

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
**NEW DELHI**

PRINCIPAL BENCH – COURT NO. – IV

**Service Tax Appeal No. 50124 of 2017 [DB]**

[Arising out of Order-in-Original No. 42/COMMR/HPR/2016-17 dated 05.10.2016 passed by the Commissioner of Central Excise, Customs and Service Tax, Hapur]

**M/s. Aurangabad Auto Engineering Pvt. Ltd.      ...Appellant**  
Plot No. 7H, Sector – 09,  
IIE, SIDCUL, Pantnagar,  
Uttarakhand

*VERSUS*

**Principal Commissioner of CGST,  
Excise and Service Tax – Meerut I      ...Respondent**  
Opposite CCS University,  
Mangal Pandey Nagar, Meerut,  
Uttar Pradesh - 250002

**APPEARANCE:**

Shri Prashant Patankar, Advocate for the Appellant  
Shri Anand Narayan, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)**  
**HON'BLE MRS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)**

DATE OF HEARING: 23.08.2024  
DATE OF DECISION: **19.12.2024**

**FINAL ORDER No. 59911/2024**

**DR. RACHNA GUPTA**

Present appeal has been filed to assail the Order-in-Original No. 42/2016-17 dated 05.10.2016. The facts, in brief, which culminated into the said order are as follows:

1.1 M/s. Aurangabad Auto Engineering Pvt. Ltd., the appellants, are engaged in manufacture of parts and accessories of motor vehicles. They were also availing area wise exemption under Notification No. 50/2003-CE dated 10.06.2003. During the scrutiny of records of the appellant, the department observed that for Financial Year 2009-10, 2010-11, 2011-12 and 2012-13, the

appellant had regularly showed receipt of conversion charges in their balance sheets. On being enquired, it was informed that appellants are engaged in processing of goods of M/s. Varroc Engineering Pvt. Ltd. on job work basis and the said conversion charges are used for doing the said activity. In fact, the movement of the inputs was also shown as job work and job work challans were raised in terms of Rule 4(6) of Cenvat Credit Rules, 2004. The appellant failed to convey the actual process undertaken by them with respect to the inputs received from M/s. Varroc Engineering Pvt. Ltd. Hence, it could not be ascertained as to whether the said process amount to manufacture or not. Irrespective the single process carried out by the appellant cannot be termed as amounting to manufacture. Therefore, the appellant was held to have been doing job work not amounting to manufacture and the activity of the appellant has been alleged to be the act of providing Business Auxiliary Services to M/s. Varroc Engineering Pvt Ltd. Since the activity being taxable, the amount received for performing the said activity as conversion charges from M/s. Varroc Engineering Pvt. Ltd. are liable to service tax. With these observations and allegations, Show Cause Notice No.222/15 dated 20.10.2015 was served upon the appellants proposing the demand of service tax amounting to Rs.81,61,363/- with the proportionate interest and the appropriate penalties. The said proposal has been confirmed by the original adjudicating authority vide the aforementioned order. Being aggrieved, the appellant is before this Tribunal.

2. We have heard Shri Prashant Patankar, learned Advocate for the appellant and Shri Anand Narayan, learned Authorized Representative for the department.

3. Learned counsel for the appellant has mentioned that the original adjudicating authority has confirmed the demand of service tax along with the interest and has also imposed penalty of equal amount on the premise that the processes undertaken by the appellant do not amount to manufacture but job work. Hence, it is a Business Auxiliary Service being rendered by the appellant to M/s. Varroc Engineering Pvt. Ltd. It is submitted that though the appellant is a job worker of M/s. Varroc Engineering Pvt. Ltd. but the change which is being brought by the appellant to the raw material i.e. to the 'Forged Blastings' is such a change which can be called as manufacture because after the job work being applied to the said material, it gets converted into a different product called 'Gear'. Hence, the activity rendered by the appellant is purely an activity of manufacture which does not invite the service tax liability. Even if, it is considered as Business Auxiliary Service as per the definition of the said service under Section 65(19) of the Finance Act, 1994, any service which amounts to manufacture is not included under Business Auxiliary Service.

3.1 Learned counsel further mentioned that the period involved in the present appeal is 2010-11 to 2013-14 i.e. the period is pre as well as post negative list (Section 66D of the Finance Act). In view of the above submission about Section 65(19) of the Finance Act, no service tax liability of appellant arises for pre negative list period. For post negative list period, the activity of the appellant as

per sub clause (f) of Section 66D of the Finance Act, the services by way of carrying out any process amounting to manufacture or production of goods have been held exempted from the payment of service tax. It is submitted that the demand for the entire period has wrongly been confirmed.

3.2 The learned counsel has finally alleged the show cause notice to have been barred by time. It is mentioned that the entire intimation of the nature of job work was in the notice of the department. In fact, the Superintendent, Range Service Tax, Rampur, vide his letter dated 24.04.2024 had opined that the activity/process undertaken by the party amounts to manufacture and accordingly, the party is not liable to pay any service tax under the category of Business Auxiliary Services. The Preventive Officers of the concerned division also vide their report dated 26.06.2014 had endorsed the said view of the superintendent. The entire procedure along with the drawings and the samples was provided to the department even at the time of investigation i.e. prior issuance of the show cause notice. But still the show cause notice has been issued on 20.10.2015 without alleging any act of the appellant which may amount to suppression of facts. In absence thereof, the allegations of suppression are not sustainable. Order is liable to be set aside for the reason of show cause notice being barred by time. Appeal is accordingly prayed to be allowed.

4. While rebutting these submissions, learned Departmental Representative has mentioned that the appellant had failed to provide any concrete evidence of processes undertaken by them which bring into existence a product having different name,

character and use. Hence, they have failed to establish their claim. The confirmation of demand for lack of such evidence has therefore no infirmity. Otherwise also, in show cause notice itself, it has clearly been alleged that resultant product coming into the existence after processes undertaken by the party/appellant is not different from what they received except having undergone certain processes. Hence, the activity of appellant is admittedly a job work not amounting to manufacture. Since no new product was coming into existence, the activity is rightly denied to be called as manufacture. The job work rendered by appellant is therefore a service categorized under Business Auxiliary Service and is an activity which is not mentioned under Section 66D of the Finance Act for the post negative period of impugned demand.

4.1 Learned Departmental Representative also submitted that M/s. Varroc Engineering Pvt. Ltd., the main manufacturer, was availing the benefit of area based exemption notification. The appellants were wrongly claiming the benefit of Notification No. 08/2005-ST dated 01.03.2005. The detailed findings justifying the invocation of extended period have been given in the impugned order in Para 36 thereof. Imposition of penalty has also been explained in Para 39 of the impugned order. With these submissions and impressing upon no infirmity therein, learned Departmental Representative has prayed for dismissal of the impugned appeal.

5. Having heard the rival contentions and perusing the records, we observe and hold as follows:

5.1 The appellant was admittedly taking raw material from M/s. Varroc Engineering Pvt. Ltd. and was subjecting that the said raw material to certain changes as job worker and was sending the same back to the main manufacturer M/s. Varroc Engineering Pvt. Ltd. Since, admittedly, it was a job work, the department alleged it to be a Business Auxiliary Service. The original adjudicating authority has also while considering the definition of Business Auxiliary Services has held that since the appellant were mainly doing the intermediatary process of machining and drilling on forged automobile parts and the modified part was to be sent to the principal manufacturer for the manufacture of the final/end product, the job work done by the appellant not amounts to the manufacture and as such for pre negative list period, it amount to Business Auxiliary Serve and for post negative list period it fails to fall under Section 66D of Finance Act. To adjudicate the correctness of these findings, the moot question to be decided is:

**“Whether the activity undertaken by the appellant on the raw material received from M/s. Varroc Engineering Pvt Ltd. amounts to manufacture or not?”**

5.2 Foremost, we need to know the meaning of ‘manufacture’. The Section 2(f) of Central Excise Act, 1944 define manufacture. The definition for the relevant period was as follows:

*“manufacture” includes any process—*

*(i) incidental or ancillary to the completion of a manufactured product;*

*(ii) which is specified in relation to any goods in the Section or Chapter Notes of 1[the Fourth Schedule] as amounting to manufacture ;or*

*(iii) which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer;*

*and the word "manufacture" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account;*

5.3 It is the well settled law that 'manufacture' implies change. The concept has been elaborately explained by the Constitution Bench of Hon'ble Supreme Court in the case of **Union of India Vs. Delhi Cloth and General Mills Co. Ltd. reported as 1977 (1) E.L.T (J 199) (SC)** where the Constitution Bench quoted with the approval from an American judgment in **Anheuser-Busch Brewing Assn. Vs. United States – 207 US 556 (1908)**, which is to the following effect:

*"Manufacture' implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having a distinctive name, character or use."*

In **Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. Pio Food Packers - 1980 Supp. SCC 174-1980 (6) E.L.T. 343 (S.C.)**, a three-Judge Bench

while interpreting Section 5A(1)(a) of the Kerala General Sales Tax Act, 1963 opined that:-

*"There are several criteria for determining whether a commodity is consumed in the manufacture of another. The generally prevalent test is whether the article produced is regarded in the trade, by those who deal in it, as distinct in identity from the commodity involved in its manufacture, Commonly manufacture is the end result of one more processes through which the original commodity is made to pass. The nature and extent of processing may vary from one case to another, and indeed there may be several stages of processing and perhaps a different kind of processing at each stage. With each process suffered, the original commodity experiences a change. But it is only when the change, or a series of changes, take the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognised as a new and distinct article that a manufacture can be said to take place. Where there is no essential difference in identity between the original commodity and the processed article it is not possible to say that one commodity has been consumed in the manufacture of another. Although it has undergone a degree of processing, it must be regarded as still retaining its original identity."*

After so stating, the Court posed the question: does the processing of original commodity brings into existence a commercially different and distinct article? In that context, the three-Judge Bench analysed the ratio in previous decisions and stated thus:-

*"Some of the cases where it was held by this Court that a different commercial article held come into existence Include Anwarkhan Mahboob Co. v. State of Bombay-AIR 1961 SC 213 (where raw tobacco was manufactured into bidi patti), A. Hajee Abdul Shakoor and Co. v. State of Madras-AIR 1964 SC 1729 (raw hides and skins constituted a different commodity from dressed hides and skins with different physical properties), State of Madras v. Swastik Tobacco Factory- AIR 1966 SC 1000 (raw tobacco*

*manufactured into chewing tobacco) and Ganesh Trading Co., Karnal v. State of Haryana- (1974) 3 SCC 620, (paddy dehusked into rice). On the other side, cases where this Court has held that although the original commodity has undergone a degree of processing it has not lost its original identity include Tungabhadra Industries Ltd., Kumool v. CTO-AIR 1961 SC 412, (where hydrogenated groundnut oil was regarded as groundnut oil) and C.S.T., U.P., Lucknow v. Harbilas Rai and Sons-(1968) 21 STC 17 (SC) (where bristles plucked from pigs, boiled, washed with soap and other chemicals and sorted out in bundles according to their size and colour were regarded as remaining the same commercial commodity, pigs bristles)."*

5.4 The concept of essential change in the character of product has also been explained by Hon'ble Supreme Court in the case titled as **Income Tax Officer, Udaipur Vs. Arihant Tiles and Marbles Pvt. Ltd. reported as (2010) 2 SCC 699**. The Hon'ble Supreme Court after referring to their decision in the case of **CIT Vs. M/s. N.C. Budharaja and Company reported as 1994 Supp (1) SCC 280**, has held as follows:

*"25. Applying the above tests laid down by this Court in Budharaja case to the facts of the present cases, we are of the view that blocks converted into polished slabs and tiles after undergoing the process indicated above certainly results in emergence of a new and distinct commodity. The original block does not remain the marble block, it becomes a slab or tile. In the circumstances, not only is there manufacture but also an activity which is something beyond manufacture and which brings a new product into existence and therefore, on the facts of these cases, we are of the view that the High Court was right in coming to the conclusion that the activity undertaken by the respondent assessee did constitute manufacture or production in terms of Section 80-IA of the Income-tax Act, 1961.*

*26. Before concluding, we would like to make one observation. If the contention of the Department is to be accepted, namely, that the activity undertaken by the respondents herein is not*

*manufacture, then, it would have serious revenue consequences. As stated above, each of the respondents is paying excise duty, some of the respondents are job workers and the activity undertaken by them has been recognised by various government authorities as manufacture. To say that the activity will not amount to manufacture or production under Section 80-IA will have disastrous consequences, particularly in view of the fact that the assesseees in all the cases would plead that they were not liable to pay excise duty, sales tax, etc., because the activity did not constitute manufacture."*

5.5 Reverting to the facts of the case, we observe that the department has produced a detailed literature about the processes undertaken by them on the raw material received from the principal manufacturer to explain that the 'Forged Blastings' received from the principal manufacturer are being converted into 'Gear 4<sup>th</sup> Platina'. The photographs of 'Forged Blasting' and the 'Gear 4<sup>th</sup> Blatina' are also placed on record. In fact, both the physical goods were also produced before the bench as sample. A five step process has been explained where the first step is drilling at the centre of the said 'Forged Blast'. Second is carrying out CNC machining on one side of the 'Blasting', the raw material received from M/s. Varroc Engineering Pvt. Ltd. The third one is carrying out same CNC machining on the other side of the 'Blasting'. The next is carrying out of deburring with the help of niddle files and lastly is the process of carrying out broaching/spline cutting with the help of broaching machine on the product which already has differently emerged at the previous stage itself.

5.6 The said procedure and the respective photographs are sufficient for us to hold that a complete different product (Gear 4<sup>th</sup> Platina), different in character and use has emerged after process is

undertaken by the appellant as job worker on the received raw material (Forged Blastings). Though the product of the appellant is not the final product of M/s. Varroc Engineerig Pvt. Ltd. but the product sent back to the principal manufacture was no more a raw 'Forging Blast' supplied by the principal manufacturer. 'Forged Blasting' has converted into Gears/shafts except an outer gear cutting to be done at the end of M/s. Varroc Engineering Pvt. Ltd. in order to make them complete 'Gears and Shafts'. But the fact remains is that after the job work done by the appellant, the 'Forge Blasting' as no more the same. It has converted into 'Gear 4<sup>th</sup> Platina' a distinct product known to said trade distinctly. No evidence produced by the department to falsify the same. The burden of proving the allegation was on the department itself.

5.7 In the light of above discussion about the concept of manufacture and lack of evidence to contrary, we hold that the processes of cutting, deburring and broaching on the raw material/Forged Blastings have laid into existence of a new product having gear teeth on its internal ring and the cutting in the centre of the product which can now readily be identified and called as 'Gear'. Hence we hold that since any process incidental or ancillary to the completion of manufactured product also falls in the definition of manufacture (Section 2(f) of Central Excise Act, already quoted) and that the processes undertaken by the appellant have imparted change of lasting character to the raw material to the extent that a new product had come into existence with a distinguishable identity, we hold that the activity done by the appellant is such which amounts to manufacture. We draw our

support from the decision of Hon'ble Apex Court in the case of **Prachi Industries Vs. Commissioner of Central Excise, Chandigarh reported as 2008 (225) ELT 16 (SC)**. Once the activity is held to be amounting manufacture even if appellant would have been rendering a Business Auxiliary Service such service amounting to manufacture was not taxable during the period 2010-11 to 2011-12 till 30.06.2012. For the remaining period, the activity is a service which is non-taxable in terms of Section 66D(f) of Finance Act, 1994. No service tax liability arises for the remaining period as well. Hence, the order confirming the demand of service tax alleging the job work done by appellant to be Business Auxiliary Service by provided to M/s. Varroc Engineering Pvt. Ltd. is liable to be set aside.

5.8 Coming to the plea of invocation of extended period of limitation, we observe that in Para 39 of the impugned order, the appellant is alleged to have suppressed the value of taxable services. The entire above discussion has already held that appellant was not providing any taxable services. The question of suppression of such activity becomes absolutely redundant. Since the activity of appellant is held to be an activity amounting to manufacture, question of appellant to seek service tax registration vis-à-vis rendering such activity does not arises. The allegations that ST-3 returns were not filed also becomes redundant. Thus, we hold that it has wrongly been held that non-filing of returns amounts to an act of suppression on part of the appellants. Since appellant was not liable to pay any service tax question of having intention to evade the tax payment is also not applicable.

5.9 The reliance of the adjudicating authority on job work challan from M/s. Varroc Engineering Pvt. Ltd. and the non-disclosure thereof to the department is also held to be absolutely wrong for the reason that the job work challan itself reveals that M/s. Varroc Engineering Pvt. Ltd. has sent Short Blasting/Forged Blasting as raw material to the appellant/job worker. However, the same were returned by the appellant to M/s. Varroc Engineering Pvt. Ltd. after being converted in a distinctly new product called 'Gear 4<sup>th</sup> Platina'. Hence, irrespective the appellant was processing the raw material as job worker but as already held above, a distinct product with distinct use and character had emerged, we hold that the job work was amounting to manufacture. Accordingly it is held that there is no act of alleged suppression on part of the appellant. The show cause notice has wrongly invoked the extended period. The same is accordingly held being barred by time. We rely upon the decision of **Anand Nishikawa Co. Ltd. Vs. CCE, Meerut reported as 2005 (188) ELT 149 (SC)**.

6. In the light of entire above discussion, the order under challenge is hereby set aside and consequently appeal is hereby allowed.

[Order pronounced in the open court on **19.12.2024**]

**(DR. RACHNA GUPTA)**  
**MEMBER (JUDICIAL)**

**(HEMAMBIKA R. PRIYA)**  
**MEMBER (TECHNICAL)**