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

S.No	Appeal No.	Appellant	Respondent
1.	ST/511/2010	Samrajyaa and Company	Commissioner of Central Excise, Coimbatore
Arising out of Order-in-Appeal No.41/2010-ST dt. 11.05.2010 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore			
1.	ST/676/2010	Samrajyaa and Company	Commissioner of Central Excise, Coimbatore
Arising out of Order-in-Appeal No.71/2010-ST dt. 25.08.2010 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore			

Appearance :

Ms. S. Sridevi, Advocate
For the Appellant

Shri A. Cletus, ADC (AR)
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi, C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / decision : 25.09.2018

FINAL ORDER No. 42493-42494 / 2018

Per Bench

The facts of the case are that appellants were doing job work of machining, drilling, milling etc on goods received under cenvat challans from one M/s.Magna Electro Castings Ltd. Pursuant to verification of invoices and other records, it appeared to the department that appellants are involved in the activity of "production of goods on behalf of the clients" on which service tax is required to be paid as per Section 65 (19) (v) of the Finance Act,1994 under the category of “Business Auxiliary Service”. Appellants were requested to produce certain documents like invoices, bills etc. by HPU unit on 11.9.2006. Accordingly, show cause notice dt. 15.05.2008 was issued to the appellants *inter alia*, alleging that since activities of “inspection and packing” and clearance of goods for export under bond done by the principal manufacturer do not amount to fulfilment of conditions of ‘use in or in relation to manufacture of other goods’ as appearing in the Notification No.8/2005-ST dt. 01.03.2005, the appellants were not eligible to the exemption available under the said notification; that they would be liable to pay service tax on behalf of the client under the category of “Business Auxiliary Service” during the period 10.9.2004 to 31.07.2006 amounting to Rs.43,83,331/- and Education Cess of 87,667/- with interest thereon and imposition of penalties under Section 76, 77 & 78 of the Act. In adjudication, the original authority vide an Order dated 11.08.2009 confirmed demand of service tax of Rs.41,97,593/- and Educatin cess of Rs.26,287/- with interest thereon and imposition of equal penalty under Section 78 ibid as also penalty under Section 76 ibid. In appeal, the Commissioner (Appeals) vide an Order No.41/2010-ST dt. 11.05.2010 set aside the demand for the period prior to 16.06.2005, set aside the penalty under Section 76 and directed that penalty under Section 78 should be equal to the service tax liability to be recomputed. Hence Appeal ST/511/2010 by the appellant.

2. Another SCN dt. 16.10.2008 was issued on identical grounds for the period 1.4.2010 to 31.03.2008 proposing demand of service tax liability of Rs.47,18,145/-, Education Cess of Rs.94,363/- and Secondary Higher Education

Cess of Rs.43,640/- with interest thereon and imposition of penalty under Section 76 ibid. In adjudication, the original authority vide an Order dt.14.10.2009 confirmed demand of service tax of Rs.41,22,299/-, Education cess of Rs83,989/-, SHS Education cess of Rs.38,840/- with interest thereon and also imposed penalty under Section 76 of the Act ibid. On appeal, the Commissioner (Appeals) vide an Order No.71/2010-ST dt.25.08.2010 upheld the order of original authority and rejected the appeal. Hence appeal ST/676/2010 by the appellant.

3. Today when the matter came up for hearing, on behalf of the appellant, Ld. Advocate Ms. S. Sridevi made oral and written submissions which can be broadly summarized as under :

i. The term “business auxiliary service” specifically excluded activities amounting to “manufacture” as per Sec.2 (f) of Central Excise Act, 1944, from the scope of levy. In appellants case, the rough casting received from M/s.Magna Castings would be subjected to various processes, such as maching, drilling tapping and milling so as to convert them in to different components. After such process, the emerging components are used as components of locomotives, hydraulic values, automotives etc., The rough castings received by the appellant are not capable of being used for any specific purposes and after the processed carried out by the appellant, they attain the character of specific components with specific use, whey they did not possess hitherto. Hence the activities undertaken by the appellant would amount to “manufacture”.

ii. Reliance is places in the following decisions;

(1) Paramount Centrispun Castings – 1995 (77) ELT 705, upheld by Supreme court in 1996 (83) ELT A176 SC;

(2) Metal forgings – 1998 (102) ELT A224 SC

(3) Brakes India – 1998 (101) ELT 241 SC

(4) Vishal Malleable Ltd – 1995 (76) ELT 590

iii. Without prejudice to the above, the appellant wish to submit that even assuming that the activity would not amount to manufacture, even then the appellants are eligible for exemption in terms of Notification No.8/2005 – ST which exempts the job worker from payment of tax on the job worked goods. Reliance in placed on the decision of Interplex Electronics India (P) Ltd., - 2014 (33) STR 56 (Tri Bang).

iv. The appellant submits that the processed goods were cleared for export under bond by the Principal Manufacturer. This would not be equated to exempted goods in order to deny the exemption benefit to the appellants. In this connection detailed submissions were made in para 6.4 of the appeal memorandum, which may be taken up for consideration.

v. The appellant submits that the goods received from the principal manufacturer were under job work challan and the principal manufacturer vide their letter dated 10.03.2005 clearly admitted that these goods were used in relation to manufacture of final products by them and the finished goods are cleared either for export under bond or domestic purpose on payment of appropriate duty. Further, the appellants also claimed benefit of Notification No.8/2005 and filed ST 3 returns intimated such availment of notification. Hence, no suppression can be attributed against the appellants.

4. On the other hand, Ld. A.R Shri A.Cletus supports the impugned orders. He points out that appellants had already registered with the department on 22.1.2005 itself for providing BAS. However, they had not filed any periodical ST-3 returns. In the first return filed on 24.10.2006, appellants had claimed exemption under Notification No.8/2005-ST dt. 1.3.2005. Ld. AR contends that as per the said notification, the exemption will only be available only in case when goods which has been produced by the appellants are returned back to the principal manufacturer for use in or in relation to manufacture of any other goods. Ld. A.R submits that when the principal manufacturer M/s.Magna Electro Castings Ltd. were not using returned goods for manufacture of final product but only doing inspection and packing, the benefit of Notification No.8/2005-ST will not be applicable to the appellants. Ld. AR also argues that the process carried out on the castings by the appellant will also not amount to any 'manufacture'.

5.1 Heard both sides and have gone through facts.

5.2 From the facts narrated in the SCN dt. 15.05.2008, it is evident that till verification done on 11.09.2006 by the department, the appellants were not discharging any duty or tax liability on the activities carried out by them. It is not disputed that they were doing job work such as machining, drilling, milling etc. on the goods received under cenvat challans from Magna Electro Castings Ltd. It is also evident that only after the verification action by the department started, the appellant had filed the first return on 24.10.2006 claiming exemption under Notification No.8/2005-ST dt.01.03.2005. The main ground for initiation of the proceedings against the appellant in both the SCNs is that their client Magna Electro Castings Ltd. were not using the returned goods “in the manufacture of final products” but were exporting the goods as such. At the same time, nothing is forthcoming from the notices as to whether any SCN has been issued to Magna Electro Castings Ltd. in this regard and whether such proceedings have culminated in a finding that in fact no manufacturing activity is being carried out by them. In the circumstances, we are of the considered opinion that mere allegation against Magna Electro Castings Ltd., that too in passing, in para 10.5 of the SCN dt.15.05.2008 and in para-2 of the SCN dt. 16.10.2008 cannot be taken as a bulwark for initiating proceedings against their job workers, the appellants herein.

5.3 On the other hand, the appellants have been crying hoarse all along that the activities carried out by them do amount to processing of manufacture. The case laws relied upon by the Ld.Advocate also have consistently reiterated that subjecting crude castings to machining and drilling processes amount to “manufacture”. SCNs also did not dispute that appellant performed machining, drilling, milling etc. on the rough castings supplied by the client.

5.4 In the circumstances, the activities carried out by the appellant will indeed amount to ‘manufacture’ for the purpose of Section 2(f) of the Central Excise Act,1994 and in consequence, the same will not be a Business Auxiliary Service under Section 65 (19) of the Finance Act, 1994 and therefore no service tax liability will arise in consequence. This being so, the impugned orders confirming demand of service tax under 'Business Auxiliary Service' cannot then sustain and will require to be set aside, which we hereby do. Appeals are allowed with consequential benefits, if any , as per law.

(operative part of the order pronounced in court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi, C.S)
Member (Judicial)

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