CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Service Tax Appeal No. 51486 of 2014

(Arising out of Order-in-Appeal No. 173-174(VC)ST/JPR-I/2013 dated 04.11.2011 passed by the Commissioner (Appeals) Central Excise & Customs, Jaipur)

DATE OF HEARING : 01.03.2017
DATE OF DECISION : 01.03.2017

M/s Shree Mohan Industries …. Appellants
(Rep. by Sh. Kumar Vikram, Adv.)

VERSUS

CCE&ST, Jaipur …. Respondent
(Rep by Sh. Sanjay Jain, DR)

CORAM : HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. ASHOK K. ARYA, MEMBER (TECHNICAL)

FINAL ORDER NO. 52166/2017

PER JUSTICE (Dr.) SATISH CHANDRA :

The present appeal is filed by the assessee-Appellants against the impugned order-in-appeal no. 173-174(VC)ST/JPR-I/2013 dated 04.11.2011 passed by the Commissioner (Appeals) Central Excise & Customs, Jaipur.

2. The brief facts of the case are that, the assessee-Appellants is engaged in chilling of milk for Jaipur Zila Dugdh Utpadak Sahkari Samiti

Ltd.. The said service was brought under the clutches of the Service Tax. Being aggrieved, the assessee-Appellants have filed the present appeal.

3. With this background, we have heard Shri Kumar Vikram, learned counsel for the assessee-Appellants and Shri Sanjay Jain, learned DR for the Department.

4. After hearing both sides and on perusal of record it appears that an identical issue has come up before this Tribunal in the case of **Vinayak Industries vs Commissioner of Central Excise & Service Tax, Jaipur-I,** 2016 (45) STR 191 (Tri.-Del.), wherein after following the judgment in the case of **Sharma Ice Factory vs Commissioner of Central Excise, Jaipur-I,** 2015 (37) STR 660 (Tri.-Del.), it was held that :

> **"4.** We have considered the contentions of both sides. At the very outset, we would like to acknowledge that in the case of *Sharma Ice Factory* (supra), CESTAT has held that chilling of milk (process/treatment involved in the present case) does not fall under the category of business auxiliary service and in the wake of the said judgment this appeal would obviously succeed. However, we would like to reproduce Para 5 of the CESTAT judgment in case *Sharma Ice Factory* :
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> > "5. We have considered the submissions from both the sides and perused the records. There is no dispute about the nature of the appellant's activity - chilling of milk to temperature below 5° Celcius for M/s. SZDUSS Ltd. No other activity like pasteurization etc. is involved. We are of the view that mere chilling of milk to temperature below 5° Celcius for the purpose of its long distance transportation, does not amount to production or processing of goods, as there is no permanent or temporary change in milk other than lowering of the temperature by the process of chilling of milk, due to which it can be transported over long distance without getting spoiled. The Apex Court in the case of *Commissioner of Income Tax* v. *N.C. Budharaja & Co.*, reported in 2004-ITR-412 (S.C.) has held that word "production", when used in

> juxtaposition with word “manufacture”, takes in bringing into existence new goods by a process, which may not amount to manufacture. Therefore, for “Production”, there must be some change in the raw-material subjected to process, though by that change no new product with distinct characteristics, commercial identity and usages has emerged. The process of chilling of milk to make it fit for long distance transportation without getting spoiled, which does not bring into existence any change whatsoever, would not amount to production or processing of the goods not amounting to the manufacture. We also find that earlier, the Commissioner (Appeals) on this very issue had taken view that chilling of milk is not Business Auxiliary Service covered by Section 65(19)(v) of the Finance Act, 1994. In view of this we hold that impugned order is not sustainable. The same is set aside. The appeal as well as the stay application and the application for early hearing stands disposed off”.**”**

5. By following the ratio laid down in the earlier orders (supra), we find no reason to sustain with the impugned order and is hereby set aside.

6. In the result, the appeal filed by the assessee-Appellants is allowed.

(Dictated & pronounced in the open court)

(ASHOK K. ARYA)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT

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