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

ST/51/2009

(Arising out of Order-in-Appeal No.38/2008 dated 30.10.2008 passed by the Commissioner of Central Excise (Appeals), Trichy)

M/s. Veesons Energy Systems Pvt. Ltd. Appellant

Vs.

Commissioner of Central Excise, Trichy Respondent

Appearance

Ms. Sridevi, Advocate for the Appellant
Shri B. Balamurugan, AC (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: **21.08.2017**

Final Order No. 41761/2017

Per Bench

The appellant is engaged in manufacturing of boilers and parts thereof. They are registered with the Central Excise Department and also with Service Tax Department. Appellant also undertakes various job work activities, mainly for M/s. BHEL, Trichy. Show cause notice dated 18.4.2007 was issued to the appellant proposing to demand service tax of

Customs, Excise & Service Tax Appellate Tribunal

Rs.48,470/- along with interest for the above activity under Business Auxiliary Service for the period from 10.9.2004 to 28.2.2005 by invoking extended period. The notice also proposed to impose penalty under sections 76, 77 and 78 of Finance Act, 1994. After due process of law, the original authority confirmed demand of service tax of Rs.48,470/- along with interest and appropriated the amounts paid by the appellant against such liabilities. He also imposed equal penalty under Section 78 and penalty of Rs.1000 under Section 77. On appeal, the Commissioner (Appeals) upheld the order. Hence this Appeal.

2. On behalf of appellant, learned counsel Ms. Sridevi submitted that appellants are doing the above activity for M/s. BHEL and not on behalf of M/s. BHEL. The scope of service of BAS as on 10.9.2004 covered only the activity 'production of goods on behalf of the client' and only from 16.6.2005, the scope was extended to cover 'production or processing of goods for or on behalf of the client'. The following decisions clearly hold that the job work activity carried for the client was covered under BAS only from 16.6.2005 and prior to the same it is not a taxable activity. She relied upon the judgment in the case of M/s. Tara Agencies 2007 (214) E.L.T. 491 (S.C.) as well as the following judgments:

(a) Sonic Watches Ltd Vs. Commissioner of Central Excise, Vadodara - 2011(21) S.T.R. 34 (Tri.-Ahmd)

(b) Rathour Engineering Works Vs. Commissioner of Central Excise, Chandigarh - 2012(27) S.T.R. 37 (Tri.-Del.).

(c) Auto Coats Vs. Commissioner of Central Excise, (S.T.), Coimbatore - 2009(15) S.T.R. 398 (Tri.-Chennai)

(d) Prakash Pulversing Mills – 2014 (33) STR 454

3. The Learned AR Shri B. Balamurugan reiterated the findings in the impugned order.

4. Heard both sides. The issue is whether the manufacturing of boilers and parts thereof on behalf of client would fall within the definition of Business Auxiliary Service. The department is of the view that such activities would amount to manufacture of goods. The Hon'ble Apex Court in the case of Commissioner of Income Tax, Kerala Vs. Tara Agencies (supra) has discussed the activity and observed as under:

> *"All the three stages, namely, production, manufacturing and processing of tea can be enumerated as under. The tea is produced in the tea gardens. This first stage is called production of tea. The second stage is manufacture of tea. In this stage, the tea leaves are plucked from the tea bushes and by mechanical process, tea leaves are converted to tea. This second stage is considered manufacturing of tea. The third stage is blending of different qualities of tea in order to smoothen its marketability. This third stage is considered processing of tea.*
>
> *The controversy involved in this case revolves around construction and meaning of terms 'manufacture', 'production' and 'process', therefore, we deem it appropriate to deal with these terms in detail as enumerated in various dictionaries and by the decided cases to properly comprehend the distinction in these terms.*

Customs, Excise & Service Tax Appellate Tribunal

> *On clear construction and interpretation of Section 35B(1A) of the Act, we are clearly of the opinion that the responden's activity amounts to 'processing' only and the activity does not amount to either 'production' or 'manufacture'. The term 'processing' has not been included in Section 35B(1A) of the Act, therefore, the respondent is not entitled for weighted deduction under Section 35B(1A) of the Act".*

5. Following the same, we are of the view that the activity of the appellants would not amount to manufacture. Similar view was taken in the case of Sonic Watches Ltd, and above cases relied by the appellant.

6. From the above, we hold that the demand is unsustainable. The impugned orders are set aside. The appeals are allowed with consequential reliefs, if any.

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

(**Madhu Mohan Damodhar**) Member (Technical)	Sulekha Beevi (**Sulekha Beevi C.S.**) Member (Judicial)

Rex

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति/Certified True Copy

सहायक पंजीकार/Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर
अपील अधिकारी/(CESTAT)
चेन्नै/CHENNAI