IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.1

Service Tax Appeal No.76377 of 2016

(Arising out of Order-in-Original No.15/Commr/ST/GHY/15-16 dated 29.03.2016 passed by Commissioner of Central Excise & Service Tax, Guwahati.)

M/s. SRD Nutrients Private Limited
(Industrial Area, Mangaldoi, District-Darrang, Assam-784125.)

...Appellant

VERSUS

Commissioner of CGST & CX, Guwahati Commissionerate
.....Respondent
(5^{th} Floor, Sethi Trust Building, Bhangagarh, Guwahati-781005.)

WITH

Service Tax Appeal No.75019 of 2021

(Arising out of Order-in-Appeal No.20/DIB/CE(A)/GHY/2020 dated 28.09.2020 passed by Commissioner(Appeals), CGST, Central Excise Customs, Guwahati.)

M/s. SRD Nutrients Private Limited
(Industrial Area, Mangaldoi, District-Darrang, Assam-784125.)

...Appellant

VERSUS

Commissioner of CGST & CX, Dibrugarh Commissionerate
.....Respondent
(Milan Nagar, Lane 'F', Dibrugarh-786003, Assam.)

AND

Service Tax Appeal No.75878 of 2021

(Arising out of Order-in-Appeal No.14/DIB/CE(A)/GHY/2021 dated 27.07.2021 passed by Commissioner(Appeals), CGST, Central Excise Customs, Guwahati.)

M/s. SRD Nutrients Private Limited
(Industrial Area, Mangaldoi, District-Darrang, Assam-784125.)

...Appellant

VERSUS

Commissioner of CGST & CX, Dibrugarh Commissionerate
.....Respondent
(Milan Nagar, Lane 'F', Dibrugarh-786003, Assam.)

APPEARANCE

Shri B.L.Narasimhan & Ms. Udita Saraf, both Advocates for the Appellant (s)
Shri Mihir Ranjan, Special Counsel for the Revenue

CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

FINAL ORDER NO. 77251-77253/2023

DATE OF HEARING : 26 September 2023
DATE OF DECISION : 26 September 2023

Per : ASHOK JINDAL :

As in all the appeals, the issue is common, therefore, the appeals are disposed of by a common order.

2. The facts of the case are that the appellant entered into an agreement with Glaxo SmithKline Consumer Healthcare (GSK) for carrying out job work for them. As per the agreement, intermediate malt-based power manufactured at various units of GSK was forwarded to the appellant in drums. The appellant is required to manufacture and pack the finished product for GSK in pouches or jars having brand name of 'Horlicks' on it. The appellant is receiving the conversion charges for the said activity. The appellant manufactures and clears Malted Milk Food by availing exemption of the excise duty payable on the said malt-based food product under Notification No.20/2007-CE dated 25.04.2007.

3. The revenue is of the view that the activity of processing undertaken by the appellant does not amount to manufacture, therefore, various show cause notices were issued by the revenue for the period in question to demand service tax on conversion charges received by the appellant from GSK. The show cause notices were adjudicated and the demand of service tax was confirmed against the appellant for the period upto to June 2012 under 'Business Support

Service' and for post 2012 the appellant has provided the service as job-worker of GSK. Aggrieved from the said orders, the appellant is before us.

4. The Ld.Counsel for the appellants submits that the Commissioner of Central Excise, Guwahati vide its Order dated 28.10.2011 has already held that the appellant is a manufacturer and is entitled for Area Based Exemption and the said order has been accepted by the department, in that circumstances, the issue is no more res integra, therefore, the demand of service tax is not sustainable. It is his submission that now the department cannot take contrary stand in different points of time on the same issue.

5. To support his contention, he relied on the decisions in the cases of CCE, Pune-II v. S.S. Engineers [2023-VIL-68-SC-CE], Rosmerta Technologies v. CCE & ST [2019-VIL-466-CESTAT-DEL-ST], Raman Boards v. CCE, Gurgaon [2019 (365) ELT 605 (Tri.-Chan.)].

6. He further submitted that the activity undertaken by the appellant amounts to manufacture of goods, therefore, no service tax can be levied on the activity amounting to manufacture of goods. It is his submission that the appellant is undertaking manufacturing of 'Horlicks', which falls under chapter heading 19019090 of CETA. The activity undertaken by the appellant amounts to manufacture, therefore, the appellant qualifies as a manufacturer in terms of section 2(f)(ii) of the Central Excise Act, 1944. Further, the activity undertaken by the appellant amounts to manufacture even in terms of section 2(f) of the Central Excise Act, 1944 read with chapter note 5 of chapter 19 of CETA, 1985. The said chapter note clearly stipulates that "in relation to the item classifiable under chapter 19, activity of labeling, relabeling or repacking of containers to render the product marketable, amounts to manufacture". It is his submission that the activity undertaken by the appellant brings about a change in name, character as well as use of the ingredients and leads to emergence a new product, which is recognized in the market as 'Horlicks', which is used in preparation of milk beverages. Therefore, he submitted that it is also settled principle

of law that job-workers are eligible to avail exemption under Area Based Exemption Notification by way of refund since the activity undertaken by such job-workers amount to manufacture. To support this, the appellant relies on the decision in the case of Vasantham Enterprises v. CCE, Chandigarh [2015 (37) STR 1007 (Tri.-Del.)], wherein in respect of job-work activity undertaken by the assessee, it was held by the Tribunal that the activity of banding of soaps unequivocally qualifies as 'manufacturing' activity. Therefore, activity of blending, packing, repacking, undertaken by the appellant as a job worker would qualify as manufacturing activity.

7. He further submitted that the Ld.Commissioner(Appeals) in the impugned order has observed that since GSK exercises control over the goods and supervises the production, therefore, the appellant do not have any ownership on the processed goods and hence they do not qualify as a manufacturer. It is his submission that the GSK is limited to ensuring quality control by visiting the appellant's manufacturing facilities to inspect, audit and view the state of processing and packing operations. There is no control and supervision of the manufacturing process of the appellant by GSK's personnel on a permanent/regular basis and the agreement provides that transaction between the parties on principal to principal basis and the appellant is not the agent of GSK. In that circumstances, the activity undertaken by the appellant is a manufacturing activity. He further relied on the decision in the case of Ujagar Prints v. Union of India [1988 (38) ELT 535 (SC)] and Empire Industries Limited v. Union of India [1985 (20) ELT 179 (SC)] to say that excise duties are leviable on manufacture of production/manufacture of excisable goods and ownership of goods do not determine excise liability.

8. He also submitted that the appellant is recognized manufacturer by various statutory bodies namely the appellant is registered with Central Excise Department , Sales Tax VAT Registration, Separate factory registration, License under Food Safety Act, Separate Pollution

Control Board Registration. Therefore, it cannot be said that the appellant is not an independent manufacturer.

9. He also relied on the CBEC Circular No.908/28/2009-CX dated 23.12.2009, which provides that even the job-workers who are only engaged in peripheral activities of packing, labeling etc. are also eligible area-based exemption provided the main product is being manufactured in the specific areas eligible for exemption. Therefore, the impugned orders are to be set aside by holding that the appellant is a manufacturer of excisable goods.

10. On the other hand, the Ld.Special Counsel for the department supported the impugned order.

11. Heard the parties, considered the submissions.

12. On going through the fact and record, the issue to be decided by us is "whether the activity of blending, labeling, packing and re-packing of 'Horlicks' by the appellant amounts to manufacture in terms of section 2(f) (iii) of the Central Excise Act, 1944 read with chapter note 5 of chapter 19 of CETA, 1985 or not?"

13. Admittedly the Commissioner of Central Excise, Guwahati vide its order dated 20.10.2011 observed as under:-

> "15.0. Now, coming to the issue of the present dispute on the question of manufacture, I observe that the Notice have submitted a flow-chart giving the details of activities undertaken by them in their premises during the material period, which I have taken note of.
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> ……………..
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> 15.3. In other words, the Noticee, having been a contracted producer of goods on behalf of M/s. Smithkline Beecham Consumer Healthcare Limited, lawfully deserve consideration as manufacturer under Excise Law in terms of the Section 2(f) of the Central Excise Act, 1944; consequently, the impugned goods, namely, malt based food items produced by the Noticee should be subjected to levy of duty in terms of Section 3 of the Central Excise Act, 1944.
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> 15.4. Further, as dealt with in detail in the preceding paragraphs, Section 2(f) of the Central Excise Act, 1944 defines "manufacture"

inter-alia to include any process which, in relation to the goods specified in the Third Schedule to the Central Excise Tariff Act, 1985, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer. Besides, Chapter Note 5 of Chapter 19 of the Central Excise Tariff Act, 1985 provides that in relation to products of this Chapter, labelling or re-labelling of containers or repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to manufacture. In the instant case, the activities of undertaken by the Noticee, which also includes re-packing of goods from bulk to retail packs and adoption of other treatment on the goods (i.e., removal of unwanted particles from the bulk-powder) to render the product marketable in relation to goods covered under CETSH No. 1901 90 90 of the Schedule to the Central Excise Tariff Act, 1985, is well within the scope of definition of "manufacture" under Section 2(f) of the Central Excise Act, 1944 as well as Chapter Note 5 of Chapter 19 of the Central Excise Tariff Act, 1985."

14. As the Commissioner of Central Excise, Guwahati has already held that the activity undertaken by the appellant amounts to manufacture and the said order has attained finality, in that circumstances, on this ground alone, the allegation against the appellant that the appellant is not a manufacturer is not sustainable.

15. We further find that the appellant undertakes the activity/processing on the bulk malt based powder, received from GSK thereafter removal of unwanted particles from the bulk malt based powder to make it fit for human consumption. Then processing/blending of the bulk powder with sweetened milk powder, sugar, vitamins etc. to make it marketable in the finished form and then packing of the final manufactured product either in pouches or in jars having brand name of 'Horlicks' on it. The said activity undertaken by the appellant do qualify as process of manufacturing in terms of

section 2(f) of the Central Excise Act, 1944 as the activity undertaken by the appellant brings about a change in the name, character and use and bringing a new product in the market which is known as 'Horlicks', therefore, we hold that the activity undertaken by the appellant is manufacturing activity and the appellant is a manufacturer in terms of section 2(f) of the Central Excise Act, 1944.

16. In that circumstances, it cannot be said that the appellant is a job-worker and providing 'Business Support Service' and no demand of service tax can be raised against the appellant.

17. Therefore, the impugned order qua demand of service tax from the appellant that they are service provider post June 2012 and prior to 2012, the appellant was providing 'Business Support Service', is not sustainable.

18. In view of this, we do not find any merit in the impugned orders, the same are set aside and the appeals are 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)

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