

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH REGIONAL BENCH AT HYDERABAD
BENCH - DB
COURT - I**

Appeal(s) Involved:

ST/2337/2010-DB, ST/2050/2010, ST/917/2012, ST/25188/2013

(Arising out of Order-in-Appeal No. 18/2010 (H-III)ST dated
30/07/2010 and Order-in-Appeal No. 23/2012 (H-III)ST dated
23/02/2012 passed by Commissioner of Customs Central Excise &
Service Tax (Appeals-III) Hyderabad)

**M/s Krison Sai Tool Crafts
Hyderabad**

Appellant(s)

**M/s Anok Precision Tools Pvt Ltd
Hyderabad**

Versus

**Commissioner of Central Excise,
Customs and Service Tax
HYDERABAD-III**

Respondent(s)

Appearance:

Mr G. Sudhakar Adv for the Appellant.

Mr Dass Thavanam, A.R. for the Respondent.

CORAM:

HON'BLE Mr. M.V.Ravindran, MEMBER (JUDICIAL)

HON'BLE Mr. P. Venkata Subba Rao, MEMBER (TECHNICAL)

Date of Hearing: 09/10/2018

Date of decision:21/12/2018

Final Order No. A/ 31591-31594/2018

[Order per: M.V.Ravindran.]

By this common order, the following appeals are disposed of:

Sl No	Appeal No.	Order-in-Appeal	Period involved
1)	ST/2337/2010	18/2010 H-III-ST dt 30.07.2010	2004 to 2009 (March)
2)	ST/2050/2010	17/2010 dt 28.07.2010	2004 to 12/2008
3)	ST/917/2012	23/2012 dt 23.02.2012	1/2010 to 12/2010
4)	ST/25188/2013	263/2012 dt 16.11.2012	1/2011 to 9/2011

The relevant facts that arise for consideration in all these appeals being same, they are being disposed of by a common order.

2. The facts that arise for consideration are the appellants herein were manufacturers of threaded die rolls and cleared the same by availing the benefit of small scale exemption. During the period in question as enumerated above, the appellants received worn out threaded die rolls from their customers for rework/remanufacturing/reconditioning. After doing so, appellants removed the same to their customers. The Revenue officers are of the view that the process that is undertaken by the appellants on worn out threaded die rolls is not a manufacturing activity. Hence, the amounts collected as labour charges by the appellants are taxable under the category of maintenance and repair services. Accordingly, show-cause notices were issued to both the appellants for the demand of service tax liability along with interest and for imposition of penalties by invoking extended period. In the case of Anok precision Tools Pvt Ltd subsequently two show-cause notices were issued within the limitation period. Appellants contested the show-cause notices by claiming that the process performed on the worn out threaded die rolls would amount to manufacture and accordingly they

are not liable to pay service tax. The adjudicating authority after following due process of law confirmed the demand raised along with interest and imposed penalties. Aggrieved by such orders, appeals were preferred to the 1st Appellate Authority. The 1st Appellate Authority did not agree with the contentions raised and upheld the orders-in-original.

3. Learned counsel appearing for both the appellants submits that the worn out threaded die rolls are received by the appellants and they undertake the following process on the same:

- (i) Removal of old worn out threads on cylindrical grinding machine;
- (ii) Stress relieving
- (iii) Threading
- (iv) chamfering

It is his submission that the process as enumerated above would amount to manufacturing of new threaded die rolls though the appellants are charging their customers only the labour charges for carrying out the said activity. It is his submission that Section Note 6 of Section XVI of CETA would apply in the case in hand. It was further submitted that at least two appeals i.e. ST/2050/2010 of Anok Precision Tools (P) Ltd and Appeal No ST/2337/2010-ST of Krison Sai Tool Crafts are hit by limitation as during the relevant period, both the appellants had informed the Revenue Authorities as to the activity of reconditioning of threaded die rolls. In support of such a claim, he draws our attention to a letter dated 12.06.1998 of Krison Sai Tools and 173 B declaration dated 17.04.1997 of M/s Anok Precession Tools Pvt Ltd. He submits that they had kept the department informed about their activity of job work and sought clarification as to whether the activity would

be excisable or otherwise. It is his responsible statement that the Revenue Authoritiesclarification sought by the appellant in respect of Krison Sai tools and in respect of Anok Precision no further action was undertaken after filing of 173 B declaration.

4. Learned A.R. submits that the activity or the process as has been explained by the learned counsel does not amount to manufacture is the finding which has been recorded by the adjudicating authority. It is the submission that in order to be a manufacturing activity, a new and distinct product needs to come into existence is the law settled by the Apex Court in various decisions. It is his further submission that since the activity does not amount to manufacture, the amounts collected as consideration for labour charges are liable to be taxed under the Finance Act, under the category of maintenance and repair services. It is his submission that appellant is not disputing that they are receiving worn-out threaded die rolls and undertaking the process on the same dies and removing the same to their customers. On limitation, it is his submission that both the appellants did not inform the Revenue Authorities about the consideration so received as labour charges.

5. On a careful consideration of the submissions made, we find that there is no dispute as to the fact that both the appellant are engaged in manufacturing of threaded die rolls and cleared the same, availing small scale exemption; that they received the worned out dies from their purchasers and undertook various processes and covert it as usable threaded die rolls and cleared the same to their customers for which they receive consideration towards labour charges. It is the claim of the appellant that this process amounts to manufacture and Section Note 6 of Section 16 of CETA would apply. The contention of the appellants that the

activity/process undertaken by them would amount to manufacture is totally misplaced. The activity is undertaken by them on various worn out die rolls received back from their customers which would mean that the process undertaken by them would not result in a new and distinct product in order to state that it is a manufacturing activity. We hold that the activity undertaken by the appellant cannot be considered as a manufacturing activity and the Finance Act will apply and appellant is required to discharge the service tax liability under maintenance or repair services. Another point made by learned counsel about the applicability of Section Note 6 of Section XVI of CETA, will not also carry their case any further as that Section Note would apply only in case of incomplete or unfinished goods having essential character of complete or finished article. In the case in hand undoubtedly the threaded die rolls were cleared as finished products and subsequently were received back for undertaking some process due to wear and tear.

6. We do find that learned counsel was correct in emphasising that Appeal No. ST/2050/2010 and ST/2337/2010 are hit by limitation. In the case of Krison Sai Tools, we find that a letter dated 12.06.1998 specifically requests the Range Superintendent to verify and decide whether the activity undertaken by them as a job work is excisable or not and in the case of Anok Precision, the classification declaration was filed with the authorities indicating so. The Revenue authorities, during the relevant period, did not respond to any of these letters or the classification declaration filed by the appellant, though the Superintendent of Range was also implementing the provisions of Finance Act 1994. We find that the claim of demands beyond the period of two years from the date of issuance of show-cause notice are hit by limitation in these two appeals. In our view, the appellants have kept the department informed about their activity of reprocessing or

reconditioning of the said threaded die rolls. Hence, the demand within the period of limitation from the date of the show-cause notice in these two appeals are only sustainable and the demands beyond the period of limitation are unsustainable and liable to be set aside. In these two appeals, since the demand beyond the period of limitation are set aside, consequently the interest and the penalties imposed are liable to be set aside and we do so.

7. In short the demands raised within the limitation from the date of show-cause notice are upheld along with interest as also penalties and the demands which are raised beyond the period of limitation are set aside as also interest and penalties on such demands.

8. The appeals stand disposed as indicated herein above.

(Order pronounced in open court on 21/12/2018)

P. Venkata Subba Rao
MEMBER (TECHNICAL)

M.V.Ravindran
MEMBER (JUDICIAL)

Neela Reddy