC) dated 31.01.2011 came to be passed confirming the demands, as proposed, against which it appears that the appellant approached the First Appellate Authority; but however, even the First Appellate Authority having dismissed their appeal vide impugned Order-in-Appeal No. CMB-CEX-000-APP-157-13 dated 23.04.2013, the present appeal has been filed before this forum.

4. Today, when the matter was taken up for hearing, Shri R. Balagopal, Learned Consultant appeared for the appellant and Smt. Sridevi Taritla, Learned Additional Commissioner, appeared for the Revenue.

5. The Learned Consultant for the appellant submitted, at the outset, that under similar set of facts, the co-ordinate Mumbai Bench of the CESTAT in the case of *M/s. Endurance Systems India Pvt. Ltd. v. Commissioner of Central Excise and Customs, Aurangabad* [Order No. A/2272/13/CSTB/C-I dated 24.10.2013] reported in 2014-TIOL-139-CESTAT-MUM, has held that the activity, *inter alia*, of powder coating would amount to "manufacture", which were cleared on payment of duty and thus, the same would not come under the purview of business auxiliary service.

6. *Per contra*, the Learned Additional Commissioner drew our attention to the findings in the impugned order wherein, at paragraph 8, the First Appellate Authority has analysed the issue and has come to the conclusion that the activity of the appellant of powder coating would not bring any new goods into existence, for which reliance has been placed by the First Appellate Authority on an order of the co-ordinate Bangalore Bench of the CESTAT in the case of *A.G. Shibu v. Commissioner of Cus., C.Ex. & S.T., Cochin [2008 (10) S.T.R. 317 (Tribunal – Bangalore)]*.

7. We have heard the rival contentions and have gone through the documents placed on record including the orders of lower authorities.

8.1 A perusal of the Order-in-Original reveals that the appellant had filed its detailed reply dated 11.09.2009 to the Show Cause Notice, *inter alia* indicating that they had not complied with the necessary declaration under Notification No. 214/86-C.E. and that M/s. KFPL, being the main contractor, was liable to pay the Service Tax. Further, the Adjudicating Authority has recorded that an offence case was registered against M/s. KFPL for non-payment of Service Tax under business auxiliary service, which included the services of powder coating that were done by the appellant.

8.2 The Adjudicating Authority has referred to the decision of the Hon'ble Apex Court in the case of *M/s. Gujarat Steel Tubes Ltd. v. State of Kerala [1989 (42) E.L.T. 513 (S.C.)]* and also the following orders of co-ordinate CESTAT Benches: -

(i) *A.G. Shibu v. Commissioner of Cus., C.Ex. & S.T., Cochin [2008 (10) S.T.R. 317 (Tri. – Bang.)]*;

(ii) *PSL Corrosion Control Services Ltd. v. Commissioner of C.Ex. & Cus., Daman [2008 (12) S.T.R. 504 (Tri. – Ahmd.)]*;

(iii) *Commissioner of C.Ex., Mumbai-I v. Clad Material System*  
*[2001 (131) E.L.T. 249 (Tri. – Mum.)]*

to hold that the activity of powder coating was classifiable under business auxiliary service.

9.0 The appellant has also relied on the decision in the case *M/s. Endurance Systems India Pvt. Ltd. (supra)*, but however, the decision of the Hon'ble Apex Court in the case of *M/s. Gujarat Steel Tubes Ltd. (supra)* and orders of other CESTAT Benches (*supra*) would prevail and accordingly, we hold that the issue needs to be answered and is answered against the appellant.

9.1 The appellant has urged that they were providing the job work of powder coating on goods received from M/s. KFPL, who are the manufacturers of cabinets for M/s. BPL Telecom Pvt. Ltd., the main manufacturer. The facts borne on record reveal that the said M/s. KFPL appears to have admitted that the powder coating was done by the appellant herein, for which they were availing CENVAT Credit but without filing any declaration with the jurisdictional Officer, however, the powder coating charges were also collected from M/s. BPL Telecom Pvt. Ltd. by the said M/s. KFPL, who are the main service provider. Hence, it was contended that the Service Tax liability was on the main contractor / main service provider i.e., M/s. KFPL, who appears to have remitted the Service Tax, and not on the appellant, who had only discharged the service in the capacity of a sub-contractor.

9.2 The Learned Larger Bench of the CESTAT in the case of *Commissioner of Service Tax, New Delhi v. M/s. Melange Developers Pvt. Ltd. [2020 (33) G.S.T.L. 116 (Tri. – LB)]* has held that the Service Tax liability of a sub-contractor would never cease, even when the main contractor remits Service Tax. Thus, the contention of the appellant that there was no Service Tax liability on the part of the appellant, being a sub-contractor, would not hold any

water in view of the decision of the Learned Larger Bench (*supra*).

10. Therefore, we are of the view that on merits, the appellant has no case.

11.1 It has also been urged by the Learned Consultant for the appellant that the entire exercise is revenue neutral since any amount of tax paid by them as sub-contractors could be availed by the main contractor as CENVAT Credit.

11.2 We do not propose to go into the aspect of revenue neutrality since the same depends on the facts of each case, as held by the Hon'ble Apex Court in the case of *M/s. Star Industries v. Commissioner of Customs (Imports), Raigad* [2015 (324) E.L.T. 656 (S.C.)] and the Learned Five-Member Bench of the CESTAT in *M/s. Jay Yuhshin Ltd. v. Commissioner of Central Excise, New Delhi* [2000 (119) E.L.T. 718 (Tribunal – LB)].

12. Further, since no other ground is urged before this Bench in the grounds-of-appeal, we are of the view that the appeal should fail as the appellant has not made out any case for our interference.

13. The appeal is therefore dismissed.

(Order pronounced in the open court on **24.04.2023**)

Sd/-  
**(VASA SESHAGIRI RAO)**  
MEMBER (TECHNICAL)

Sd/-  
**(P. DINESHA)**  
MEMBER (JUDICIAL)

Sdd