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

Date of Hearing/Order: 17.11.2017

Appeal No. ST/1594/2011-SM

(Arising out of Order-in-Appeal No. 16(ST)/RPR-II/2011 dated 20.7.2011 passed by the Commissioner, Central Excise, Customs & Service Tax, Raipur)

M/s Neeraj Industries — Appellant

Vs.

CCE & ST, Raipur — Respondent

Appearance

Shri Manish Saharan, Advocate - for the appellant

Shri K. Poddar, D.R. - for the respondent

CORAM: **Hon'ble Mr. S.K. Mohanty, Member (Judicial)**

Final Order No. 58078/2017

Per S.K. Mohanty:

This appeal is directed against the Order-in-Appeal dated 27.2.2016 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Jaipur.

2. The grievance of the appellant is that the service tax demand along with interest has been wrongly computed by the department inasmuch as the appellant had claimed lesser amount of service tax

from its service receiver and deposited the same with the Govt. exchequer. Thus, the contention of the appellant is that since excess amount of service tax had not been collected by the appellant, it is not required to pay such excess amount as service tax. Accordingly, confirmation of the differential amount payable by the appellant by the authorities below is not proper and justified. Further contention of the appellant is that the services provided by it pursuant to the agreement entered into between the appellant and M/s Symplex Engg. & Foundry Pvt. Ltd., relates to the job work activities, which amounts to manufacture. That the service receiver had already discharged the Central Excise duty liability on removal of the finished goods from the factory. Thus, the contention of the appellant is that since the activities undertaken by the appellant amounts to manufacture, it cannot be termed as service and accordingly, no service tax can be levied under the taxable entry of the Business Auxiliary Service.

3. Heard both sides and examined the case records.

4. On perusal of the case records, I find that the appellant had submitted the relevant bills/invoices, which were raised on the service receiver for receipt of the amount of service tax. However, such invoices were not verified by the Commissioner (Appeals) and

solely relying on the statement recorded from the employee of the company, proceeded against the appellant for collection of differential amount of service tax. Since, the appellant claims that it has in possession of all the documents/invoices to prove exact service tax amount received and payable by it, I am of the view that matter should be remanded to the original authority for verification of the documents to be produced by the appellant.

5. With regard to providing of Business Auxiliary Service, I find that the service receiver, M/s Symplex Engg. & Foundry Pvt. Ltd. vide certificate dated 10.3.2009 has certified that it had entered into the contract (job work) with the appellant and the job worked goods were used in assembly of excisable goods, which were cleared on payment of appropriate Central Excise duty. The certificate placed in file proves that the activities undertaken by the appellant is of manufacturing in nature and there is no involvement of any service. However, since this certificate was not verified by the original authority, I remand the matter for such verification of such certificate. If the activities undertaken by the appellant relate to job work for further manufacture of the excisable goods, on which Central Excise duty liability has been discharged by the service receiver, no service tax shall be demanded against the appellant. The original authority while passing the fresh adjudication order,

should decide the issue, whether the appellant will be liable to penalty or not.

6. In the result, the appeal is allowed by way of remand to the original authority.

(Dictated & pronounced in open Court)

(S.K. Mohanty)
Member (Judicial)

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