IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH – COURT NO. 1
Service Tax Appeal No. 76172 of 2014

(Arising out of Order-in-Original No.15/Commr/ST/Bol/2014 dated 31.03.2014 passed by Commissionerof Service Tax, Kolkata)

M/s. BDG Metal & Power Limited **: Appellant**
Plasto Steel Park, Kadasola,Barjora, Dist.-Bankura, West Bengal.
Pin: 722202.

VERSUS

Commissioner of Central Excise, Bolpur. **: Respondent**
Nanoor Chandidas Road, Sian, Bolpur-731204.

APPEARANCE:

Mr. N.K.Chowdhury, Advocate for the Appellant

Shri S.K.Singh, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.75236/ 2025

DATE OF HEARING :23.01.2025

DATE OF DECISION:23.01.2025

Order : [Per Shri Ashok Jindal]

The appellant is in appeal against the impugned order confirmation of demand of service falls under the category of business auxiliary services.

2. The facts of the case are that the appellant is engaged in production and manufacture of M.S.Billets, rolled products of iron and steel and Silico Manganese. The appellant was registered with CE department. The principal raw materials used by them are Sponge iron, pig iron, scrap, manganese ore, coke, dolomite lumps etc. It was alleged that appellants are engaged in providing the services under 'Business Auxiliary Services' and 'Goods Transport agency Services' and it was further alleged

that some of the services shown as 'Supervision and Dealing Charges'. Therefore, it was alleged that the services provided by the appellant for which they recovered/claim 'supervision and dealing charges' from their clients were services such as general liaison work, business promotion, providing information on competitive activity, follow up of payments and other related services which were provided to different clients as per terms and conditions of the contracts made with such clients. The consideration/commission received from these clients were shown as 'supervision and dealing charges' in their books of accounts during the years 2007-08 and 2010-11 and they were reportedly paying Service Tax on such income under the category of Business Auxiliary Service. It was further found that the appellant were also providing other clients and consideration received for providing such services was shown as 'Machining Charges' in the schedules to their financial statements during the relevant period. They were performing machining works like drilling, tappling, forming, threading etc. on diesel locomotive wheels as per the specifications of DSP for their various clients. Therefore, the process undertaken by the appellant does not amount to manufacture within the definition as contained in Section 2(f) of the Central excise Act, 1944 and therefore, appears it is to be covered by Business Auxiliary Service as contained in clause 105 (zzb) of the erstwhile Section 65 of the Finance Act 1994 and the activity appears to covered by the expression 'Production or processing of goods for or on behalf of the client' under the category of Business Auxiliary Service as contained in sub-clause (v) of the erstwhile Section 65(19) of the Finance Act and as applicable during the relevant period, and is chargeable to Service Tax as per the erstwhile Section 66 of the Finance Act, 1994. In addition, for the reasons given hereinafter, it appears that the said activities done by BDG for their clients would not be exempt from levy of Service Tax under Notification No. 8/2005 –ST dated 01.03.2005 (as amended).

3. Therefore, the service rendered by the appellant falls under the category of 'Business Auxiliary Service' during the impugned period and they are liable for the Service Tax. Consequently, a Show Cause Notice was issued to the appellant to demand service tax and to impose penalty thereof.

4. The matter was adjudicated. Demand of Service Tax was confirmed for machining charges and penalty was also confirmed.

5. Against the said order the appellant is before us.

6. The Ld. Counsel for the appellant submits that they were doing work for the Mohata Coal Company, Durgapur, Vardhaman axles & Wheels (P) Ltd. , Durgapur, Bengal Commercial & Credit (P) Ltd. Durgapur and others. For executing the jobs, the materials that is wheels were never brought to their factory premises for such work. In fact, they were asked to set up their own facilities at the premises of the clients including setting up of machines and providing workers for doing the jobs of machining which included jobs such as buffing, drilling, tappling, forming, threading etc. These and other conditions of providing such work for the clients was available in the contrats/agreemtns which they had with them and that he had submitted a sample copy

of such contract during the course of adjudication. The work done by the appellant under job work challan in terms of Rule 4(5)(a) of Cenvat Credit Rules, 2004. He further submitted that the activity undertaken by the appellant is squarely covered by the definition of Section 2(f) of CE as the activity amounts to manufacture.

7. In that circumstances, no Service Tax is payable by the appellant as in their principal M/s. Mohata Coal Company (P Ltd. vide final order no. 75473/2024 dated 06.03.2024 this Tribunal dropped the proceedings. Therefore, no proceedings is sustainable against the appellant.

8. Heard the parties. Considered the submissions.

9. Similar issue came up in the case of this Tribunal in the case of M/s. Mohata Coal Company Pvt. Ltd. wherein this Tribunal observed as under:

"7. We find that the issue has already been examined by this Tribunal in the case of M/s. Ferro Scrap Nigam Limited (supra) wherein this Tribunal 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 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 theservice is provided on behalf of the client i.e. there would be involvement

of three parties. The relevant portion of the decisionrendered 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 -

(1) promotion or marketing or sale of goods produced or providedby 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 theclient; 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 orsupervision, and includes services as a commission agent, but does not include anyinformation 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 "productionof 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 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 Commissionerin 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 provision of service on behalf of the client. This is as because the taxable activity envisaged under this category of business auxillary service" is that while the "client" is obliged to provide some service to a 3rd personbut instead of the client providing such service, the service provider provides the such service to the 3rd person, on behalf of the cliente. 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. 81/6/2005-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 onbehalf of the client" The activities that amount to manufacture within the Central Excise Act were not covered within the scope of thetaxable 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 servicetax 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 clientor on behalf of the client would be liable to service tax".

10. Apart from the above circulars of the Board there are decisions ofthe 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 thatappellants have undertaken job work on behalf of the clients, in viewof 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 isnot covered by the definition, no service tax is attracted. Accordingly, impugned order is set aside and appeal Further, in the case of Rathour Engg. Works 2012 (27) S.T.B. 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 ofdispute. 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 infavour 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 theirown 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) forthe 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 NotificationNo. 8/2005-S.T. ibid:

"In exercise of the powers conferred by sub-section (1) of Section 9.3of 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 thesaid 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 [orprocessed) 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,

(1) 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 doubtabout the satisfaction of the condition of the second limb of thenotification 1.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 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 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 undertakenby the appellant are admittedly within the plant itself. As such, we find that the ratio of the law declared by he 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."

7.1 As it has already been decided that the said activity undertaken by the appellant amounts to manufacture and the appellant is doing the said activity on job work basis and such job worked goods have suffered duty at the end of the principal manufacturer, in these circumstances, the demand of Service Tax under the category of "business auxiliary service" is not sustainable against the appellant."

10. As the activity undertaken by the appellant has been considered by this Tribunal in the case of M/s. Mohata Coal Company Pvt Ltd. (Supra) therefore, we hold that activity undertaken by the appellant amounts to manufacture as appellants is doing the activity on job work basis and such job work goods have been suffered duty at the end of principal manufacturer.

11. In that circumstances, demand of service tax under the category of 'Business Auxiliary Service' is not sustainable against the appellant.

12. Therefore, we set aside the impugned order and allow the appeal with consequential relief, if any.

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

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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