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

REGIONAL BENCH – COURT NO. 2

Service Tax Appeal No. 75872 of 2018

(Arising out of Order-in-Original No. 04/S.Tax/Commr./2017 dated 27.10.2017 passed by the Commissioner of C.G.S.T. & C.X., Jamshedpur, Outer Circle Road, Bistupur, Jamshedpur – 831 001)

M/s.H.V. Transmission Limited **: Appellant**
[Now known as 'M/s. TML Drivelines Limited']
TELCO Campus, Jamshedpur,
Jharkhand – 831 010

VERSUS

Commissioner of C.G.S.T. and Central Excise, **: Respondent**
Jamshedpur, Outer Circle Road, Bistupur,
Jamshedpur – 831 001

APPEARANCE:

Ms. Taniya Roy and Mr. Deepro Sen,both Advocates, for the Appellant

Ms. K. Kalpana, Authorized Representative, for the Respondent

CORAM:

HON'BLE SHRIR. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 77602/2025

DATE OF HEARING / DECISION: 17.10.2025

ORDER:[PER SHRI K. ANPAZHAKAN]

The instant appeal has been filed against the Order-in-Original No. 04/S.Tax/Commr./2017 dated 27.10.2017 passed by the Commissioner of C.G.S.T. & C.X., Jamshedpur, Outer Circle Road, Bistupur, Jamshedpur – 831 001, wherein the Ld. Commissioner has confirmed the demand of service tax of Rs.3,43,54,608/- along with interest and equivalent penalty, for the period from 2007-08 to 2011-12 (till December 2011).

2. The facts of the case are that M/s.H.V. Transmission Limited [Now known as 'M/s. TML

Drivelines Limited’](herein after referred as the appellant) was *inter alia* engaged in the business of manufacturing of gearboxes and its components falling under Chapter 87.

2.1. During the underlying period, the Appellant was also working as a job worker of Tata Motors Limited (‘TML’). The Appellant was erstwhile Transmission Division of TML. Further, with effect from 01.04.2000, the gear box Division was incorporated as a subsidiary to TML and the erstwhile Axle Division of TML was taken over by H.V. Axles Limited (**‘HVAL’**) and was incorporated as a subsidiary to TML. Thus, the Appellant took over the gear box manufacturing division from TML while HVAL took over the axle division of TML. As a result, both the companies have become subsidiaries of TML. Vide an order dated 29.07.2011 passed by the Bombay High Court the scheme of merger of M/s H.V. Transmission Ltd. and M/s H.V. Axles Ltd. was approved to form the new entity M/s TML Drivelines Ltd. (Appellant herein).

2.2. During the underlying period, the Appellant was engaged in carrying out heat treatment activity on its own parts and also for other parts of HVAL for further manufacture of Axles and parts thereof which were cleared on payment of duty to TML. Further, both Appellant and HVAL were working as job workers of TML. The various goods manufactured by the Appellant and HVAL and cleared to TML were used by TML in or in relation to the manufacture of motor vehicle/chassis which were finally cleared on payment of excise duty.

2.3. An audit was conducted by the department intimating the Appellant that the activity of heat treatment of various parts used in the manufacturing of gear boxes was taxable under 'Business Auxiliary Service' thereby seeking the details of consideration received by the Appellant in lieu of the said heat treatment process on HVAL's products for the last five years.

2.4. Thereafter on 17.08.2012 a Show Cause Notice was issued to the Appellant proposing to demand service tax amounting to Rs.3,43,54,608/-on the consideration received for undertaking the activity of heat treatment carried on by the Appellant for the underlying period under the category of Business Auxiliary Service. The SCN alleged that the activity of heat treatment appeared to be covered under 'processing of goods for, or on behalf of, the client' thereby being taxable under Business Auxiliary Service. Further, it was also alleged that the said activity does not fall under the exemption notification no. 08/2005-ST dated 01.03.2005.

2.5. On adjudication, the Ld. Adjudicating authority confirmed the entire demand along with interest and penalty vide the Order-in-Original dated 27.10.2017. Being aggrieved by the impugned order, the Appellant has filed the present appeal.

3. The Appellant submits that the present issue with respect to process of heat treatment amounting to 'manufacture' is no longer *res integra* as the said issue stands decided by this Tribunal as well as various other forums in favour of the assessees. The Appellant submits that the process of heat treatment is often associated with increasing the strength of the steel, but it can also be used to alter certain manufacturability objectives such as improve machinability, formability, restore ductility etc. Thus,

the process of heat treatment ensures that the spare parts that are passed through the said process comes out as a complete product suitable to be used in the manufacture of automobiles. This process is essential to make the parts capable of being used in the manufacture of automobile. Thus, the Appellant submits that such an activity undertaken by it amounts to 'manufacture' as defined under section 2(f) of the Central Excise Act, 1944..

3.1. Further, it is the submission of the Appellant that Note 6 of Section XVII of the First Schedule to the Central Excise Tariff Act, 1985 states that conversion of an incomplete or unfinished product into a complete/finished product shall amount to manufacture. Thus, the instant case of the Appellant stands squarely covered under such provisions wherein the materials received from HVAL being in incomplete and unfinished condition are converted into complete and finished products after undergoing heat treatment.

3.2. In support of their contention, the appellant submitted that this Tribunal in the Appellant's own case in **M/s TML Drivelines Limited v. Commissioner of Central Excise, Jamshedpur [Final Order No. 76697/2024 dated 05.08.2024 in Appeal No. ST/426/2011]** pertaining to the period 10.09.2004 to 28.02.2005 and concerning the same issue, held that the activity of heat treatment amounts to manufacture. The appellant also placed their reliance on the decision of the Tribunal, Chennai in the case of **M/s Excel Industries v. Commissioner of GST and Central Excise, Tiruchirapalli, 2024 (5) TMI 1341- CESTAT CHENNAI,** wherein the Tribunal, Chennai has held that the said activity of heat treatment amounts to manufacture.

3.4. It is the submission of the Appellant that when the activity undertaken by them amounts to manufacture, the same cannot be said to be an activity falling under Business Auxiliary Service. Reliance in this regard is also placed on the following judgments:

(i) In **CCE, Pune-II v. Hi-Tech Induction Pvt. Ltd., 2014-TIOL-52-CESTAT-MUM** the Tribunal held that the activity undertaken by the respondents amounted to manufacture and did not fall under the category of 'Business Auxiliary Service' where after the work of heat treatment on crank shafts, the same were returned back to the principal manufacturer who cleared the same upon payment of excise duty.

(ii) **Pioneer Engineering Industries v. Commissioner of Customs, Central Excise & Service Tax, Tiruchirapalli, 2018 (6) TMI 719-CESTAT CHENNAI**

(iii) Munish Forge Pvt. Ltd. v. CCE & ST. 2014-TIOL-862-CESTAT-DEL

3.5. In view of the above judicial pronouncements, the appellant submitted that the activity undertaken by them amounts to manufacture and thus the consideration received by them from HVAL cannot be subjected to service tax under 'Business Auxiliary Services'.

3.6. The appellant further submitted that the heat-treated components are used by HVAL in the manufacture of Axles and parts thereof which are ultimately cleared to TML on payment of duty by

HVAL. It is submitted that the said activity of the Appellant has been expressly exempted in terms of Notification No. 8/2005-ST dated 01.03.2005, as amended by Notification No. 19/2005-ST dated 07.06.2005. The said notification 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 Finance Act, from the whole of service tax leviable thereon under section 66 of the Finance Act. Thus, the Appellant submits that it is undertaking the process of heat treatment on raw materials provided by HVAL and thereafter the Appellant is sending it back to HVAL which is being used by them for the manufacture of axles and parts thereof and the resultant products are cleared to TML upon payment of excise duty. Thus, the appellant submitted that the requirements of the Notification are being completely fulfilled by the Appellant, so there is no reason to deny the said benefit of exemption to the Appellant.

3.7. The appellant submits that the axles manufactured by HVAL are excisable goods and the job work charges paid by HVAL to the Appellant are included in the assessable value of the axles on which excise duty was paid by HVAL. Thus, job work charges on which service tax has been demanded by the Ld. Commissioner have already been subjected to excise duty. Therefore, the present demand of service tax on the same job work charges results in duplication of demand being both service tax as well as excise duty. Hence, the present demand of service tax is not sustainable in law. Thus, the appellant submits that no service tax can be levied on the job work charges paid by HVAL to the Appellant as the same has been included in the assessable value of the goods of HVAL, on which excise duty has already been paid. Hence, the impugned order is liable to be set aside on this ground alone.

3.8. The appellant also submits that the demand is liable to be set aside on the ground of revenue neutrality inasmuch as any service tax charged on the Appellant would be available as credit to HVAL. In this regard, the Appellant relies on the decision of **M/s H. V. Transmission Ltd. v. CCE, Jamshedpur**,**2023 (12) TMI 118 – CESTAT Kolkata** wherein this Tribunal has set aside the demand of excise duty on the grounds of revenue neutrality. Reliance is also placed on the judgment of **Commr. Of C. Ex., Ahmedabad-II Versus Reclamation Welding Ltd. [2014 (308) E.L.T. 542 (Tri. - Ahmd.)],** wherein the demand of excise duty was *inter alia* set aside on the ground of revenue neutrality on goods supplied after job work to the subsidiary company which was available as credit in the hands of the subsidiary company. Reliance is further placed on the following judgments:

- **M/s Steel Authority of India Limited v. Commissioner of Central Excise & Service Tax, Ranchi-I, 2025 (3) TMI 565- CESTAT Kolkata**
- **Steel Authority of India v. Commissioner of Central Excise & Service Tax, Ranchi I, 2025 (3) TMI 258-CESTAT Kolkata**
- **Tata Motors Ltd, Jamshedpur v. CCE, Jamshedpur – Final Order No. 76041/2024 dated 22.05.2024**

3.9. Regarding confirmation of the demand by invoking extended period of limitation, the appellant submits that the demand raised for the period April 2007to March 2011 is liable to be set aside on the ground of being time-barred. Further, it is a settled principle of law that extended period cannot be invoked in case of revenue neutral situation. Reliance in this regard is placed on the Hon'ble Apex Court judgment pronounced in the case of **Nirlon Ltd. Versus Commissioner of Central Excise, Mumbai [2015 (320) E.L.T. 22 (S.C.)].** The Appellant further submits that extended period is not invokable in the instant case as the issue involved is purely interpretational in nature. In view of the above, the appellant submits that the demand confirmed invoking extended period of limitation is liable to be set aside on the ground that the issue is one of interpretation.

3.10. Thus, by relying on the ratio of the decisions cited supra, the appellant submits that the demand of central excise duty along with interest and penalty confirmed in the impugned order is not sustainable. Accordingly, they prayed for setting aside the demands of duty, interest and penalty confirmed in the impugned order.

4. The Ld. A.R. reiterated the findings in the impugned order.

5. Heard both sides and perused the appeal documents.

6. We observe that, the Appellant has been undertaking the process of heat treatment on raw materials provided by HVAL and thereafter the Appellant is sending it back to HVAL which is being used by them for the manufacture of axles and parts

thereof and the resultant products are cleared to TML upon payment of excise duty. Thus, we observe that the issues to be decided in the appeal are:

(i) Whether the activity of heat treatment undertaken by the appellant amounts to manufacture or not?

(ii) Whether the demand is sustainable on the ground of it being revenue neutral?

6.1. In this regard, we observe that the issue with respect to process of heat treatment amounting to manufacture or not, is no longer *res integra* as the said issue stands decided by this Tribunal as well as various other forums in favour of the assessees. We also find that this Tribunal in the Appellant's own case in **M/s TML Drivelines Limited v. Commissioner of Central Excise, Jamshedpur [Final Order No. 76697/2024 dated 05.08.2024 in Appeal No. ST/426/2011]** pertaining to the period 10.09.2004 to 28.02.2005 and concerning the same issue held that the activity of heat treatment amounts to manufacture. The relevant paragraph of the said decision is extracted below for ready reference:

> *"7. We find that in the case of Hi-Tech Induction Pvt. Ltd. (supra), the activity undertaken by the assessee was of work of heat treatment on crank shafts supplied by various customers and after the heat treatment on crank shafts, the same were sent back to the principal manufacturer and the principal manufacturer cleared the same on payment of appropriate duty after taking into consideration the charges of heat*

treatment towards assessable value. ***Admittedly, in this case also, the heat treatment was given by the appellant to various parts used in manufacturing of gearboxes which were further used in manufacture of excisable goods by the principal manufacturer, namely, M/s. Tata Motors Ltd****. Therefore, we observe that the facts of this case are identical to the facts of the case of Hi-Tech Induction Pvt. Ltd. (supra), wherein this Tribunal has held as under: -*

> *"4. We find that the respondents are receiving job work of Heat Treatment of automobile p-arts mainly crankshafts from their principal manufacturers M/s. Hind Engg. Works, and M/s. Fairfield Atlas Ltd. After the heat treatment carried out on crank shafts the same were returned back to the principal manufacturers. Both the principal manufacturers have issued certificates to clarify that the crank shafts on which heat treatment process was done by the respondents was received by them and the same were cleared ultimately on payment of appropriate Central Excise duty. In view of this as the activities undertaken by the respondent do not fall under the category of "Business Auxiliary Service" therefore we do not find any infirmity in the impugned order and the same is upheld."*

> *8. As the issue has already been decided by this Tribunal in the case of Hi-Tech Induction Pvt. Ltd. (supra), therefore, the issue is no more res integra.* ***In these circumstances, we hold that the activity of heat treatment given by the appellant to parts of gearboxes amounts to manufacture and does not fall under the category of 'business auxiliary service' and hence, no service tax is payable by the appellant****. Accordingly, demand of service tax against the appellant is set aside."*

6.2. We find that the same view has been taken by the Tribunal, Chennai in the case of **M/s Excel Industries v. Commissioner of GST and Central Excise, Tiruchirapalli, 2024 (5) TMI 1341- CESTAT CHENNAI,** wherein the Tribunal has held that the said activity of heat treatment amounts to manufacture. Relevant extract of the said decision is extracted hereunder:

> *"7. It can be seen that the definition excludes any activity that amounts to manufacture of excisable goods. In the present case, the supply of raw materials as well as clearing of worked goods are undertaken by the appellant by giving declaration as per Notification No. 214/86-CE. Thus the onus to pay excise duty is on the principal manufacturer. The Tribunal in the case of Pioneer Engineering Industries (supra) had considered the very same issue and held that the activity undertaken by the assessee in the nature of cutting, punching, drilling,* ***heat treatment*** *on steel plates so as to send the products to M/s.*

*BHEL would amount to manufacture. The Tribunal had relied upon the decision of the Hon'ble Supreme Court in the case of Orissa Bridge & Construction Corpn. Ltd. Vs. Commissioner of Central Excise, Bhubaneswar, [2011 (264) ELT 14 (SC)] to hold that such activity amounts to manufacture. Following the decision of the Tribunal in the case of Pioneer Engineering Industries (supra), **we are of the considered opinion that the activity amounts to manufacture.** The Commissioner (Appeals) for the subsequent period has set aside the demand of service tax observing that the activity amounts to manufacture of excisable goods. In view thereof, the demand cannot sustain."*

6.3. We also observe that when the activity undertaken by the appellant amounts to manufacture, the same cannot be said to be an activity falling under Business Auxiliary Service. In the case of **CCE, Pune-II v. Hi-Tech Induction Pvt. Ltd., 2014-TIOL-52-CESTAT-MUM** the Tribunal held that the activity undertaken by the respondents amounted to manufacture and did not fall under the category of 'Business Auxiliary Service' where after the work of heat treatment on crank shafts, the same were returned back to the principal manufacturer who cleared the same upon payment of excise duty. The relevant extract is reproduced as herein below:

*"2. We have gone through the appeal papers. **We find that the issue involved in this case is whether the activity undertaken by the respondent amounts to manufacture or not.** In view of this the request for adjournment is declined.*

3. The respondents are undertaking the work of Heat treatment on crank shafts supplied by various customers. After the heat treatment on crank shafts the same were sent back to the principal manufacturers. The principal manufacturers cleared the same on payment of appropriate duty after taking into consideration the charges of heat treatment towards the assessable value. The Revenue demanded service tax on the ground that the heat treatment carried out by the respondents falls under the category of Business Auxiliary Service.

4. We find that the respondents are ***<u>receiving job work of Heat Treatment of automobile parts mainly crank shafts</u>*** *from their principal manufacturers M/s. Hind Engg. Works, and M/s. Fairfield Atlas Ltd. After the heat treatment carried out on crank shafts the same were returned back to the principal manufacturers. Both the principal manufacturers have issued certificates to clarify that the crank shafts on which heat treatment process was done by the respondents was received by them and the same were cleared ultimately on payment of appropriate Central Excise duty.* ***In view of this as the activities undertaken by the respondent do not fall under the category of "Business Auxiliary Service" therefore we do not find any infirmity in the impugned order and the same is upheld****."*

6.4. In view of the above discussions and by relying on the ratio of the decisions cited supra, we hold that no service tax can be levied on the job work charges paid by HVAL to the Appellant as the same has been included in the assessable value of the goods of HVAL, on which excise duty has already been paid.

6.5. We also find that the heat-treated components are used by HVAL in the manufacture of Axles and parts thereof which are ultimately cleared to TML on payment of duty by HVAL. We observe that the said activity of the Appellant has been expressly exempted in terms of Notification No. 8/2005-ST dated 01.03.2005, as amended by Notification No. 19/2005-ST dated 07.06.2005. The said notification 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 Finance Act, from the whole of service tax leviable thereon under section 66 of the Finance Act. Thus, we observe that the appellant has been undertaking the process of heat treatment on raw materials provided by HVAL and thereafter the Appellant is sending it back to HVAL which is being used by them for the manufacture of axles and parts thereof and the resultant products are cleared to TML upon payment of excise duty. Thus, we hold that the appellant has fulfilled all the requirements of the Notification and hence they are eligible for the benefit of exemption of the said notification.

6.6.. We also agree with the submission of the appellant that the demand is liable to be set aside on the ground of revenue neutrality inasmuch as any service tax charged on the Appellant would be available as credit to HVAL. In this regard, we rely on the decision of **M/s H. V. Transmission Ltd. v. CCE, Jamshedpur**,**2023 (12) TMI 118 – CESTAT Kolkata** wherein this Tribunal has set aside the demand of excise duty on the grounds of revenue neutrality. Reliance is also placed on the judgment of **Commr. Of C. Ex., Ahmedabad-II Versus Reclamation Welding Ltd. [2014 (308) E.L.T. 542 (Tri. - Ahmd.)],** wherein the demand of excise duty was *inter alia* set aside on the ground of revenue neutrality on goods supplied after job work to the subsidiary company which was available as credit in the hands of the subsidiary company. Reliance is further placed on the following judgments:

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6.7. Regarding confirmation of the demand by invoking extended period of limitation, we observe that it is a settled principle of law that extended period cannot be invoked in case of revenue neutral situation. Reliance in this regard is placed on the Hon'ble Apex Court judgment pronounced in the case of **Nirlon Ltd. Versus Commissioner of Central Excise, Mumbai [2015 (320) E.L.T. 22 (S.C.)].** In the instant case, we find that the issue involved is purely interpretational in nature. In view of the above, we hold that the demand confirmed invoking extended period of limitation is liable to be set aside on the ground that the issue is one of interpretation.

6.8. In view of the above discussions, we hold that the demand of service tax confirmed in the impugned order is not sustainable and hence, we set aside the same. As the demand itself is not sustainable, the question of demanding interest or imposing penalty does not arise and hence we set aside the same.

7. In the result, we set aside the demands of service tax along with interest and penalties confirmed in the impugned order and allow the appeal filed by the appellant with consequential relief, if any, as per law.

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

Sd/-
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd/T.K.