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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. ST/S/880-883/2011 IN ST/457 /2011-460 /2011 - CU[DB] Date **13/02/2012**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S RATHOUR ENGG. WORKS,
VILLAGE SAILBA MAJRI, DISTT. MOHALI.

M/S RATHOUR ENGG. WORKS, Appellant

Vs

C.C.E. CHANDIGARH **STAY ORDER NO.ST/S/114-117/2012** Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/104-107 2012 CU[DB]** dated 07.02.2012 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19,
SECTOR 17-C, CHANDIGARH
160017

2. Adv. / Consult
MR.JOY KUMAR
FLAT NO 261/1,SEC 45-A,
CHANDIGARH.

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd.,1512-B, Bhishm Pitamah marg,Opp. ICICI Bank of Defence Colony, New Delhi-3
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file
14. M/S BHAGAT AGRO INDUSTRIES,
VILLAGE SAILBA MAJRI, DISTT. MOHALI.
15. M/S RAGHU ENGG. WORKS,
VILLAGE SAILBA MAJRI, DISTT. MOHALI.
16. M/S SAHIL ENGG. WORKS,
VILLAGE SAILBA MAJRI, DISTT. MOHALI.

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III

DATE OF HEARING : 07/12/2011.
DATE OF DECISION : 07/12/2011.

Service Tax Stay Application No. 880 of 2011 in Appeal No. 457 of 2011

M/s Rathour Engg. Works — Appellant

Versus

CCE, Chandigarh — Respondent

Service Tax Stay Application No. 881 of 2011 in Appeal No. 458 of 2011

M/s Raghu Engg. Works — Appellant

Versus

CCE, Chandigarh — Respondent

Service Tax Stay Application No. 882 of 2011 in Appeal No. 459 of 2011

M/s Sahil Engg. Works — Appellant

Versus

CCE, Chandigarh — Respondent

Service Tax Stay Application No. 883 of 2011 in Appeal No. 460 of 2011

M/s Bhagat Agro Industries — Appellant

Versus

CCE, Chandigarh — Respondent

[Arising out of the Order-in-Appeal No. 190-194/ST/Appl/CHD-I/2010 dated 24/12/2010 passed by The Commissioner (Appeals), Central Excise, Chandigarh – I.]

For Approval and signature :
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:
3.	Whether their Lordships wish to see the fair copy of the order?	:
4.	Whether order is to be circulated to the Department Authorities?	:

Appearance

Shri Joy Kumar, Advocate – for the appellant

Shri B.L. Soni, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Shri Rakesh Kumar, Member (Technical)

Stay order No. ST/S/114-117/12-Cus.

Final Order No. ST/A/104-107/12-Cus Dated : ____________

Per. Rakesh Kumar :-

The appellants are engaged in the activity of grinding and smoothening the edges by clipping of rough iron castings on job work. There is no change of shape or size of the castings in this process and there is no dispute that this process does not amount to manufacture. The point of dispute is as to whether during the period from 10/9/04 to 28/2/05, this activity of the appellants attracted service tax as "Business auxiliary service" (production of goods on behalf of the client which does not amount to manufacture) under Section 65 (105) (zzb) readwith

Section 65 (19) (v) of the Finance Act, 1994. Though the jurisdictional Deputy Commissioner, Central Excise, vide order-in-original dated 31/8/09 held that the appellant's activity is not taxable under Section 65 (105) (zzb) readwith Section 65 (19) (v) of the Finance Act, 1994, as the same stood during the period of dispute, on Revenue's appeals to CCE (Appeals), the Deputy Commissioner's order was reversed vide order-in-appeal No. 190-194/ST/Appl/CHD-I/2010 dated 24/12/2010 and service tax demands of Rs. 1,00,557/-, Rs. 33,222/-, Rs. 1,04,958/- and Rs. 29,401/- were confirmed against the appellants – M/s Rathour Engg. Works; M/s Bhagat Agro Industries; M/s Sahil Engg. Works and M/s Raghu Engg. Works respectively alongwith interest and beside this, penalties were also imposed on them under Section 76, 77 and 78 of the Finance Act, 1994. Against this order of CCE (Appeals), these appeals alongwith stay applications have been filed.

2. Heard both the sides.

3. Though these matters were listed for hearing of the stay applications, after hearing the same for some time, we were of the view that the matter the appeals themselves can be taken up for final disposal. Accordingly with the consent of both the sides, their appeals were taken up for final disposal after waiving the pre-deposit.

3.1 Shri Joy Kumar, Advocate, the learned Counsel for the appellants, pleaded that during the period of dispute i.e. from

10/9/04 to 15/6/05, the taxable entry in Section 65 (19) (v) was "production of goods on behalf of clients which does not amount to manufacture under Section 2 (f) of Central Excise Act, 1944", that this entry did not cover production on job work basis but was applicable only when for production, a person was engaged by another for processing of goods entrusted by a third person, that the appellant's activity became taxable w.e.f. 16/5/05 when clause (v) of Section 65 (19) was replaced by the entry – "production or processing of goods, for, or on behalf of, the client" that during the period of dispute, the appellant's activity was not taxable under Section 65 (105) (zzb) readwith Section 65 (19) (v), that in this regard he relies upon the judgments of the Tribunal in cases of **Auto Works vs. CCE, Coimbatore** reported in **2009 (15) STR – 398 (Tri. – Chennai), M/s Gedee Weiler Pvt. Ltd. vs. CCE, Coimbatore** reported in **2010 (18) STR – 417 (Tri. – Chennai)** and **Sonic Watches Ltd. vs. CCE, Vadodara** reported in **2011 (21) S.T.R. – 34 (Tri. – Ahmd.)**, that these judgments are squarely applicable to the facts of these cases, and that in view of this, the impugned order is not sustainable.

4. Shri B.L. Soni, the learned SDR defended the impugned order by reiterating the findings of the CCE (Appeals) in the impugned order.

5. We have carefully considered the submissions from both the sides and perused the records.

6. The appellants carry out the process of grinding and smoothening the edges, called fettling of the rough castings, received from principal manufacturers who clear the goods after carrying out further processes. Since there is no dispute that this activity of the appellants does not amount to manufacture, it can only be called processing not amounting to manufacture, which was not taxable during the period of dispute. We also agree with the appellant's plea that as held by the Tribunal in cases of **M/s Auto Works vs. CCE, Coimbatore** (supra), **M/s Gedee Weiler Pvt. Ltd. vs. CCE, Coimbatore** (supra) and **M/s Sonic Watches vs. CCE, Vadodara** (supra) during the period of dispute, the wordings of Clause (v) of Section 65 (19) of the Finance Act, 1994 did not cover processing of goods on job work basis which got covered by this clause, when the same was substituted by – "production or processing of goods for, or on behalf of, the clients." In view of this, the impugned order is not sustainable. The same is set aside. The appeals as well as the stay applications are allowed.

(Operative part of the order pronounced in the open court.)

(Archana Wadhwa)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

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