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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 185 of 2012

(Arising out of Order-in-Original No.71/Commr/ST/Kol/2011-12 dated 2.2.2012 passed by Commissioner of Service Tax, Kolkata.)

M/s. Walzen Strips Pvt. Ltd.
(Benaras Road, Biradinghi, Howrah-711108)

Appellant

VERSUS

Commr. of Service Tax, Kolkata
(Kendriya Utpad Shulk Bhawan, (3rd Floor), 180,
Shantipally, Rajdanga Main Road, Kolkata-700107)

Respondent

APPEARANCE :
Mr. N. K. Chowdhury, Advocate for the Appellant
Mr. P. Das, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75999/2024

Date of Hearing : 17th May 2024
Date of Decision: 17th May 2024

[ORDER] PER R. MURALIDHAR:

The Appellants are manufacturers of steel strips in their factory located at Howrah, West Bengal. The steel strips manufactured by them are cleared on payment of duty to various steel sheets/rolls manufacturers on payment of Excise Duty. The bought out steel strips are given on job work basis the buyers to the appellant for strapping the steel rolls. For the job work undertaken by them at the premises of such buyers, two Show Cause Notices were issued for the period 01/04/2007 to 31/03/2009 on 07/04/2010 and for the period 01/04/2009 to 31/03/2010 on 19/04/2011. It was alleged that the services rendered by the Appellant firms under the category of "Business Auxiliary Service" and the Appellant has failed to pay the Service Tax for such services. After due process, the Adjudicating Authority confirmed the demand vide OIO No. 71/Commr/ST/Kol/2011-12 dated 02/02/2012. Being aggrieved, the Appellant is before the Tribunal.

2. The Learned Advocate appearing on behalf of the Appellant submits that the activity undertaken by them amounts to manufacturing in terms of Section 2(f) of the CEA 1944, since the strapping of steel rolls is important to completing the manufacturing activity of steel sheets. Under "Business Auxiliary Service (BAS in short)", in terms of Section 65(19), when production/processing of goods amounting to manufacture takes place, the activity is fully exempted from payment of Service Tax. As an alternate pleading, he submits that when any production/processing of goods is undertaken on behalf of the client based on the raw materials / semi finished goods issued by him which finally results in a manufactured product on which Excise Duty is paid by the client, again Service Tax is fully exempted under Notification No.8/2005 dated 1.3.2005. Therefore, he submits that under both circumstances, no Service Tax is required to be paid by the Appellant.

3. He also submits that the issue is no more *res integra*. In the case of another unit of the same Appellant, such Notices were issued and matter had reached CESTAT, Hyderabad. The Hon'ble Hyderabad Tribunal vide **Final Order No. A/30836-30837/2018 dated 26/07/2018 has held that no Service Tax is liable to be paid for the job work activity undertaken.** In view of the foregoing, he submits that the Appeal may be allowed on merits.

4. He further submits that the Appellant is registered with the Department as a manufacturer and also as a service recipient for GTA and other services. They have been filing their Returns under Central Excise and Service Tax regularly. In this particular case, it is not disputed that on the strips cleared by them, the Excise Duty has been paid. The Appellant is using strips already bought by the client and given by them to the Appellant at the

premises of the clients for strapping the steel coils. Admittedly, there is no dispute that the Excise Duty is being paid by the clients for the finished goods i.e. Steel Rolls cleared by them. In such a case, there is no question of suppression on the part of the Appellant. The details have been properly reflected in the Returns. Therefore, he submits that the confirmed demand for the extended period is liable to be set aside on account of limitation also.

5. The Learned AR reiterates the findings of the Adjudicating Authority and submits that the Appellant without any dispute is carrying on the job work at the premises of their buyers. It has been detected that no Service Tax is being paid by the Appellant on the service charges received from their clients. Therefore, he justifies the demand confirmed for the extended period and also justifies that on merits there is no case for the Appellant.

6. Heard both sides and perused the Appeal papers and documents made available to us.

7. Admittedly, the goods in question are Steel Strips which are cleared by the Appellant to various manufacturers of Steel Sheets / Rolls on payment of Excise Duty. After the Steel Strips are received by the buyers, they have given a contract to the Appellant to come to their factory premises and strap the Steel Rolls/Steel Sheets. For such activity, the Appellant is being paid the service charges.

8. We find that the activity carried out by them is a job work on behalf of the client, wherein the ultimate goods are cleared on payment of Excise Duty by the client. This situation is fully covered by the exemption granted under Notification No. 8/2005 dated 01/03/2005. The relevant portion of this Notification reads as under :

> 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 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.

9. We also find that from the very issue was before **the Co-ordinate Bench of Hyderabad in the case of Walzen Strips Pvt. Ltd. Vs. CCE and ST, Visakhapatnam-II**. The Hon'ble Tribunal has held as under:-

> *7. We have considered the arguments on both sides and perused the records. It is not in dispute that the appellant manufactures these strips and supplies to their client. It is also not in dispute that the appellant uses these strips in the factory of the client to strap the wire rod mill products manufactured by their client. We find it hard to accept the contention of the appellant that mere strapping of those wire rod mill products brings into existence any new marketable product. This activity is part of the production process undertaken in the factory of their client but this process in itself doesnot amount to manufacture. The definition under section 2(f) of the Central Excise Act, 1944 is an inclusive definition which says that manufacture includes any process incidental or ancillary to the manufacture. In other words, where manufacture is taking place, all the activities which are related to and are incidental or ancillary to it will also get covered with the meaning of the manufacture. However, each individual activity by itself cannot be called as manufacture as has been well established. In order for any process to be called as manufacture, a new distinct commodity as known in the market has to come into existence. Merely strapping the wire rod mill products does not bring into existence a new distinct commodity. It is more in the nature of packing the products manufactured by their client. Therefore, we find no force in the arguments of the appellant that they are excluded from the definition of business auxiliary services by virtue of the proviso to the definition. We find it is the contention of the department that appellant is covered by section 65(19)(v) of the Finance Act, 1994 in as much as they are involved in the activity of production of goods on behalf of their client. The appellant does not dispute this and,*

in fact, he goes one step further and argues that their activity amounts to manufacture which we do not find so. Notification No.8/2005-ST dated 01.03.2005 reads as follows:

> *"......the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service of production of goods on behalf of the client referred in sub-clause (v) of clause (19) of section 65 of the said 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 using raw materials or semi-finished goods supplied by the client and goods so produced 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."*

8. From the above it is apparent that the activity of the appellant of strapping the wire rod mill products of their client in the factory of the client with the material supplied by the client, so that the client can, in turn, clear the goods on payment of excise duty, is squarely covered by Notification No.8/2005-ST and therefore they are not liable to pay service tax under the head of business auxiliary services. As no service tax is leviable, the question of interest and penalties also does not arise. In consequence, we find that the appeals are to be allowed and we do so.

10. The facts of the case in the present Appeal are identical and Appeal is squarely covered by the above decision of the Tribunal. Following the ratio laid down in the cited case law, we allow the Appeal on merits.

11. We also find force that the Appellant being manufacturer and recipient of service would have been filing their ER-1 Returns and ST-3 Returns before the authorities. The Appellant also would be carrying a bonafide belief that since the Excise Duty is paid by the Steel manufacturers after strapping, they are well covered by the exemption under Notification No. 08/2005. Therefore, in such cases, the Appellant cannot be fastened with the suppression clause to demand the Service Tax for the extended period. We set aside the confirmed demand for the extended period on account of limitation.

13. On the above, terms, the Appeal is allowed with consequential relief, if any, as per law.

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

Sd/-
(R. Muralidhar)
Member (Judicial)

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

Pooja