

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD**

ST/52122/2015-CU[DB]

(Arising out of Order-in-Original No.04/Commr./Meerut/2015 dated 26.02.2015 passed by Commissioner, Customs, Central Excise & Service Tax, Meerut.)

M/s. Daurala Sugar Works

...APPELLANT(S)

VERSUS

Commissioner of Central Excise & Service Tax, Meerut-i

RESPONDENT (S)

APPEARANCE

Shri S.C. Kamra (Advocate) & Shri Kartikeya Narayan (Advocate) for the Appellant (s)

Shri Pawan Kumar Singh (Supdt.) (A.R.) for the Revenue

CORAM:

MRS. ARCHANA WADHWA, HON'BLE MEMBER(JUDICIAL)

SHRI ANIL G. SHAKKARWAR, HON'BLE MEMBER(TECHNICAL)

DATE OF HEARING : 26.11.2018

DATE OF PRONOUNCEMENT : 11.12.2018

FINAL ORDER NO.72835/2018

Per Mrs.Archana Wadhwa :

As per facts on record, the appellants are primarily engaged in the manufacture of sugar and molasses and are also registered with the Service Tax department as a service provider falling under various categories. In addition the appellant entered into a contract with M/s.Pernod Ricard (India)(P) Ltd. (hereinafter referred to as PRIPL) earlier known as M/s.Seagram Manufacturing Pvt.Ltd. for bottling of alcohol liquor in the bottles of various sizes supplied by M/s.PRIPL. The said bottling was to be done out of the rectified Spirit/extra neutral alcohol manufactured by M/s.PRIPL and out of

the blending material, bottles holograms and packing material supplied by M/s.PRIPL free of cost. For the purposes of bottling of alcohol they arrange their own labour, supervise the operations and transfer the finished goods i.e. packed in cases to the godown of M/s.PRIPL and thereafter loading the finished goods in the vehicles for onward dispatch from the plant.

2. As per the appellant they were basically engaged in the bottling of alcohol liquor on job-work basis for M/s.PRIPL and bottling of such alcohol liquor being a part and parcel of manufacturing alcohol liquor, on which state excise duty is payable no Service Tax was being paid by them. Prior to 01.07.2012 the appellant was paying Service Tax under the category of 'business support services' as defined in Section 65(19), which excluded any activity that amounts to manufacture of excisable goods. Inasmuch as alcohol was subject to State Excise Duty and not Central Excise duty, the same did not qualify as 'excisable goods' within the meaning of Section 2(d) of Central Excise Act, 1944, the appellant was discharging Service Tax liability.

3. As a result of visit of the Preventive Officers to the appellant's unit on 17.02.2014 and after carrying out the further investigations, Revenue entertained a view that as the appellant was providing services to M/s.PRIPL, they were liable to pay Service Tax on the same. Accordingly proceedings were initiated by way of issuance of a show cause notice dated 23.05.2014 raising demand of Rs.1.32 Crores (approx.) for the period July 2012 to March 2014. The said show cause notice stands culminated into an order passed by the Commissioner confirming the demand as also imposing penalties.

4. Learned Advocate appearing for the appellant submits that the activity undertaken by them has been held to be as manufacturing activity by the Hon'ble High Court of Madhya Pradesh in the case of Maa Sharda Wine Traders vs. Union of India [2009 (15) S.T.R. 3 (M.P.)] and as such it cannot

be held that any service element is involved in the process. By referring to various clauses of the agreement, it stands submitted that after receiving all the inputs along with the packing materials from M/s.PRIPL, they are filling the Indian made foreign liquor into the said bottles after washing the same and further doing labeling, checking and packing fill bottles into cardboard cases. The said activities have been held to be as falling under business auxillary services by the adjudicating authority.

5. After hearing the Id.A.R. we note that an identical issue was the subject matter of the Hon'ble Madhya Pradesh High Court in the case of Maa Sharda Wine Traders vs. Union of India (supra). It stands observed by the Hon'ble High Court that packaging activity means packaging of goods including pouch filling, bottling, labeling or imprinting of package which would get covered under the definition of 'manufacture' inasmuch as the same includes any process incidental or ancillary to the completion of a manufactured product. The Hon'ble High Court upheld the earlier decision of the Hon'ble High Court in the case of Som Distilleries and Breweries Pvt.Ltd. v. State of M.P. and Another [1997 (1) J.L.J. 319] by over-ruling another decision of the Hon'ble Madhya Prashdesh High Court in the case of Vindhyachal Distilleries Pvt.Ltd. v. State of M.P. [2006 (3) S.T.R. 723 (M.P.)]. The Hon'ble High Court observed that the manufacturing process does not necessarily mean it has to be excisable goods, but would include any process which is incidental or ancillary to the completion of a manufactured product. It was further observed that the analysis that the bottling of liquor can be independent is not correct, as the liquor cannot be sold without bottling as there is a statutory stipulation that the liquor has to be sold in bottles. As such it was held that bottling is a part of manufacturing process and amounts to manufacture.

6. If the bottling amounts to manufacture, the Revenue's stand that the appellant is providing taxable services to the manufacturer of the rectified spirits cannot be upheld. Accordingly by following the said decision of the Hon'ble Madhya Pradesh High Court, we set aside the impugned order and allow the appeal with consequential relief to the appellant.

(Pronounced in the open Court on 11.12.2018.)

SD/
(ANIL G. SHAKKARWAR)
MEMBER(TECHNICAL)

SD/
(ARCHANA WADHWA)
MEMBER (JUDICIAL)

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