CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 472 of 2012

[Arising out of Order-in-Appeal No. 09/ST/APPL/CHD-II/2012 dated 16.01.2012 passed by the Commissioner (Appeals), 18.01.2012]

M/s Shiv Ply Boards Pvt Ltd **......Appellant**
Vill-rail Majra, The Balachaur, Distt.

VERSUS

Commissioner of Central Excise and ST-Chandigarh **......Respondent**
Plot no. 19,Central Revenue Building Sector 17-C, 160017

APPEARANCE:

Present for the Appellant: Shri Sudeep Singh Bhangoo, Advocate

Present for the Respondent: Shri Raman Mittal, Authorized Representative

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

FINAL ORDER NO. 60421/2024

DATE OF HEARING: 03.04.2024
DATE OF DECISION:09.07. 2024

PER S. S. GARG

The present appeal is directed against the impugned order dated 18.01.2012 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has set aside the demand of Rs. 15066/- and confirmed the rest of the demand thereby partially allowed the appeal of the appellant.

2. Briefly the fact of the present case are that the appellant during the relevant time was engaged in the manufacture of ply wood and was also doing job work of seasoning of the wood on behalf of others. The Preventive Staff of the Central Excise Division, Phagwara had visited their factory on 15.12.2006 and had found that they were not paying service tax on the job work of wood seasoning being done by them. It was also noticed that the appellant had also not paid service tax on inward freight charges under the service on GTA. The Department entertained the view that the activity of a seasoning of wood done by the appellant was liable to service tax w.e.f. 10.09.2004, under the category of "Business Auxiliary Service", when the service in relation to "Production of Goods on behalf of the Client" was made liable to service tax; a demand of Rs.3,37,719/- on this account was raised against the appellant on the amount of Rs.27,16,971/- for the period for 10.09.2004 to 31.03.2006 @10.2% and on an amount of Rs.4,95,000/- for the period from 01.04.2006 to 31.03.2007 @12.24%.

2.1 Demand of Rs.20,088/- was also raised under the category of GTA Service, on the amount of Rs.39,232/- paid during the period 01.01.2005 to 31.03.2005 and on the amount of Rs. 1,57,712/- paid during the period 2005-06 @10.2%. The appellants had deposited an amount of Rs.3,57,807/- vide TR-6 challans dated 04.01.2007. After following due process, the adjudicating authority confirmed the demand of Rs. Rs.3,57,807/-, demanded in interest under Section 75, imposed penalty under Section 76, Imposed penalty to Rs. 10,000/- for not filing of ST-3 return under Section 77 and imposed equal penalty of Rs.3,57,807/- under Section 78. Aggrieved by the said order, the appellant filed before the Commissioner who partially allowed the appeal of the appellant; hence, the present appeal.

3. Heard both the parties and perusal of the material on record.

4. Ld. Counsel for the appellant submits 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 submits that the Commissioner (Appeals) did not appreciate the contention of the appellant that no tax under the category of business auxiliary service could be demanded for the period prior to 16.06.2005 as during that period only activity related to production of the goods were chargeable to service tax. He further submits that it was only w.e.f. 16.06.2005 that the activity of production or processing of goods was made liable to service tax. He also submits that the Ld. Commissioner (Appeals) although has accepted the plea that the appellants were eligible to claim abatement @75% under the service of GTA and hence he has dropped the demand of Rs. 15,066/- against the appellant and has also dropped the penalty imposed under Section 76.

5. He further submits that the appellant has only undertaken the process of seasoning of wood which cannot be treated as production of goods as no new product comes into existence. By way of seasoning of the wood only moisture content is reduce. He further submits that if at all the in service tax is demandable then it would be for the period 16.06.2005. In this regard, he relied upon the

decisions in the case of CCE Hyderabad-III Vs. Oil Country Tubular Ltd. 2019(24)GSTL 612(Tri. Hy) wherein, the demand of service tax for the period prior to 16.06.2005 on the processes of heat treatment, surface coating, drift test etc, was dropped.

5.1 The Ld. Counsel further submits that appellant would also be eligible for the benefit of SSI exemption under Notification No.6/2005-ST dated 01.03.2005. If the Tribunal comes to the conclusion that the activity is taxable w.e.f. 16.06.2005. He also submits that benefit of cum-tax value merits to be extended to the appellant because of the figures of the amount of job work done have been taken from balance sheet and accounts of the appellant. He also brought that in the facts and circumstances penalties should be dropped by giving waved off in terms of Section 80.

6. On the other hand, Ld. AR reiterated the findings of the impugned order.

7. After considering the submissions of both the parties and perusal of the material on record, we find that it is relevant to reproduce the definition of "business auxiliary service" for the period 10.09.2004 to 16.06.2005 and after the amendment of "business auxiliary service" which is reproduced here in below:

"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

(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

(v) production of goods 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 information technology service and any activity that amounts to "manufacture" within the meaning of clause (f) of section 2 of the Central Excise Act, 1944 (1 of 1944). Explanation. - For the removal of doubts, it is hereby declared that for the purposes of this

clause, "information technology service" means any service in relation to designing, developing or maintaining of computer software, or computerised data processing or system networking, or any other service primarily in relation to operation of computer systems;

8. Further, we find that the activity of seasoning of timber by the appellant was made taxable w.e.f. 16.06.2005 whereas the Ld. Commissioner (Appeals) has confirmed the demand of Rs.

Rs.3,37,719/- for the period 10.09.2004 to 31.03.2006 @10.2% and on an amount of Rs.4,95,000/- for the period 01.04.2006 to 31.03.2007 @12.24%. Further, we hold that the Ld. Commissioner has wrongly confirmed the demand on the activity of seasoning of timber for the period 10.09.2004 to 16.06.2005 till the entry was amended. As per the appellant, if the benefit of this period is given then their demand would reduce by Rs. 2,09,427/- out of the total demand and they will be entitle to refund of excess duty paid.

8.1 Further, we note that the submissions of the appellant that they are eligible for benefit of SSI exemption under Notification No. 6/2005-ST dated 01.03.2005 if their demand of service Tax is considered from 16.06.2005. This aspect will be examined by the Original Authority after fresh quantification. We also hold that since the service tax demand has been confirmed by adjudicating authority, by taking the figures of the amount of job work done from Balance Sheet/ Accounts; the appellant is also entitled to the benefit of cum-tax.

9. In view of our discussion above, we set aside the impugned order and remand the matter back to the Original authority with the following directions:

a) to quantify the demand of service tax w.e.f. 16.06.2005 when the definition of business auxiliary service was amended.

b) after quantification they found to be eligible to SSI exemption, the same may be extended to them.

c) the amount of excess deposited to Rs. 15066/- paid against GTA which has been dropped by the Ld. Commissioner (Appeals) should also be adjusted while quantifying the final demand.

d) in these circumstances, penalty against the appellant under Section 77 & 78 are waived off in terms of Section 80 of the Finance Act, 1994 as the appellant had a reasonable ground for not paying the service tax.

10. The appeal is accordingly disposed of by way of remand.

(Order pronounced in the open court on 09.07.2024)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Kailash