

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.305 of 2011

(On behalf of Appellant)

(Arising out of Order-in-Original No.21/Commr./ST/Bol/2011 dated 22.03.2011
passed by Commissioner of Central Excise & Service Tax, Bolpur)

M/s Vardhaman Axles & Wheels Private Limited

781, Naim Nagar, G.T.Road, Durgapur-713203

Appellant

VERSUS

Commissioner of Central Excise, Bolpur

SIAN, Bolpur, Dist.-Birbhum, Pin-731204

Respondent

APPEARANCE :

Ms.Sheeta Mukherjee, Advocate for the Appellant
Shri S.S.Chattopadhyay, Authorised Representative for the Revenue

CORAM:

HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO...76648/2023

DATE OF HEARING : 11.09.2023

DATE OF DECISION : 11.09.2023

Per Ashok Jindal :

The appellant is in appeal against the impugned order confirming demand of service tax under the category of Business Auxiliary Service.

2. The facts of the case are that the appellant is engaged in providing the service relating to machining work on the forged wheels received from M/s Durgapur Steel Plant (DSP) under job work and sent it back the same to the principal manufacturer, M/s DSP after necessary job work done on the said wheels. For providing such service relating to machining work, they have received machining charges from the service recipient.

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2.1 The Revenue is of the view that such activity of the assessee is nothing but production or processing of goods on behalf of their clients. Therefore, the said activity is liable to service tax under the category of "Business Auxiliary Service".

2.2 Accordingly, proceedings were initiated by issuing show-cause notice for the period 2005-06 to 2009-2010 and the matter was adjudicated. The demand of service tax was confirmed under the category of "Business Auxiliary Service".

2.3 Aggrieved with the said order, the appellant is before us.

3. The Id.Counsel for the appellant submits that the issue has been settled by this Tribunal in the case of Ferro Scrap Nigam Limited Vs. Commissioner of CGST & Excise, Bolpur vide Final Order No.75013-75014/2021 dated 19.01.2021 wherein it has been held that during the impugned period, such activity was not liable to pay service tax under the category of "Business Auxiliary Service". Therefore, the impugned order is to be set aside.

4. On the other hand, the Id.A.R. for the Revenue reiterated the findings of the impugned order.

5. Heard both the parties and considered the submissions.

6. We find that the said issue came up before this Tribunal in the case of Ferro Scrap Nigam Limited (supra), wherein this Tribunal has observed as under :

"7. We find that the issue already stands decided in favour of the assessee. For the period prior to 16.06.2005, the definition of BAS under Section 65(19)(v) of the Act, inter-alia, mean any service in relation to production of goods on behalf of the client. The Principal Bench in assessee's own case, as relied by the

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assessee, has already observed in identical set of facts that there is no third person in the instant case, whereas the tax can be levied under BAS only in case the service is provided on behalf of the client i.e. there would be involvement of three parties. The relevant portion of the decision rendered by the Tribunal in their case is reproduced below:

"4. During the relevant period the definition of BAS was as under:

"(19) "business auxiliary service" means any service in relation to -

(i) promotion or marketing or sale of goods produced or provided by or belonging to the client; or

(ii) promotion or marketing of service provided by the client/ or

(iii) any customer care service provided on behalf of the client; or

(iv) procurement of goods or services, which are inputs for the client; or

(v) production of goods on behalf of the client; or

(vi) provision of service on behalf of the client; or

(vii) a service incidental or auxiliary to any activity specified in sub-clause (i) to (vi) such as billing, issue of collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision,

and includes services as a commission agent, but does not include any information technology service and any activity that amounts to "manufacture" within the meaning of clause (f) of Section 2 of the Central Excise Act, 1944".

5. As such, as seen from the above reproduced definition of BAS a service provider has to produce the goods on behalf of the client. As such two criterias are required to be satisfied before an activity can be brought under the service tax net falling under the above category. The first criteria relates to the production of goods and the second relates to the fact that such production has to be "on behalf of the client".....

8. Having appreciated the submissions made by both the sides, we first of all note that there is no dispute on the detailed activity undertaken by the appellant vide which they separate the iron metal from the molten slag. As such we do not feel the need of referring the same, as the dispute does not revolves around the said activity, but relates to as to whether the said activity can be called as "production of goods" and further "on behalf of the client".

As regards the expression "production of goods", we note that the same was amended in June 2005 and was substituted by the expression - "processing" of goods. As such it is clear that prior to the amendment

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and in the absence of the words "processing" the same has to be interpreted in a manner that the activity results in production of goods. We may here observe that every production may not amount to manufacture but admittedly every manufacturing activity involves production of goods, inasmuch as the term "manufacture" would include production though every production may not include the manufacturing activity. Inasmuch as the Commissioner in his order dated 21-9-2006 has held that the said activity does not amount to manufacture and such order stands accepted by the Revenue, it has to be held that there was no production of goods. As such we agree with the Id. Advocate that the first criteria of the definition is not satisfied.

9. As regards second criteria that the said activity has to be "on behalf of the client", we find that the matter is no longer res integra and stand settled by various decisions of the Tribunal. Even the Board's Circular has clarified the same. For ready reference we may reproduce the relevant portion :

Circular No. 137/111/2007-CX, dated 15-7-2007

"03. The matter has been examined by the Board. The view of the Board is that the incineration/shredding of bio-medical where can, by no stretch of imagination, be called as "processing of goods", even if in certain cases the shredded materials may be used as filters etc. Further, the activity also does not qualify to be called as provision of service on behalf of the client. This is because the taxable activity envisaged under this category of 'business auxiliary service' is that while the "client" is obliged to provide some service to a 3rd person but instead of the client providing such service, the service provider provides the such service to the 3rd person, on behalf of the client i.e. acting as an agent of the client. Admittedly, in the instant case, there is no 3rd person. Thus, the activity as undertaken does not fall under business auxiliary service or any other existing taxable services".

Circular No. B1/6/2005-TRU, dated 27 Jul. 2005

"24.1 One of the taxable activities prior to amendment by Finance Act, 2005 under business auxiliary service was 'production of goods on behalf of the client' The activities that amount to manufacture within the Central Excise Act were not covered within the scope of the taxable service. Amendments have been made to define this taxable activity as 'production or processing of goods for, or on behalf of, the client'. The condition that only such activities would be liable to service tax which do not amount to manufacture under Central Excise Law would, however, continue.

24.2 A point was raised whether 'production of goods on behalf of the client' covers situations where the service provider undertakes job work for the client. In view of the amendment, production or processing (not amounting to manufacture) done either for the client or on behalf of the client would be liable to service tax".

10. Apart from the above circulars of the Board there are decisions of the Tribunal settling the issue at rest. In the case of Auto Coats - [2009 \(15\) S.T.R. 398](#) (Tri.-Chen.) it stands held that prior to 16-6-2005 unless a person was engaged by another for processing the goods entrusted by a third person, such activity would not be exigible to service tax. Similarly in the case of Sonic Watches Ltd. - [2011 \(21\) S.T.R. 34](#) (Tri.) it was held as under :

"5. We find that activity undertaken by the appellants in this case was similar to the one as existed in the case of Auto Coats. Therefore, in the light of above two decisions discussed above, it cannot be said that

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appellants have undertaken job work on behalf of the clients, in view of the fact that there were only two parties to the transaction in this case, whereas where the production is on behalf of the clients, there would be three parties. Since, services undertaken by the appellants is not covered by the definition, no service tax is attracted. Accordingly, impugned order is set aside and appeal is allowed".

Further, in the case of Rathour Engg. Works - [2012 \(27\) S.T.R. 37](#) (Tri.-Del.), the Tribunal held as under :-

"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 Coats. v. CCE, Coimbatore (supra), M/s. Gedee Weiler Pvt. Ltd. v. CCE, Coimbatore (supra) and M/s. Sonic Watches v. 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 of 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".

11. In view of our foregoing discussions, we hold that the appellant's activity prior to June 2005 cannot be held to be exigible to service tax under the category of BAS. Accordingly, we set aside the impugned order and allow the appeal with consequential relief to the appellant. Inasmuch as we have held in favour of the appellant on merits, we do not think it necessary to deal with the appellant's plea of limitation. Appeal is disposed of in the above manner."

8. Further, for the period after 16.06.2005, the Tribunal in their own case as reported in 2019 (2) TMI 766 – CESTAT Kolkata, has held that the assessee is entitled to exemption under Notification no. 8/2005 dated 01.03.2005. The relevant portion of the decision is reproduced below:

*"9. Next we consider the liability for the period w.e.f. 16-6-2005. When we consider the definition in sub-clause (v) of Section 65(19) for the period prior to and subsequent to 16-6-2005, we note that for the later period, the definition has included processing of goods in addition to production of goods. **The claim of the appellant is that the liability of service tax would stand extinguished through the Notification No. 8/2005-S.T., dated 1-3-2005.** The lower appellate authority has denied the benefit of the said exemption to the appellant. For ready reference, we reproduce below the Notification No. 8/2005-S.T. *ibid* :*

"In exercise of the powers conferred by sub-section (1) of Section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service of [production or processing of goods for, or on behalf of, the client] referred in sub-clause (v) of clause (19) of Section 65 of the said

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Finance Act, from the whole of service tax leviable thereon under Section 66 of the said Finance Act :

Provided that the said exemption shall apply only in cases where such goods are produced [or processed] using raw materials or semi-finished goods supplied by the client and goods so produced [or processed] are returned back to the said client for use in or in relation to manufacture of any other goods falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), as amended by the Central Excise Tariff (Amendment) Act, 2004 (5 of 2005), on which appropriate duty of excise is payable.

Explanation. - For the purpose of this notification, -

(i) the expression "production [processing] of goods" means working upon raw materials or semi-finished goods so as to complete part or whole of production [or processing], subject to the condition that such production [or processing] does not amount to "manufacture" within the meaning of Clause (f) of Section 2 of the Central Excise Act, 1944 (1 of 1944).

(ii) "appropriate duty of excise" shall not include 'Nil' rate of duty or duty of excise wholly exempt."

10. The activities carried out by the appellant for BSP is in the nature of processing. It is evident from the record that the appellant was required to recover of iron steel scrap from various stages of manufacture and the collected scrap was to be returned to BSP, but the benefit was denied to the appellant by taking the view that such scrap cannot be covered by expression of "raw materials" or "semi-finished goods". But such a view is not called for. The scrap is nothing, but a raw material for use in melting and further manufacture within the iron and steel plant.

11. On behalf of Revenue, the Ld. DR has further raised a doubt about the satisfaction of the condition of the second limb of the notification i.e. to the effect that the processed goods have been returned back to the client and the same has been further used in the manufacture of other goods, on which appropriate duty of excise is payable. In this connection, we note that the Ld. Advocate on behalf of the appellant, has submitted a certificate, dated 4th September, 2009, issued by M/s. SAIL, Bokaro Steel Plant, wherein the Deputy General Manager (F & A) has certified that the scrap, after processing and recovery, has been returned back and the same has been used for the manufacture of dutiable steel products. Giving due consideration to such end-use certificate submitted by the Public Sector Undertaking, we are of the view that the appellant will be entitled to the benefit of Notification No. 8/2005, dated 1-3-2005. Consequently, we set aside the demand for service tax made in the impugned order and allow the appeal.

9. With regard to the demand raised on shifting, transportation, loading and unloading from one place to another inside the steel plant of the client itself, the Tribunal in their own

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case as reported in 2014 (1) TMI 1051- CESTAT-New Delhi has observed that :-

"7. In any case, we have seen the decision of the Tribunal as upheld by Hon'ble High Court in the case of Modi Construction Co. vs. CCE, Ranchi (supra), it stands clearly held by the Tribunal that service of shifting, transportation or raw materials, waste materials, and finished products from one place to another, inside the plant itself, does not fall under the taxing category of Cargo Handling Services. The activities undertaken by the appellant are admittedly within the plant itself. As such, we find that the ratio of the law declared by the Tribunal in the above referred matter, which also stands upheld by the Hon'ble Jharkhand High Court, is fully applicable to the facts of this case."

10. In view of the aforesaid, the issue is no longer res-integra, since decided in favour of the assessee. We do not find any reason to take contrary view and therefore, the demand raised vide the impugned adjudication order cannot be sustained and hence, the same is set aside. Consequently, the appeal filed by Revenue to dispute the cum tax benefit is liable to be rejected since there cannot be demand of service tax as held above.

11. The appeal filed by assessee is thus allowed with consequential relief as per law. The appeal filed by Revenue is rejected."

7. As the issue has been settled in favour of the appellant, therefore, the appellant is not liable to pay service tax on the activity of machineries and accordingly, the impugned order is set aside and the appeal is allowed with consequential relief, if any.

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

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K.Anpazhakan)
Member (Technical)