

Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad
REGIONAL BENCH- COURT NO.3

Service Tax Appeal No. 11616 of 2016

(Arising out of OIA-BHV-EXCUS-000-APP-0104-16-17 dated 21/07/2016 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-BHAVNAGAR)

Sureel Enterpries P Ltd

.....Appellant

Plot No 513-B,N.H. Road,
Chhatral Tal; Kalol
GANDHINAGAR, GUJARAT

VERSUS

C.C.E. & S.T.-Bhavnagar

.....Respondent

Plot No.6776/B-1...Siddhi Sadan, Narayan Upadhyay Marg,
Beside Gandhi Clinic, Near Parimial Chowk,
Bhavnagar, Gujarat-364001

WITH

Service Tax Appeal No. 10897 of 2018

(Arising out of OIA-BHV-EXCUS-000-APP-124-2017-18 dated 07/02/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SERVICE TAX - AHMEDABAD)

Sureel Enterpries P Ltd

.....Appellant

513-B, Ahmedabad Mehsana Highway, Village-Chhatral, Taluka-Kalol,
GANDHINAGAR, GUJARAT

VERSUS

C.C.E. & S.T.-Bhavnagar

.....Respondent

Plot No.6776/B-1...Siddhi Sadan, Narayan Upadhyay Marg,
Beside Gandhi Clinic, Near Parimial Chowk,
Bhavnagar, Gujarat-364001

APPEARANCE:

Shri Amal Dave, Advocate for the Appellant
Shri S.N, Gohil, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/11898-11899/2021

DATE OF HEARING: 25.02.2021
DATE OF DECISION: 25.05.2021

RAMESH NAIR

The brief facts of the case are that the appellant entered into an agreement dated 20.11.1999 with M/s Nirma Limited for conversion of raw material into synthetic detergent. According to the agreement the appellant produce detergents at factory of M/s Nirma at village Chattral and the other at Bhavnagar utilizing raw materials and packing materials

provided by M/s Nirma and issued debit notes for job work charges based on the quantity (in Kilograms) of detergent powder produced on monthly basis.

1.1 Another agreement dated 28.05.2005 was also entered into with M/s Nirma Limited for conversion of raw materials into soaps and detergents at Bhavnagar factory of M/s Nirma.

1.2 In accordance with above agreement the appellant produced soap and detergent utilizing land building, plant, machinery, raw material and packing materials provided by M/s Nirma and issued bills for such production work on the basis of quantity of goods so produced. M/s Nirma has paid excise duty on full value of soaps and detergents so produced through contract manufacturing by the appellant upon recording such production in RG-1 and returns were also filed by M/s Nirma.

1.3 Show cause notices dated 12.04.2013, 20.05.2014, 13.02.2015 and 20.06.2015 were issued to the appellant demanding service tax from the appellant on the contract manufacturing undertaken at M/s Nirma's factory under manpower recruitment or supply agency service. The said Show Cause Notices were adjudicated by the adjudicating authority by dropping the demand. Being aggrieved by the orders in original Revenue filed appeals before the Commissioner (Appeals), who vide the impugned orders set aside the order-in-original and allowed the appeals filed by the Revenue. Therefore, the appellant are before us.

2. Shri Amal Dave, Learned Counsel appearing on behalf of the applicant submits that on the identical fact, in the case of the appellant itself for the previous period, the matter came before this Hon'ble Tribunal. The Tribunal vide Order No. A/11947-11949/2019 dated

18.10.2019 allowed the appeals. He submits that since there is no change of circumstances, the same order may be followed and the present appeals may also be allowed accordingly. He further submits that this Tribunal order dated 18.10.2019 was challenged by the Revenue before the Hon'ble Gujarat High Court in Tax Appeal No. 289/2020 which was dismissed on the ground of jurisdiction, therefore, the Tribunal order attained finality. He also placed reliance on the following judgments:

- Ramesh Chandra C. Patel 2012 (25) STR 471 (Tri. Amd.)
- Jubilant Industries Limited 2013 (31) STR 181 (Tri. Del.)
- Shiv Narayan Bansal 2013 (31) STR 747 (Tri. Del.)
- ALi Dhara Tax Spin Engineers 2010 (30) STR 315 (Tri. Amd)
- Allengers Medical Systems Limited 2009 (19) STR 361 (Tri. Amd.)
- Neo Stracto COstruction Limited 2010 (19) STR 361 (Tri. Amd.)
- K. Damodar Reddy 2010 (19) STR 593 (Tri. Bang.)
- Hemant V Deshmukh 2014 (35) STR 602 (Tri. Mum.)
- Ritesh Enterprises 2010 (18) STR 17 (Tri. Bang.)
- Divya Enterprise 2010 (19) STR 370 (Tri. Bang.)

3. On the other hand Shri S.N. Gohil, Learned Superintendent (Authorized Representative) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the records. we find that the issue involved in the present case is that whether the activity of appellant i.e. conversion of raw material to soap and detergent on behalf of M/s Nirma Limited in the factory of M/s Nirma Limited is amount to provision of service classifiable under Manpower Recruitment Agency Service or otherwise.

5. We find that very identical issue in the appellant's own case for the previous period i.e. June 2005 to June 2010 was considered by this Tribunal in Service Tax Appeal Nos. 2327 of 2011, 768 of 2011 and 10391 of 2013. In these appeals this Tribunal has passed a Final Order No. A/11947-11949/2019 dated 18.10.2019 whereby it was held that the appellant's activities amount to manufacture and does not amount to service of Manpower Recruitment Agency Service. Accordingly, the appeals were allowed. This Tribunal following various judgment namely, Ramesh C. Patel 2012 (25) STR 471 (Tri. Amd.), Jubilant Industries Limited 2013 (31) STR 181 (Tri. Del.) and Shiv Narayan Bansal 2013 (31) STR 747 held that contract between the appellant and M/s Nirma Limited is of contract manufacturing hence demand under manpower supply cannot be made. Concluding and operating portion of the order is reproduced below:

From the above judgments the issue in hand is settled that when the contract between the service provider and service recipient is admittedly of contract manufacturing in such case demand under man power supply cannot be made. The appellant have vehemently argued on Revenue neutral situation on the ground that if at all the appellant is liable to pay service tax the same is available as cenvat credit to the service recipient i.e. M/s. Nirma Ltd. In this regard, he also submitted the details of payment of excise duty of M/s. Nirma Ltd from PLA/cash. This prima facie show that it is a case of Revenue neutral and by not paying the service tax by the appellant the Government Exchequer is not at any loss, however, since, we have already decided the issue on merit, we are not giving our concluding opinion on Revenue Neutral position. The issue of jurisdiction raised by the appellant is also kept open.

As per our above discussion the impugned order is not sustainable. Hence, the same is set aside. The appeals are allowed with consequential relief, if any, in accordance with law.

6. In view of above decision of the Tribunal in the appellant's own case on the same issue, the issue in the present case is no longer res integra. The only difference in the present case and the case decided supra is the difference of period. However, there is no change in the

facts and the law point, therefore, the Tribunal's decision given by Order dated 18.10.2019 is squarely applicable in the present case. Accordingly, the impugned orders are set aside. The appeals are allowed.

(Pronounced in the open court on 25.05.2021)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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