

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Service Tax Appeal No.40518 of 2014

(Arising out of Order-in-Appeal No. 19/2014 dated 21.2.2014 passed by the Commissioner of Customs, Central Excise and Service Tax (Appeals), Coimbatore)

M/s. Lakshmi Automatic Loom Works Ltd.

Singarampalayam
Kinathukadavu, Pollachi
Tiruppur – 642 109.

Appellant

Vs.

Commissioner of GST & Central Excise

6/7 ATD Street
Race Course Road
Coimbatore 641 018.

Respondent

APPEARANCE:

Ms. G. Lavanya Lakshmi, Advocate for the Appellant
Smt. Anandalakshmi Ganeshram, Supdt. (AR)

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No.40451/2023

Date of Hearing : 16.06.2023

Date of Decision: 16.06.2023

Per Ms. Sulekha Beevi C. S.,

Brief facts are that the appellant has central excise registration and service tax registration and is engaged in the manufacture of transmission shaft, transmission elements, machinery parts and is also providing taxable services under the category of maintenance and repair service.

2. On verification of the records of the 100% EOU, it was noticed that the appellant which is a DTA unit had received the raw materials from the EOU for further processing of drilling, milling and boring etc. on job work basis and received job work charges. As per section

65(19)(v) of Finance Act, 1994, 'production or processing of goods for, or on behalf of the client' is subject to service tax under the category 'Business Auxiliary Service'. The appellant had received labour charges from the EOU for the period from February 2007 to September 2008. They had not discharged appropriate service tax on the gross amount received by them. Show Cause Notice dated 13.1.2012 was issued proposing to demand service tax along with interest and for imposing penalty. After due process of law, the original authority confirmed the demand, interest and imposed penalty. Against such order, appellant preferred appeal before Commissioner (Appeals) who upheld the same. Hence the appellants are now before the Tribunal.

3. The learned counsel Ms. G. Lavanya Lakshmi appeared and argued for the appellant. It is submitted by her that the appellant unit is receiving goods from their EOU and processing the same on job work basis and send the products to the 100% EOU. The authorities below have rejected their contention that no service tax is liable to be paid on job work charges as per notification 8/2005. The reason for rejection is that the EOU has not paid duty on the finished products cleared by them. The EOU to whom the appellant supplied the goods after job work has cleared the goods on bond. It cannot be then said that the goods are cleared with 'nil' duty or availing exemption. The decision in the case of *Repro India Ltd. Vs. UOI* – 2009 (235) ELT 614 (Bom.) was relied to argue that 'exempted goods' does not cover dutiable goods exported under bond. It is submitted that the issue in the present as to whether the benefit of notification 8/2005 is eligible when the job work is done for EOU who has cleared the goods without payment of duty is settled by various decisions. The learned counsel

adverted to the decision of the Tribunal in the case of Interplex Electronics India Pvt. Ltd. Vs. Commissioner of Service Tax reported in 2014 (33) STR 56 (Tri. Bangalore), Super Springs Pvt. Ltd. Vs. CCE reported in 2018 (4) TMI 1104 (Tri. Chennai) and Best Heat Treatment Services Vs. Commissioner of GST & CE reported in 2018 (4) TMI 1104 (Tri. Chennai). She prayed that the appeal may be allowed.

4. The learned AR Smt. Anandalakshmi Ganeshram, Supdt. (AR) appeared and argued for the respondent. The learned AR submitted that the department has preferred appeal against the decision of the Tribunal in the case of Interplex Electronics India Pvt. Ltd. (supra) before the Hon'ble Supreme Court and that the same is pending. It is also pointed out by her that the subsequent decision of the Tribunal has relied the decision in Interplex Electronics India Pvt. Ltd. (supra). She prayed that the appeal may be dismissed.

5. Heard both sides.

6. The issue to be decided is whether the appellant is liable to pay service tax under the category of Business Auxiliary Service for the labour charges collected by them from their EOU for doing the job work on drilling, milling, boring etc. After considering the facts, we find that the issue stands covered by the decision of the Tribunal in the case of Interplex Electronics India Pvt. Ltd. (supra) wherein the Tribunal has observed 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:-

"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.

5.4 Since we have found that the appellant has made out a case on merits on both the grounds as discussed above, we do not consider it necessary to consider the issue relating to limitation, penalty, etc. In view of the above, the appeal is allowed with consequential relief, if any, to the appellant. The stay petition also gets disposed of."

(Emphasis supplied)

7. The Tribunal in the case of Best Heat Treatment Services (supra) applied the decision in the case of Interplex Electronics India Pvt. Ltd. (supra) and held as under:-

"6. It is also submitted by the Id. 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."*

(Emphasis supplied)

8. It is submitted by the learned AR that the decision of the Tribunal in the case of Interplex Electronics India Pvt. Ltd. (supra) has been appealed before the Hon'ble Supreme Court. However, since there is no stay of operation of the ratio laid in the decision of the Tribunal, by judicial discipline, we follow the above decisions and hold that the demand cannot sustain and requires to be set aside, which we hereby do. The impugned order is set aside.

9. In the result, the appeal is allowed with consequential relief if any, as per law.

(Dictated and pronounced in open court)

(M. AJIT KUMAR)
Member (Technical)

(SULEKHA BEEVI C.S.)
Member (Judicial)