

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

**Service Tax Appeal No. 2101 Of 2012**

[Arising out of OIA-No-176/BK/RTK/2012 dated 19.04.2012 passed by the Commissioner (Appeals) of Central Excise , Delhi-III]

**M/s Nancy Enterprises**

Satrod Khas, Hissar, Haryana

**: Appellant (s)**

Vs

**CCE & ST- Rohtak**

SCO No. 6 to 8 & 10, Sector 1 Huda  
Market, Rohtak, Haryana 124001

**: Respondent (s)**

APPEARANCE:

None for the Appellant

Shri Nikhil Kumar Singh, Shri Harish Kapoor, DRs for the Respondent

**CORAM : HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)**  
**HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**ORDER No. A/60173/2023**

Date of Hearing:28.06.2023

Date of Decision:28.06.2023

**Per : S. S. GARG**

The present appeal is directed against the impugned order dated 19.04.2012 passed by the Commissioner (Appeals) of Central Excise, Delhi-III wherein the Ld. Commissioner (Appeals) has rejected the appeal of the appellant and confirmed the order-in-original.

2. Briefly stated the facts of the present case are that the appellant has been appointed as the bottle filling, sealing, labelling and packing contractor by M/s Associated Distillers Ltd. (in short M/s ADL). On investigation of the records of the M/s ADL, it was observed that the appellant during the period 2004-2005 and 2005-2006 has entered into contract for bottle filling, sealing, labelling and packing thereof of IMFL and Country Liquor formulated by M/s ADL within the factory at fixed rate depending upon the size of the bottle. Based of this

contract, the appellant was served show cause notice dated 06.10.2009 under Section 73 of the Finance Act, 1994 alongwith interest and equivalent penalty on the ground that the appellant has rendered services of bottle filling, sealing, labelling and packing which is covered under Business Auxiliary Services as defined under Section 65 (19) of the Finance Act, 1994 and liable to pay service w.e.f. 01.07.2003. The appellant filed reply to the show cause notice controverted the allegation of the department and submitted that the activity carried out by the appellant fall in the definition of Manufacture as defined in Section 2(f) of the Central Excise Act, 1944 and thus outside the purview of Business Auxiliary Services as envisaged in the Finance Act. Appellant also took plea that at best his activity may be covered under packaging services as defined under Section 65((76b) of the Finance Act, 1994.

3. After following due process, the original authority has confirmed the demand vide its order dated 29.10.2010. Aggrieved by the said order, the appellant filed appeal before the Ld. Commissioner (Appeals) who rejected their appeal. Hence, the present appeal.

4. None has appeared for the appellant.

5. We have heard the Ld. DR, since the issue involved in this appeal is in a narrow compass. We proceed to decide the case on merit after hearing the Ld. DR.

6. Ld. DR for the Revenue reiterated the findings in the impugned order.

7. We have perused the grounds of appeal and find that the stand of the appellant is that the activity of bottle filling, sealing, labelling & packing cannot be classifiable under the definition of 'Business Auxiliary Services' as defined under Section 65 (105) zzb of the Finance Act, 1994 rather as per the appellant the activity carried out by him amounts to manufacture and the alternative plea of the

appellant is that it can at best be classified under packing services defined under Section 65 (76b) of the Finance Act, 1994 introduced w.e.f. 16.06.2005.

8. Now, the only issue to be decided in the present case is whether the activity of bottle filling, sealing, labelling and packing of IMFL formulated by M/s ADL within the factory of M/s ADL using the plant and machinery of ADL amounts to rendering Business Auxiliary Services or whether it amounts to manufacture of liquor or only packing so as to attract service tax.

In this regard, it is pertinent to consider the definition of 'Business Auxiliary Service' and 'Packing Service' as provided in Finance Act, 1994 and definition of manufacture as provided in Section 2(f) of Central Excise Act, 1944. The definition of 'Business Auxiliary Service' as per section 65(105)(zzb) which is defined as under:-

**"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

[**Explanation** – For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "service in relation to promotion or marketing of service provided by the client" includes any service provided in relation to promotion or marketing of games of chance, organized, conducted or promoted by the client, in whatever form or by whatever name called, whether or not conducted online, including lottery, lotto, bingo;]

(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

[**Explanation** — For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "inputs" means all goods or services intended for use by the client;]

- (v) production or processing of goods for, or 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 sub-clauses (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 commission agent, but does not include any activity that amounts to "manufacture" within the meaning of clause (f) of Section 2 of the Central Excise Act, 1944 (1 of 1944). [**The term 'manufacture' has been replaced by the 'manufacture of excisable goods' by the Finance No.2 Act, 2009]**]

and the definition of 'Packing Services' as defined under Section 65 (76b) of the Finance Act, 1994 which is defined herein below:-

*"packaging activity" means packaging of goods including pouch filling, bottling, labeling or imprinting of the package, but does not include any packaging activity that amounts to 'manufacture' within the meaning of clause (f) of section 2 of the Central Excise Act, 1944 (1 of 1944).*

9. On perusal of the definition of 'Business Auxiliary Service' as well as packing Service, we find that the activity carried out by the appellant does not fall under the definition of 'Business Auxiliary Service' at best it can fall under the definition of packing as

provided under Section 65 (76b) of the Finance Act, 1994.

10. Further we find that the larger bench of the Hon'ble Madhya Pradesh High Court in the case of MAA Sharda Wine Traders vs. Union of India – 2009 (15) STR 3 (M.P) has examined this issue at length and the larger bench after considering the two contrary decisions of the division benches of the High Court's has held in Para 32 as under:-

**32.** *In view of the aforesaid, we answer the reference on following terms :*

*“The decision rendered in M/s. Vindhyachal Distilleries (supra) does not state the law correctly inasmuch as it has expressed the opinion that packaging and bottling of liquor are not the part of manufacturing process and hence, liable to service tax and we uphold the view taken in Som Distilleries (supra) and, therefore, rule that packaging and bottling of liquor come within the ambit and sweep of manufacture within the meaning of clause (f) of Section 2 of Central Excise Act, 1944 in view of the definition contained in Section 65(76b) of the Finance Act especially keeping in view the exclusionary facet and further regard being had to the circular issued by Central Board of Excise and Customs.”*

Since, the issue is squarely covered by the Larger Bench of the Hon'ble High Court of Madhya Pradesh holding that the bottle filing, sealing, labelling and packing amounts to manufacture and therefore does not attract service tax.

11. Following the ratio of the Hon'ble High Court of Madhya Pradesh, we hold that the impugned order is not sustainable in law and we set-aside the impugned order by allowing the appeal filed by the appellant.

*(Operative part of the order pronounced in the open court)*

**(S. S. GARG)**  
MEMBER (JUDICIAL)

**(P. ANJANI KUMAR)**  
MEMBER (TECHNICAL)