CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

Regional Bench COURT-2.

Service Tax Appeal No. 802 of 2011

[Arising out of the Order-in-Original No. 71/2010 dated 30.09.2010 passed by the Commissioner of Service Tax, Bangalore.]

Commissioner of Service Tax,
16/1, S.P complex,
Bengaluru Urban
Karnataka – 560021 **.......Appellant**

VERSUS

Arion Technology Ltd
No. 112-A1, Bommasandra Industrial Area,
Hosur Road, Anekal Taluk,
Bengaluru Urban
Karnataka – 560099 **..... Respondent**

Appearance:
Shri Rajiv Kumar Agarwal, Authorized Representative for Appellant
Shri H.Y. Raju, Advocate for Respondent

Coram:
Hon'ble Mr. P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

FINAL ORDER No. 20515 of 2025

Date of Hearing: 09.10.2024
Date of Decision: 08.04.2025

Per: P.A. Augustian

The issue in the present appeal is whether the Respondent is entitled for service tax exemption as per Notification No. 08/2005-ST dated 01.03.2005 as amended by Notification No.19/2005-ST dated 16.06.2005 in respect of the job work activities.

2. The brief facts are the appellant is carrying out the silver finishing (plating), cubic painting etc., on various goods like arm rest, stereo cover, panel boxes etc. Alleging that the activity carried out by the Respondent does not amount to manufacture as per Section 2(f) of the Central Excise Act, 1944, it is considered as 'Business Auxiliary Service' under Section 65(19) of the Finance Act, 1994, proceedings were initiated demanding service tax for the period from 2004-05 to 2007-08 and the service tax liability was worked out to Rs.2,80,56,260/-. Accordingly, Show Cause Notice was issued. However, the Adjudication authority held that by virtue of Notification No. 08/2005-ST dated 01.03.2005, the Respondent is exempted from payment of service tax. The Order-in-Original was reviewed by Committee of Chief Commissioners and as per the Review Order No. ST/71/2010 dated 04.01.2011 the present appeal was filed by the Department before this Tribunal.

3. When the appeal came up for hearing, the Learned Authorized Representative (AR) reiterated the contentions in the grounds of the Appeal Memorandum and submits that though the Respondent was claiming that majority of the clients are major automotive units, the Adjudication authority dropped the proceedings accepting the same on face value without any admissible evidence on record.

4. The Learned Counsel for the Respondent submits that they were receiving semi-finished components from the principal manufacturer under delivery challans and returned the goods after processing. Learned Counsel also draws our attention to the details including list of recipients, value of service and service tax, duty paid status and also submitted declarations from some of the recipients and only after considering these aspects, Adjudication authority rightly held that the Respondent is eligible for the benefit of Notification No. 08/2005-ST dated 01.03.2005. The Learned Counsel also draws our attention to the details regarding the customers to whom they have supplied the goods in 2004-2005, 2005-2006 and 2007 to 2008. The Learned Counsel for the Respondent further submits that while issuing the show cause notice (SCN) demand was made without proposing to classify the

impugned activity under the head of “Business Auxiliary Service” and simply proposed to treat the value of service of Rs. 25,46,57,501/- as declared in the financials as “taxable value” for the period 2004-05 to 2007-08. This issue is considered by the Tribunal in the matter of **M/s. Indian Machine Tools Manufacturers Association Vs. CCE Panchkula** (**2023 (11) CENTAX-213) (Tri. Cha),** wherein it is held that such method of demand is unsustainable.

5. The Learned Counsel further submits that **f**rom the definition of 'Business Auxiliary Service' which stood from 10.09.2004 to 16.06.2005, it is clear that up to 16.06.2005 the service provided i.e production on behalf of the client was only covered, whereas the service rendered to the clients (manufacturers) on job work basis on the goods/materials supplied by the clients is not a case of service provided on behalf of the client but is a case of service provided for the client. Thus prior to 16.06.2005, service provided for a client for production of goods are not covered by the definition of 'Business Auxiliary Service' and hence no service tax liability arises. Activity of the respondent is covered under the category "Production of goods for the client" and not under the category 'Production on behalf of the client'. Respondent was providing the services directly to their clients, who are manufacturers of dutiable excisable goods and not on their behalf to a third party to attract any service tax liability under the category of 'Business Auxiliary Services'. The amendment brought about in Finance Act, 2005 with effect from 16.06.2005 by inserting the words in clause (v) "Production or processing of goods for, or on behalf of the client" clearly shows that with effect from 16.06.2005, the scope of 'Business Auxiliary Service' was expanded to bring the activity of production or processing of goods for the client under the service tax net, and prior to this date, there was no service tax liability on such activity. Learned Counsel for the Respondent also placed reliance on the decision of Tribunal in the case of Auto Coats Vs. CCE Coimbatore, reported in 2009(15) STR 398(Tri-Chennai), wherein it was held that the appellant had not undertaken the activity of bending, drilling etc., on behalf of any other person. They had under taken the activities themselves for a fee. It was only with effect from 16.06.2005 such activities undertaken by a person for

another was brought under 'Business Auxiliary Service' and prior to 16.06.2005, the appellant's activities could be described as processing of goods for their customers. Thus the Hon'ble CESTAT has set aside demand of service tax under 'Business Auxiliary Service' on the job work rendered by the appellant to their clients. The facts and circumstances being similar in their case, the ratio of the above decision is squarely applicable and that the following case laws also support their contentions.

(i) Pearl Packaging Vs. CCE Salem-2009 (15) STR 171 (Tri- Chennai)

(ii) Veesons Energy Systems (P) Ltd., Vs. CCE, Trichy-2009(16)STR 290 (Tri-Chennai)

(iii) Board's letter F.No.B1/6/2005-TRU dated 27.07.2005 which clarified the scope of 'Business Auxiliary Service'.

6. The Learned Counsel also submits that as regards demand for the period 2005-2009 and for the subsequent period also, activity carried out by the respondent does not attract any service tax under the category of 'Business Auxiliary Service' because of the specific exemption provided under Notification No. 08/2005-ST dated 01.03.2005. The said notification provides full exemption to taxable service of production or processing of goods for or on behalf of the clients referred to in sub-clause (v) of the clause 19 of section 65 of the Finance Act, 1994 subject to the following conditions:

a) The goods must be produced or processed using raw materials or semi-finished goods supplied by the client (supplier of raw-material).

b) The goods produced or processed by the job worker are returned back to the said client.

c) The goods so produced or processed by the job worker must be used in or in relation to manufacture of final products classifiable under first schedule to the Central Excise Tariff Act, 1985. The appropriate amount of Central Excise duty must also be paid on the said final product at the time of clearance of goods. It is especially provided that 'appropriate duty of excise' shall not include 'nil' rate of duty or wholly exempt from duty of excise.

7. Therefore by virtue of the said notification, the goods produced are processed on job work basis (whether the process/activity amounts to manufacture or otherwise) are fully exempted, if the conditions specified at (a), (b) and (c) above are satisfied. In Respondent's case, the moulded parts/components of various assemblies or interior parts of motor vehicles, which are semi-finished in nature, are supplied to the Respondent by Tata Auto Comp Systems, TG Kirloskar Automotive Pvt., Ltd., Mahindra and Mahindra, Toyota Boshoku Automotive India Pvt., Ltd., Sun Vacuum Formers Ltd., etc., and they are subjected to the process of cubic painting, water transfer of designs and lacquering etc., as per the customers specifications. The said components/parts are sent back to the suppliers (manufacturers) after completion of the above processes. The components/parts processed and returned to the suppliers are used in the manufacture of final products which are classifiable under the Central Excise Tariff, and appropriate duty is discharged by them at the time of the clearance of the final products. Further, the final products cleared are not wholly exempt or chargeable to 'nil' rate of duty. Thus, all the conditions specified in Notification No. 08/2005-ST dated 01.03.2005 as amended are fully met in the instant case and hence Respondent's activity is fully exempt by virtue of this notification and no service tax is payable by Respondent as demanded in the show cause notice.

8. As regards the demand by invoking the extended period of limitation, Learned Counsel for the Respondent submits that they have not suppressed any facts from the authorities concerned for evasion of duty. Thus invoking the extended period of limitation is unsustainable. Learned Counsel relied on the following case laws.

i. **Tamilnadu Housing Board Vs. CCE, 1994(74) ELT 9 (SC),**
ii. **CCE Vs. Chemphar Drugs & Liniments, 1989 (40) ELT 276(SC),**
iii. **Padmini products Vs. Collector, 1989 (43) ELT 195 (SC)**

iv. **Pushpam Pharmaceuticals Vs. Collector, 1995(78) ELT 401(SC)**

v. **Gopal Zarda Udyog Vs. CCE, 2005 (188) ELT 251(SC),**

vi. **Anand Nishikawa Co. Ltd., Vs. CCE, Meerut 2005 (188) ELT 149 (SC),**

9. Heard both sides and perused the records.

10. We find that as regards invoking of the extended period of limitation, there is no finding given by the Adjudication authority regarding invoking of the extended period of limitation, hence we are not expressing any view regarding the demand invoking the extended period of limitation. On merit, we have gone through the findings given by the Adjudication authority, where it is held that prior to 16.06.2005, the assessee was in production of goods for the client and not on behalf of the clients as per the definition of 'Business Auxiliary Service' as it existed the said activity was not a taxable activity under 'Business Auxiliary Service' prior to the amendment. It is clarified vide Circular No. 80/10/2004/S.T dated 17.09.2004 that production of goods not amounting to manufacture are taxable. Due to change in the definition of 'Business Auxiliary Service' the 'Production or processing of goods for, or on behalf of the client' became a taxable activity, however was exempted under Notification No. 08/2005-ST dated 01.03.2005 as amended, once the job-worked goods are returned to the client, who uses the same in the manufacture of the final goods, which are cleared on payment of duty. Hence, it is held that the assessee is not liable to pay any Service Tax on the Services provided by him. Further, as no liability of tax arises, the question of interest and penalty does not arise.

11. In view of the clear finding given by the Adjudication authority specifying the reasons for dropping the demand raised against the Respondent, we find no reason to interfere with the said findings, hence the impugned order is sustainable and is upheld.

12. Accordingly, the appeal filed by the Revenue is dismissed.

(Order pronounced in open court on 08.04.2025)

(P.A.Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

Sasidhar