CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

ST/120/2007-DB

[Arising out of Order-in-Appeal No. 6/2007-ST dated 31/01/2007 passed by the Commissioner of Customs, Central Excise and Service (Appeals), Cochin.]

M/s. JAYANTHI RUBBERS,
INDUSTRIAL ESTATE, MAYITHARA.P.O.,
CHERTHALA, KERALA STATE

Appellant(s)

Versus

The Commissioner of Central Excise and Service Tax
C R BUILDING,
I S PRESS ROAD, ERNAKULAM,
COCHIN – 682 018.
KERALA

Respondent(s)

Appearance:

Mr. Raghavendra, Advocate
S. RAGHU ADV
NO.543, 12TH CROSS, 8TH MAIN,
J.P.NAGAR 2ND PHASE,
BANGALORE 560 078

For the Appellant

Mr. Parasivamurthy, AR

For the Respondent

Date of Hearing: 18.04.2018
Date of Decision: 10.05.2018

CORAM:

HON'BLE SHRI S.S GARG, JUDICIAL MEMBER
HON’BLE SHRI DEVENDER SINGH, TECHNICAL MEMBER

Final Order No. 20732 /2018

Per : S.S GARG

The present appeal is directed against the impugned order dated 31.1.2017 passed by the Commissioner (A) whereby the Commissioner (A) has rejected the appeal of the appellant and upheld the Order-in-Original.

2. Briefly the facts of the case are that the appellants are manufacturers of rubberized coir products and other moulded rubber products. They are also undertaking rubber backing and rubber edging of polypropylene carpets on job work basis for M/s. Kerafibretex, Kakkanad, Cochin as per agreement dated 10.10.2003. As per this agreement, M/s. Kerafibretex will transfer imported polypropylene carpets vide Challan to the appellants for job work. The appellants will procure raw materials necessary and after job work, return the job worked products to M/s. Kerafibretex, Kakkanad. As per the Order-in-Original, the activity of production of goods on behalf of the client rendered by the appellant was held to be a taxable service within the ambit of 'Business Auxiliary Service; as defined under Section 65(19) of Finance Act, 1994. Accordingly, the demand of service tax amounting to Rs.3,83,162/- and Education Cess of Rs.7,663/- has been confirmed in terms of Section 73 of the Finance Act, 1994 in addition to interest at appropriate rate. Penalty of Rs.200/- per day for the period during which the failure to pay service tax occurred was also imposed, subject to the maximum

of the amount confirmed above under Section 76 of the Finance Act, 1994. Besides, penalty of Rs.1000/- was also imposed under Section 77 of the Finance Act, 1994. Aggrieved by the Order-in-Original, the appellant filed appeal before the Commissioner (A), who rejected the appeal. Hence, the present appeal.

3. Heard both the parties and perused the records.

4. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law. He further submitted that activity undertaken by the appellant is a process which amounts to manufacture as defined under Section 2(f) of the Central Excise Act and therefore, out of purview of the service tax. He further submitted that the appellants are undertaking rubber backing and rubber edging of polypropylene carpets based on job work basis for M/s. Kerafibretex, Cochin. The activity carried out by them is manufacture of rubber mats falling under Tariff Heading No.4016 9100 of Central Excise Tariff Act (CETA). He further submitted that the appellants are using the polypropylene sheets supplied by M/s. Kerafibretex in the process of manufacture. It is his submission that as per the

agreement between the appellant and M/s. Kerafibretex, they are required to manufacture and supply the rubber mats using the polypropylene sheets and the entire process carried out by them is manufacture of goods as per Section 2(f) of the Central Excise Act, 1944. He further submitted that the appellant is a manufacturer of rubber mats out of the raw materials purchased and also using the material supplied by the customers and the resultant product is totally a different product with new name, character and use answering the description of manufacture as held by the Supreme Court in the case of *Delhi Cloth and General Mills Co. Ltd. vs. UOI* reported in *1977 (1) ELT J199 (SC)* and *South Bihar Sugar Mills Ltd. s. UOI: 1978 (2) ELT J336 (SC)*. The appellant has paid the sales tax on the product. Further, he submitted that the definition in Section 65(19) of the Finance Act, 1994 excludes any activity that amounts to manufacture within the meaning of clause (f) of Section 2 of the Central Excise Act, 1994 and this has also been clarified by the Ministry of Finance vide letter No.341/13/2005-TRU dated 12.5.2004. Learned counsel also submitted that in an identical case of M/s. Dolphin Rubber Products in the neighbouring Division who are also doing the same type of work for M/s. Kerafibretex, Revenue has dropped the demand vide Order-in-Original No.27/2006-ST dated

17.11.2006. The copy of which is annexed along with the appeal papers.

5. Heard both the parties and perused the records.

6. After considering the submissions of both the parties and perusal of the material on record, we find that the only issue involved in this case is whether the activity carried out by the appellant amounts to manufacture as defined under Section 2(f) of the Central Excise Act, 1944. Further, we find that the appellant is undertaking the work of rubber backing and edging and also using the polypropylene sheet supplied by the principal-manufacturer which amounts to manufacture of rubber mats falling under Tariff Heading 4016 9100. Further, we find that appellant is paying the VAT on the product. Further, the clarification issued by the Government vide letter dated 12.5.2005 clearly shows that service tax is not applicable if the activity amounts to manufacture. Further, on identical facts in the case of M/s. Dolphin Rubber Products, the Revenue has held that the activity carried out by the said assessee amounts to manufacture and therefore, the entire demand of service tax was dropped. In view of our discussions above, we are of the

considered opinion that the demand of service tax is not sustainable in law and therefore, we set aside the demand by allowing the appeal with consequential relief, if any, to the appellants.

(Order was pronounced in Open Court on **10.05.2018.)**

DEVENDER SINGH
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

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