CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 13323 of 2013-DB

[Arising out of Order-in-Original/Appeal No PJ-164-VDR-I-2013-14 dated 20.06.2013 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

Universal Medicap Limited .... Appellant

UPL House, Parag Park, N.H.No. 8, Ranoli Crossing,
P.O.-Dashrath, VADODARA, GUJARAT-391740

VERSUS

Commissioner of Central Excise & ST, Vadodara .... Respondent

1st Floor...Central Excise Building,
Race Course Circle, Vadodara,
Gujarat-390007

APPEARANCE :

MG Yagnik, Advocate for the Appellant
Shri G. Kirupanandan, Assistant Commissioner (AR) (AR) for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)

DATE OF HEARING : 08.06.2023
DATE OF DECISION: 19.06.2023

FINAL ORDER NO. 11282/2023

RAMESH NAIR :

Brief facts of the case are that appellant are engaged in the process of sterilizing goods of their client on job-work basis and for which the job charges are collected. The case of the department is that the said activity falls under the category of Business Auxiliary Service under sub-head "production of processing goods on behalf of client" accordingly, the same is taxable. The department also denied exemption under Notification No.8/2005 on the ground that, firstly the client has not supplied raw material and secondly, after the process of sterilization the goods were not used further in the manufacture of final product by their client. Being aggrieved by the impugned order the appellant filed the present appeal.

2. Shri MG Yagnik, learned Counsel appearing on behalf of the appellant submits that the condition and criteria laid-down under exemption Notification No. 8/2005 stand complied with therefore, the appellant has rightly availed exemption under Notification 8/2005. He submits that on

both the counts the Revenue has seriously erred in interpreting the notification. In the present case the appellant have received some physician goods for processing which is permissible under notification and subsequently there is no need for further use of the goods after processing by the job-work, in the further manufacture by the client. Therefore, both the reasons cited by the lower authorities for denial of exemption are not relevant and consequently the order passed on that basis is illegal and incorrect.

3. Shri G. Kirupanandan, learned Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order. He submits that appellant are liable to pay service tax in terms of clarification issued by the Board vide letter F.No. B1/6/2005-TRU dated 27.07.2005.

4. We have considered the submissions made by both the sides and perused the record. We find that there is no dispute that appellant have carried out the activity of processing of goods on behalf of the clients which is covered under taxable entry of Business Auxiliary Service. For the processing activity there is an exemption notification 8/2005-ST. Both the lower authorities have denied exemption on the ground that firstly, the appellant have not received raw material for processing and secondly, after processing the goods were not used in the manufacture by the client. To understand whether the contention of the Revenue is correct or otherwise it is necessary to read the notification carefully which is reproduced below:-

> "**Job work — Service tax exemption to goods produced on behalf of client**
>
> In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service of production of goods on behalf of the client referred in sub-clause (v) of clause (19) of section 65 of the said Finance Act, from the whole of service tax leviable thereon under section 66 of the said Finance Act :
>
> Provided that the said exemption shall apply only in cases where such goods are produced using raw materials or semi-finished goods supplied by the client and goods so produced are returned back to the said client for use in or in relation to manufacture of any other goods falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), as amended by the Central Excise Tariff (Amendment) Act, 2004 (5 of 2005), on which appropriate duty of excise is payable.
>
> *Explanation.* - For the purposes of this notification, -

> (i) the expression "production of goods" means working upon raw materials or semi-finished goods so as to complete part or whole of production, subject to the condition that such production does not amount to "manufacture" within the meaning of clause (f) of section 2 of the Central Excise Act, 1944 (1 of 1944);
>
> (ii) "appropriate duty of excise" shall not include 'Nil' rate of duty or duty of excise wholly exempt.
>
> [Notification No. 8/2005-S.T., dated 1-3-2005]"

From the plain reading of above notification it is clear that not only the raw material should be processed by the job-worker but even some finished goods are also to be processed for the eligibility of exemption notification. In the present case, the packed goods were supplied to the appellant for carrying out process of sterilization therefore the packed goods before sterilization are semi-finished goods. Therefore the contention of the Revenue that only raw material should be processed to be eligible for exemption is incorrect as semi-finished goods are also allowed to be processed for making eligible for the above notification.

5. As regards the contention of the Revenue that after processing the same should be used by the principal client for further manufacturing, though from the body of the notification it appears that after production or processing of goods by the job-worker the same should be used by the client of the job worker. Further the term "production of goods" has been explained under explanation-(i) of the aforesaid notification and according to which the job-worker is at liberty to process partly or fully to complete the product. Therefore, it is the provision that once the process is done which is required to complete the product, no further manufacturing is required. Therefore, the contention of the department that job worked good should be necessarily be used by the principal client for further manufacturing is contrary to the explanation-(i) of the notification. Therefore, on this count also the benefit of notification cannot be denied to the appellant.

6. As regards the reliance made by learned AR on Para 24 of the Board clarification issued vide No. B1/6/2015-TRU letter dated 27.07.2005, we reproduce the same:-

> **"**24.2 A point was raised whether 'production of goods on behalf of the client' covers situations where the service provider undertakes job work for the client. In view of the amendment, production or processing (not amounting to manufacture) done either for the client or on behalf of the client would be liable to service tax.**"**

A plain reading of above clarification it can be seen that said clarification only deals with the issue of taxability of Business Auxiliary Service in particular production or processing of goods on behalf of client. As we have already recorded above that there is no dispute about the taxability of service under the sub-heading of production or processing of goods on behalf of client, under taxable entry of Business Auxiliary Service, but the issue involved in the present case is eligibility to Notification No. 8/2005-ST. The aforesaid clarification does not deal with the issue of such exemption notification therefore the above clarification is of no help to the Revenue in the present case.

7. Accordingly, the demand is not sustainable hence the impugned order is set-aside and the appeal is allowed.

(Pronounced in the open court on 19.06.2023*)*

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

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