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

Appeal No. ST/593/2012

(Arising out of Order-in-Appeal No. 2/2008 dated 2.1.2008 passed by the Commissioner of Central Excise (Appeals), Chennai)

M/s. Best Heat Treatment Services Appellant

Vs.

Commissioner of GST & Central Excise,
Coimbatore Respondent

Appearance

Shri J. Shankarraman, Advocate for the Appellant
Shri Jagan Babu, AC (AR) for the Respondent

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

Date of Hearing / Decision: **27.02.2019**

Final Order No. **40409 / 2019**

Per Bench

Brief facts are that the appellants had paid service tax on process done to goods received from 100% EOU from 1.3.2009 but failed to pay service tax for the period from 15.6.2005 to 28.2.2009. Show Cause Notice was issued proposing to demand service tax along with interest and also for imposing penalty. After due process of law, the original authority confirmed the demand of service tax of Rs.5,76,886/- on the ground that the final products manufactured and exported by the EOU are wholly exempted by Notification No. 24/2003-CE dated 31.3.2003 and therefore the appellant cannot avail benefit of Notification No. 8/205-ST dated 1.3.2005. In appeal, Commissioner (Appeals) upheld the same. Hence this appeal.

2. On behalf of the appellant, ld. counsel Shri J. Shankarraman appeared and argued the matter. He submitted that the appellant received various items from 100% EOU for doing job work and the goods were returned to such 100% EOU who exported the goods under bond. The department has raised the demand alleging that the appellant is not eligible for the benefit of exemption under notification 8/2005-CE dated 1.3.2005 wherein it is stated that the service tax on the job work is exempted subject to the condition that the goods so produced / processed are returned back to the client for use in or in relation to the manufacture of any other goods falling under the First Schedule to the CETA, 1985 on which the appropriate duty of excise is payable. As per Explanation (ii) under the Notification, the term 'appropriate duty of excise' shall not include 'nil' rate of duty or duty of excise which is wholly exempt. The department alleges that since the goods manufactured by 100% EOU are wholly exempted vide Notification 23/2003, the appellant has to pay the service tax

for the job work activity. He argued that the goods manufactured by 100% EOU are exported and they are not unconditionally exempted. It is settled law that export of goods cannot be equated with clearance of goods exempted from the whole of duty or goods chargeable to nil rate of duty. The Tribunal in the case of Alpha Drugs India Ltd. Vs. Commissioner of Central Excise – 2000 (118) ELT 783 held that export of goods under bond without payment of duty are neither goods exempted from whole of duty nor goods chargeable to nil rate of duty. This was upheld by the Hon'ble High Court of Punjab and Haryana as reported in 2002 (140) ELT 43 (P&H). The above view was followed in the case of Interplex Electronics India P. Ltd. Vs. Commissioner of Service Tax – 2014 (33) STR 56. He therefore prayed to set aside the demand.

3. The ld. AR Shri Jagan Babu appeared and argued on behalf of the department. He supported the findings in the impugned order.

4. Heard both sides.

5. The issue is with regard to the demand of service tax under the category of BAS on the job work activity done by the appellant who returned the goods to the 100% EOU. The issue whether the appellant is liable to pay service tax under the category of BAS for the job work activity done for 100% EOU has been analyzed by the Tribunal in the case of Interplex

Electronics India P. Ltd. (supra). The relevant portion of the order is reproduced as under:-

> *"5.3 Even though the issue can be decided on the sole ground whether the process amounts to manufacture or not, we would like to consider applicability of the second ground viz., exemption under Notification No. 8/2005-S.T. also, which provides for exemption from Service Tax to the goods produced on behalf of the client provided such exemption is allowed only when such goods are used by the principal manufacturer or further manufacture of other goods on which appropriate duty of excise is payable. The Notification also defines 'appropriate duty of excise'. According to the Notification, 'appropriate duty of excise', shall not include 'nil' rate of duty or duty of excise wholly exempt. We find ourselves in agreement with the submission that the Notification when read with the 'appropriate duty of excise' would mean that only when the goods manufactured by the principal manufacturer attract 'nil' rate of duty as per tariff or unconditional full exemption, the benefit of Notification No. 8/2005 is denied. In this case, the 100% EOU viz., M/s. Tyco Electronics to whom the appellants have supplied the goods on job work basis is eligible for exemption Notification No. 24/2003-C.E., dated 31-3-2003. It is the stand of the department that this notification exempts 100% EOU from payment of duty and therefore the appellant is not eligible for the benefit of Notification No. 8/2005-S.T. We find that Notification No. 24/2003-C.E., dated 31-3-2003 has a proviso which reads as under :*
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> *"Provided that the exemption contained in this notification in respect of duty of excise leviable under Section 3 of said Central Excise Act shall not apply to such goods if brought to any other place in India."*
>
> *This clearly shows that this is not an unconditional exemption notification. Exemption is available only if the goods are not brought to any other place in India. Since exemption under Notification No. 24/2003 is not an unconditional exemption, we find that the appellant has a case for eligibility for exemption under Notification No. 8/2005 also even if it is assumed that the process does not amount to manufacture."*

6. It is also submitted by the ld. counsel that for the subsequent period, the Commissioner (Appeals) vide Order in

Appeal No. 63/2009 dated 13.10.2009 has set aside the demand on the very same issue.. In the case of M/s. Super Springs Pvt. Ltd. Vs. Commissioner of Central Excise vide Final Order No. 43490 & 43491/2017 dated 21.12.2017, the Tribunal has analyzed the issue and observed as under:-

> *"5. On the second issue, regarding the tax liability of the appellant on processing of goods on behalf of 100% EOU, we note that denial of exemption is not justified. We note that the scope of Notification No. 8/2005 has been examined where the Tribunal in Interplex Electronic India Pvt. Ltd. Vs. CST, Bangalore - 2014 (33) STR 56 (Tri.-Bang.), it was held that the term 'appropriate duty of excise' would mean that only when the goods manufactured by the principle manufacturer attract nil rate of duty as per tariff or unconditional full exemption, exemption under Notification No. 8/2005 is to be denied. EOU are exporting the goods under bond and as such it was held that the appellant assessee who is doing process on behalf of EOU are eligible for the said exemption. Similar ratio on identical terms for exemption has been examined by the Hon'ble P&H High Court in Alpha Drugs (I) Ltd. (supra) and Hon'ble Madras High Court (supra)."*

7. In view of the above, we hold that the demand cannot sustain. The impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Operative portion of the order was
pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

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

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