

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

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 11564 of 2015-DB

[Arising out of Order-in-Original/Appeal No VAD-EXCUS-003-APP-233-15-16 dated 18.08.2015 passed by Commissioner of Central Excise, Customs and Service Tax-ANAND]

Pharmanza India Pvt Limited

70/1, GIDC Estate, Kansari, Khambhat,
ANAND, GUJARAT

.... Appellant

VERSUS

Commissioner of Central Excise & ST, Anand

Central Excise, Customs & Service Tax, Central Excise
Building, Nr. Juna Dadar, Behind Old Bus Depot
Anand, Gujarat - 388001

.... Respondent

APPEARANCE :

None for the Appellant

Shri P. Ganesan, Superintendent (AR) for the Respondent

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

DATE OF HEARING: 25.08.2023

DATE OF DECISION: 05.10.2023

FINAL ORDER NO. 12197/2023

RAMESH NAIR :

The brief facts of the case are that appellant are engaged in the activity as manufacturer of pharmaceutical products on loan license basis for foreign companies. The department is of the view that products are exempted from payment of Central Excise duty, hence they are liable to pay service tax under the category of Business Auxiliary Service on the gross amount received by the appellant for manufacture and supply of goods under the sub category i.e. "Production or Processing on behalf of client".

2. None appeared on behalf of the appellant.

3. Heard Shri P. Ganesan, learned Superintendent (AR) appearing on behalf of the Revenue who reiterates the findings of the impugned order.

4. On careful consideration of the submissions made by learned AR and on perusal of record we find that the very same issue in the appellant's own case has been considered by this bench vide order No. A/11703/2023 dated 17.08.2023 wherein this Tribunal has passed the following order:-

"4. We have carefully considered the submission made by both sides and perused the records. We find that there is no dispute on the fact which is admitted in the show cause notice. The relevant portion of the show cause notice is reproduced below: -

"2. During the course of Audit conducted under Computer Assisted Audit Program (CAAP), it has been observed that the party has manufactured certain Goods viz. Tetracycline, Neocycline etc. falling under Chapter 30 of the Central Excise Tariff Act, 1985 and Animal Feed supplements Feritas Bolus, Ecot Bolus falling under Chapter 23 of the Central Excise Tariff Act, 1985 on behalf of their clients under loan licenses issued by the Drugs Authorities, which are exempt from the Central Excise Duty. Such services rendered to the clients in the form of manufacture of Goods which are exempt from Central Excise Duty are covered under Business Auxiliary Services as defined in Chapter V of Finance Act, 1944 Clause 65 (19)(V)-Production or processing of goods for or on behalf of the clients and service tax is payable on the gross value of receipt received as labour charges (for such production of exempted goods)"

From the above facts stated in the show cause notice it is not under dispute that the activity of manufacturing of drugs on behalf of the principle is an excisable activity in terms of Section 2 (f) of Central Excise Act, 1944. The demand was confirmed on the very same activity under the category of Business Auxiliary Service and sub head "production of goods on behalf of the clients". The definition of Business Auxiliary Service under clause (19) of Section 65 of Finance Act, 1994 reads as follows: -

"(19) "business auxiliary service" means any service in relation to,- (i) promotion or marketing or sale of goods produced or provided by or belonging to the client; or (ii) promotion or marketing of service provided by the client; or (iii) any customer care service provided on behalf of the client; or (iv) procurement of goods or services, which are inputs for the client; or (v) production of goods on behalf of the client; or (vi) provision of service on behalf of the client; or (vii) a service incidental or auxiliary to any activity specified in subclauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision, and includes services as a commissions agent, but does not include any information technology service and any activity that amounts to "manufacture" within the meaning of clause (f) of section 2 of the Central Excise Act, 1944."

4.1 From the above definition it can be seen that in clause (v) of the definition of Business Auxiliary Service, though the production of goods on behalf of the client is a taxable service, however, any activity that amounts to manufacture within the meaning of clause (f) of Section 2 of the Central Excise Act, 1944 is out of the ambit of the definition of Business Auxiliary Service. The Revenue has completely misunderstood the definition of business auxiliary service particularly with regard to the service of production of goods on behalf of the client. From the definition it is absolutely clear that all such production activities which are other than the activity of manufacture in terms of Section 2 (f) of Central Excise Act, 1944 are alone shall be taxable activity under the

head of production of goods on behalf of the client under Business Auxiliary Service. Therefore, in the present case the activity admittedly amounts to manufacture of excisable goods i.e., drugs which is clearly covered under Section 2 (f) of Central Excise Act, 1944 cannot be classified as taxable service under business auxiliary service.

4.2 We further find that the Revenue while demanding the service tax also taken the support from the exemption Notification No. 08/2005-ST contending that since the appellant's manufacturing activity is exempted from excise duty, the exemption Notification No. 08/2005-ST is also not available. We find that as we discussed above that the activity does not fall under the definition of business auxiliary service since the same is excisable manufacturing activity in terms of Section 2 (f) of Central Excise Act, 1944 the Notification 08/2005-ST is absolutely irrelevant in the present case. It is noteworthy that the said notification is only relevant when the service is taxable under Finance Act, 1994 which is not the case here as per our above discussion.

5. As per our above discussion and finding, the demand of service tax is not sustainable. Accordingly, the impugned order is set aside. Appeal is allowed with consequential relief, if any, in accordance with law."

4. From the above decision it can be seen that the issue in the appellant's own case has been settled in their favour and no service tax is demandable. Accordingly, following the above decision, the impugned order is set-aside and the appeal is allowed.

(Pronounced in the open court on 05/10/2023)

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

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