

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

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No. 171 of 2012

(Arising out of OIO-01/ST/SURAT/2012 dated 16/01/2012 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-SURAT-II)

Gujarat Insecticides Ltd

805/806, Gidc, Estate,
Ankleshwar,
Bharuch, Gujarat

.....Appellant

VERSUS

C.C.E. & S.T.-Surat-ii

New C.Ex Building...Opp. Gandhi Baug,
Chowk Bazar, Surat, Gujarat - 395001

.....Respondent

APPEARANCE:

Shri Dhaval Shah, Advocate for the Appellant

Shri Prabhat k Rameshwaram, Additional Commissioner (AR) for the Respondent

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

Final Order No. A/ 10212 /2023

DATE OF HEARING: 06.10.2022
DATE OF DECISION: 06.02.2023

RAMESH NAIR

The brief facts of the case are that the appellant M/s. Gujarat Insecticides Ltd. (GIL) are holding Central Excise Registration and are engaged in the manufacture of excisable goods viz. insecticides, pesticides, weedicides falling under chapter 28,29 & 38 of the first schedule of Central Excise Tariff Act, 1985. They are also holding certificate of registration form ST-2 for services (i) Goods Transport Operator and (ii) Business Auxiliary Services under section 69 of Finance Act, 1994. During the course of audit of appellant it was noticed by audit party that they had provided their plant A, B & D for exclusive use for the manufacture of goods on the input and packing material supplied by M/s. Gharda Chemicals Ltd (GCL) & had recovered an amount of Rs 10,91,88,495/- during the period from June 2005 – March 2006 (400 Lacs being the charges for Plant A/D & Plant B, + Rs. 692 Lacs towards reimbursement of expenses being the fixed

expenses for plant A, B & D & + Rs. 418 Lacs being the revenue expenses incurred for plant A/ D and B). The case of the department is that by providing the plant exclusively for use by M/s. Gharda Chemicals Ltd the appellant have provided the services of Management, Maintenance or Repair and the same is liable to service tax under section 65 (105) (zzg) of the Finance Act, 1994. Accordingly, the appellant was issued show cause notice and the same was adjudicated by the Adjudicating Authority whereby a demand of Service Tax amounting to **Rs 3,02,70,647/-** has been confirmed along with interest and penalties. Being aggrieved by the impugned OIO No. 01/ST/ SURAT /2012 dated 16.01.2012 the appellant filed the present appeal.

2. Shri Dhaval Shah, Learned counsel appearing on behalf of the appellant submits that the appellant are basically engaged in production and clearance of finished excisable goods. The said production and clearance of goods have been carried on under the authority and subject to terms and condition of Central Excise Registration Certificate. The appellant entered into an agreement with one M/s. GCL as per which the appellant was required to produce desired excisable goods on behalf of the said M/s. GCL. The appellant have carried out manufacturing of goods in terms of section 2(f) of CETA on the inputs and packing materials supplied free of charge by GCL. The appellant have used their specified plant, equipment, machinery, labour, Supervisors, water, electricity and certain consumable and stores in small quantum for production of excisable goods for and on behalf of GCL. It is his submission that the said activity was undertaken under the provision of Rule 4 (5) (a) of Cenvat Credit Rules, 2004. Accordingly, the activity clearly of manufacture cannot be construed as service for charging service tax. Even if by stretch of imagination the activity if classified the same will fall under Business Auxiliary Service under sub head of 'Production or Processing on behalf of the client'. In such case, demand under

Management, Maintenance or Repair service cannot be confirmed. The activity of production or processing under business auxiliary service is exempted under notification no. 8/2005- ST dated 01.03.2005 as in this case the recipient of job work goods is liable to pay excise duty. For this reason also the demand under management maintenance & repair service is not maintainable.

3. On the other hand, Shri Prabhat K Rameshwaram, Learned Additional Commissioner (AR) appearing on behalf of the Respondent reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that the demand was confirmed under the head of Management, Maintenance & Repair Service as per section 65(105) (zzg) of the Finance Act, 1994. The Management, Maintenance & Repair service is defined under section 65 (64) of the Finance Act, 1994 which is reproduced below:-

"(64) "Management, maintenance or repair" means any service provided by —

(i) Any person under a contract or an agreement; or

(ii) A manufacturer or any person authorised by him, in relation to,

(a) Management of properties, whether immovable or not;

(b) Maintenance or repair of properties, whether immovable or not; or

(c) Maintenance or repair including reconditioning or restoration, or servicing of any goods, excluding a motor vehicle

Explanation.—For the removal of doubts, it is hereby declared that for the purposes of this clause-

(a) "goods" includes computer software;

(b) "properties" includes information technology software"

From the plain reading of the above definition of Management, Maintenance & Repair Service the main condition is that the Management, Maintenance & Repair Service of the plant should belong to the service recipient and not

to the service provider. In the present case the order impugned has held the appellant as service provider and Gharda Chemicals Ltd as service recipient. It is also not disputed that it is the service recipient M/s GCL is paying for the use of manufacturing facilities of the appellant for manufacture of the excisable goods of M/s Gharda chemicals. In this fact the appellant using their own plant machinery equipment that too for production of excisable goods on behalf of M/s Gharda chemical Ltd. In this undisputed fact by any stretch the activities of the appellant cannot be classified under Management, Maintenance & Repair Service. Moreover, the activity per se cannot be treated as service itself for the reason that the activities carried out by the appellant is purely of manufacture of excisable goods with the inputs and packaging material supplied by the GCL and the said manufacturing was done on job work basis on behalf of M/s GCL.

4.1 The principle manufacturer M/s GCL has supplied the input and packing material to the appellant under Rule 4(5)(a) of Cenvat Credit Rules, 2004. It is further established that the activities carried out by the appellant is of manufacture of excisable goods on job work basis. The principle manufacturer M/s. GCL is under legal obligation to discharge the excise duty on the job work goods received by them from the appellant. The show cause notice has not alleged that the principle manufacture has not cleared their final product without payment of excise duty. Accordingly the activities at the most can be classified under sub clause of production or processing on behalf of the client under business auxiliary service.

4.2 Firstly, when the principle manufacturer and appellant as job worker complied with the conditions prescribed under Notification No. 08/2005- ST even if it is treated as business auxiliary service the same is exempted under the said notification, Secondly, when the demand was raised under Management, Maintenance & Repair Service and as per our opinion it is not the correct classification the demand is not sustainable on

this ground itself. The adjudicating authority put heavy emphasis on the fact that the entire plant was used exclusively for production of goods of GCL. Therefore, the service is classified under Management, Maintenance & Repair Service. As we already observed above that since the plant machinery equipment used for the purpose of production belongs to the appellant, the service is not classified under Management, Maintenance & Repair Service. Further, the activities carried out by the appellant are undoubtedly production of goods on job work basis on behalf of GCL. This position will not alter irrespective of fact that whether the plant, machinery & equipment are used exclusively for GCL or partly for GCL or partly for others, therefore, on this basis the activity cannot be classified as Management, Maintenance & Repair Service.

4.3 We further find that the activity of the appellant is indeed manufacture of excisable goods in terms of section 2(f) of CEA, 1944. As per the definition of business auxiliary service manufacture of excisable goods in terms of section 2(f) of the Central Excise Act, 1944 is clearly excluded from the definition of business auxiliary service. For this reason also, the demand of service tax is not sustainable.

5. As per our above discussion and finding the impugned order as a whole is not sustainable, hence we set aside the impugned order. The appeal is allowed with consequential relief.

(Pronounced in the open court on 06.02.2023)

RAMESH NAIR
MEMBER(JUDICIAL)

RAJU
MEMBER (TECHNICAL)