Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No. 10732 of 2015- DB

(Arising out of OIA-VAD-EXCUS-001-APP-648-649-2014-15 dated 27/01/2015 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Universal Medicap Ltd **.........Appellant**
Plot No. 745, KadThol Road,
Taluka : Kadi,
Mehsana, Gujarat

VERSUS

C.C.E. & S.T.-Vadodara-I **.........Respondent**
Custom House... 2nd Floor,
Opp. Old Gujarat High Court,
Navrangpura, Ahmedabad,
Gujarat-380009

WITH

Service Tax Appeal No. 10734 of 2015- DB

(Arising out of OIA-VAD-EXCUS-001-APP-648-649-2014-15 dated 27/01/2015passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Universal Medicap Ltd **.........Appellant**
Uml House, Parag Park,
N H No. 08, Ranoli Crossing, Bhadarwa,
Vadodara, Gujarat

VERSUS

C.C.E. & S.T.-Vadodara-I **.........Respondent**
1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat, 390007

APPEARANCE:
Shri Saurabh Dixit, Advocate for the Appellant
Shri Rajesh R Kurup, Superintendent (AR), for the Respondent

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

Final Order No. 12199-12200/2023

DATE OF HEARING: 20.09.2023
DATE OF DECISION: 05.10.2023

RAMESH NAIR

The brief facts of the case are that the appellant are engaged in carrying out the process of sterilization process for it's clients for which they have kept an automatic system for conveying the product boxes in to the irradiation cell, exposing the boxes to the radiation filed for specified period and then taking them out of the cell. That disputed activity of "Sterilizing Services" is one wherein the duly packed product is exposed to gamma radiation in a closed plant with a predetermined dose as per the nature and timing requirement for the product. During this process, gamma radiation penetrates into the product and it breaks the DNA structure of bacteria/ microbes. As a result of the same, the product shelf life increases in case of agriculture or like items and in other cases like hospital items/ pharmaceutical items, it sterilizes the product.

1.1 The material on which the abovementioned process is carried out is obtained by the Appellant from the various persons under the job work challans. In cases where the goods are received from non-Excise registered manufacturers, the appellant duly charges service tax on their processing charges. However, in respect of the material so obtained from Excise registered manufacturers under Rule 4(5)(a) of Cenvat Credit Rules, 2004 read with Notification No.214/86-CE, the appellant carries out the radiation/process and returns the material with proper documents. Such returned goods are further cleared by the Principals on proper duty payment, for which there is no dispute. That no Service Tax is paid in respect of such job worked goods on which proper duty is eventually paid by the Principals. The case of the department is that such job work could attract Service Tax therefore, the impugned order seeks to demand tax on such transactions.

2. Shri Saurabh Dixit, Learned Counsel appearing on behalf of the appellant at the outset submits that in the appellant's own case this Tribunal has considered the very same issue and held that the activity in the hands of the appellant is eligible for exemption Notification No.08/2005-ST. therefore, as per the final order No. 11282/2023 dated 19.06.2023 the demand in the present case is not sustainable.

3. Shri Rajesh R Kurup, Learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. On careful consideration of the submission made by both the sides and perusal of record, we find that the very same activity on job work basis, in the case of appellant itself for the period prior to 01.07.2012 was considered by this Tribunal in order dated 19.06.2023, wherein the Tribunal has passed the following order:

> *"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.*
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> *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.*
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> *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*
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> *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***
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> *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 semifinished 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."

From the above decision, it can be seen that the Tribunal has extended the benefit of 08/2005-ST to the job work activity of the appellant for the period prior to 01.07.2012.

4.1 In the present case the Learned Commissioner (Appeals) has extended the benefit of Notification 25/2012-ST for the period after 01.07.2012. However, for the previous period Notification 08/2005-ST was denied. Since, the issue relates to Notification 08/2005-ST has been considered in the aforesaid decision by this Tribunal, The issue is no longer res-integra. Hence, following the aforesaid decision we are of the view that the appellant is not liable to pay service Tax on the job work activity carried out by them. Therefore, the demand for the period prior to 01.07.2012 is also not sustainable.

5. Accordingly, the impugned order is modified to the above extent. The Appeals are allowed.

(Pronounced in the open court on 05.10.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha