IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA
Court No.1

Service Tax Appeal No.75951 of 2024

(Arising out of Order-in-Original No.59/Commr./ST/SLG/23-24 dated 28.03.2024 passed by Commissioner of CGST & Central Excise, Siliguri)

M/s Golden Cross Pharma Pvt. Ltd.
(Lal Bazar, Singhtam, Tarpin Block, Rorathang, East Sikkim, Pin-737133)

Appellant

VERSUS

Commissioner of CGST & Central Excise, Siliguri
(C.R.Building, Hakimpara, Haren Mukherjee Road, Siliguri-734001)

Respondent

Appearance:
Shri Dipankar Majumdar, Advocate for the Appellant
Ms.K.Kalpana, Authorized Representative for the Respondent

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

DATE OF HEARING : 04 DECEMBER 2025

FINAL ORDER NO.77874/2025

Per Ashok Jindal :

This is an appeal against the impugned order demanding service tax by alleging that income of Rs.42.98 Crores from services declared in their audited financials were not disclosed in ST-3 Returns.

2. The facts of the case are that The appellant is a company engaged in the development, manufacture, and marketing of pharmaceutical products. It is duly registered under the Central Excise Act, 1944 as a manufacturer and under the Finance Act, 1994 for compliance with service tax provisions.

2.1 The appellant manufactures both on its own account and also undertakes job work for its principal manufacturer, Cipla Ltd. Under such arrangement, Cipla Ltd. supplies raw materials and packaging materials, and the appellant undertakes processing and manufacturing

strictly in accordance with Cipla's specifications. The finished goods are cleared from the Appellant's factory on payment of applicable Central Excise duty, supported by statutory ER-1 returns and debit notes raised for conversion charges.

2.2 The appellant is not a service provider in the ordinary course but is liable for service tax only in respect of specified services received under the Reverse Charge Mechanism (RCM), such as Works Contract Services (WCT), Manpower Recruitment, Goods Transport Agency (GTA), Rent-a-Cab, and legal consultancy. In fact, the Appellant regularly discharged its RCM liabilities and declared the same in its ST-3 returns.

2.3 During the scrutiny of returns for FY 2016–17, the Department compared the Appellant's audited balance sheet, Form 26AS, and ST-3 returns. It noted that income of approximately Rs.42.98 crores was reflected as "service income" in financials but not in ST-3 returns. Without appreciating the accounting nature of the entry and the fact that such income related tojob work/conversion charges for Cipla Ltd., the Department concluded that the Appellant had suppressed taxable value with intent to evade service tax.

2.4 Accordingly, a Show Cause Notice dated 23.10.2021 was issued under Section 73(1) of the Finance Act, 1994, invoking the extended period of five years, alleging suppression of facts and proposing to demand service tax of Rs.6,11,53,520/-, along with interest and penalty under Sections 75 and 78 of the Finance Act, 1994.

2.5 The appellant, vide detailed reply dated 03.08.2022 and further submissions dated 20.03.2024, strongly denied the allegations. It explained that:

(i) The so-called "service income" in audited financials was in fact conversion/job work charges received from Cipla Ltd., squarely covered under the definition of "manufacture" in Section 2(f) of the Central Excise Act, 1944.

(ii) In terms of Section 66D(f) of the Finance Act, 1994, "any process amounting to manufacture or production of goods" is covered in the Negative List and thus not liable to service tax.

(iii) All RCM liabilities were duly discharged, as evident from challans and ST-3 returns.

(iv) No specific taxable service was identified in the SCN or in the impugned order, rendering the demand unsustainable.

(v) Invocation of extended period was unwarranted since all figures were taken from statutory records (balance sheet and returns) already within the knowledge of the Department.

2.6 Despite these submissions, the Ld. Commissioner, vide the impugned Order-in-Original dated 28.03.2024, confirmed the entire demand, interest, and penalty solely on the basis of the alleged mismatch.

2.7 The Ld. Commissioner vide Order-in-Original dated 28.03.2024, confirmed Service Tax demand of Rs.6,11,53,520/- under Section 73(2) of Finance Act, 1994 read with Section 174(2) of CGST Act, 2017. Interest under Section 75 of Finance Act, 1994. Penalty equal to tax demand under Section 78 of Finance Act, 1994.

2.8 Against the said order, the appellant is in appeal.

3. The ld.Counsel for the appellant submits that the manufacturing activity is covered the negative list. It is his submission that the impugned order lies in treating the appellant's job work charges as taxable service. In fact, the appellant manufactures medicaments on behalf of Cipla Ltd. under a contractual arrangement, wherein raw materials are supplied by Cipla and the finished goods are cleared on payment of excise duty. Such activity squarely falls within the ambit of "process amounting to manufacture" as defined in Section 2(f) of the Central Excise Act, 1944, and is expressly excluded from the levy of service tax by virtue of Section 66D(f) of the Finance Act, 1994. To support his contention, he relies on the decisions of this Tribunal in the cases of Pharmanza India Pvt. Ltd. v. CCE, Vadodara-I [2023 (8) TMI 854 – CESTAT Ahmedabad, Midas Care Pharmaceuticals v. CCE, Aurangabad [2010 (1) TMI 247 (Tri.–Mum) & Alkyl Amines Chemical Ltd. v. CCE, Pune-III [2015 (6) TMI 659 – CESTAT Mumbai.

4. On the other hand, the ld.A.R. for the Revenue submits that as the appellant did not provide the agreement between the Cipla and the appellant, therefore, it cannot be come out whether the appellant is a job worker of Cipla Ltd. for clearing the goods or not ? Therefore, the impugned demand was confirmed.

5. Heard both the parties and considered the submissions.

6. We find that it is a fact on record that the appellant is manufacturing medicaments on behalf of Cipla Ltd. under a contractual agreement wherein raw materials were supplied by Cipla and the finished goods were cleared on payment of excise duty.

These facts are not in dispute. For the earlier also, it was recorded on the basis of same agreement, the demand was dropped by the ld.Commissioner (Appeals) vide Order-in-Appeal No.06/SLG-CE/2019-20 dated 09.04.2019.

7. In that circumstances, this Tribunal in the case of Pharmanza India Pvt. Ltd. (supra), has held as under :

> "4. We have carefully considered the submission made by both sides and perused the records. We find that there is no dispute on the fact which is admitted in the show cause notice. The relevant portion of the show cause notice is reproduced below: -
> *"2. During the course of Audit conducted under Computer Assisted Audit Program (CAAP), it has been observed that the party has manufactured certain Goods viz. Tetracyline, Neocycline etc. falling under Chapter 30 of the Central Excise Tariff Act, 1985 and Animal Feed supplements Feritas Bolus, Ecot Bolus falling under Chapter 23 of the Central Excise Tariff Act, 1985 on behalf of their clients under loan licenses issued by the Drugs Authorities, which are exempt from the Central Excise Duty Such services rendered to the clients in the form of manufacture of Goods which are exempt from Central Excise Duty are covered under Business Auxiliary Services as defined in Chapter V of Finance Act, 1944 Clause 65 (19)(V)-Production or processing of goods for or on behalf of the clients and service tax is payable on the gross value of receipt received as labour charges (for such production of exempted goods)"*
>
> *From the above facts stated in the show cause notice it is not under dispute that the activity of manufacturing of drugs on behalf of the principle is an excisable activity in terms of Section 2 (f) of Central Excise Act, 1944. The demand was confirmed on the very same activity under the category of Business Auxiliary Service and sub head "production of goods on behalf of the*

clients". The definition of Business Auxiliary Service under clause (19) of Section 65 of Finance Act, 1994 reads as follows: -

"(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-clauses (i) to (vi), such as billing, issue or 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 commissions 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."

4.1 From the above definition it can be seen that in clause (v) of the definition of Business Auxiliary Service, though the production of goods on behalf of the client is a taxable service, however, any activity that amounts to manufacture within the meaning of clause (f) of Section2 of the Central Excise Act, 1944 is out of the ambit of the definition of Business Auxiliary Service. The Revenue has completely misunderstood the definition of business auxiliary service particularly with regard to the service of production of goods on behalf of the client. From the definition it is absolutely clear that all such production activities which are other than the activity of manufacture in terms of Section 2 (1)

of Central Excise Act. 1944 are alone shall be taxable activity under the head of production of goods on behalf of the client under Business Auxillary Service. Therefore, in the present case the activity admittedly amounts to manufacture of excisable goods ie., drugs which is clearly covered under Section 2 (f) of Central Excise Act, 1944 cannot be classified as taxable service under business auxiliary service.

4.2 We further find that the Revenue while demanding the service tax also taken the support from the exemption Notification No.08/2005-ST contending that since the appellant's manufacturing activity is exempted from excise duty, the exemption Notification No.08/2005- ST is also not available. We find that as we discussed above that the activity does not fall under the definition of business auxiliary service since the same is excisable manufacturing activity in terms of Section 2 (f) of Central Excise Act, 1944 the Notification 08/2005 ST is absolutely irrelevant in the present case. It is noteworthy that the said notification is only relevant when the service is taxable under Finance Act, 1994 which is not the case here as per our above discussion.

5. As per our above discussion and finding, the demand of service tax is not sustainable. Accordingly, the impugned order is set aside. Appeal is allowed with consequential relief, if any, in accordance with law."

8. Further, in the case of Midas Care Pharmaceuticals (supra), again this Tribunal held that the activity undertaken by the appellant amounts to manufacture under Section 2(f) of the Central Excise Act, 1944. Therefore, the same cannot be termed as "Business Auxiliary Service" and the said legal position is squarely covered by the CBEC Circular F.No.249/1/2006-CX-4 dated 27.10.2008, wherein it has been held that no demand of service tax is sustainable.

9. In view of the above discussions, we hold that the demand of service tax is not sustainable against the appellant as the activity undertaken by the appellant amounts to manufacture under Section 2(f) of the Central Excise Act, 1944. Therefore, we set aside the impugned order and allow the appeal with consequential relief, if any.

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

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

mm