

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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 76153 of 2016

(Arising out of Order-in-Original No. 114/COMMR/DGP/ST/15-16 dated 10.03.2016 passed by the Commissioner of Customs, Central Excise and Service Tax, Durgapur Commissionerate, Satyajit Ray Sarani, City Centre, Durgapur – 713 216)

M/s. Deepak & Co.

: Appellant

Holding No. 104, Ward No. 17,
Raghunath Sayer, Kalindy, Bishnupur,
District: Bankura, PIN – 722 122 (West Bengal)

VERSUS

Commissioner of Central Excise and Service Tax : Respondent

Durgapur Commissionerate
Satyajit Ray Sarani, City Centre, Durgapur – 713 216

APPEARANCE:

Shri S.P. Siddhanta, Consultant for the Appellant

Shri Prasenjit Das, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

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

FINAL ORDER NO. 77125 / 2024

DATE OF HEARING: 24.09.2024

DATE OF DECISION: 08.10.2024

ORDER: [PER SHRI K. ANPAZHAKAN]

M/s.Deepak & Co., Holding No. 104, Ward No. 17, Raghunath Sayer, Kalindy, Bishnupur, District: Bankura, PIN - 722 122 (West Bengal) [hereinafter referred to as 'Appellant'] are registered with the Department for providing manpower recruitment or supply agency service.

1.1. On verification of the records of the appellant, it was found by the Officers of the Department that the appellant had been working for M/s. Rohit Ferro Tech Ltd., Bishnupur and M/s. Sri Vasavi Industries Ltd., Bishnupur. The appellant was asked to submit copies of the work orders executed by them in respect of the above said companies.

1.2. Upon scrutiny of the documents submitted by the appellant, it appeared to the Revenue that the appellant had been rendering the taxable service in the nature of 'business auxiliary service', but had not paid Service Tax on the same. It was found that the main job of the contractor was segregating the metal and slag, sizing and packaging as per the requirement of the service receiver, to make the product viz. Fe-Mn/Fe-Si-Mn/HCFE, saleable and marketable.

2. The Revenue is of the opinion that the appellant was involved in the production / processing of the goods on behalf of their clients and hence, fall within the definition of Part (v) of the definition of "business auxiliary service", which reads as under:

"(19) "business auxiliary service" means any service in relation to, —

...

(v) production or processing of goods for, or on behalf of, the client;"

3. Accordingly, a Show Cause Notice dated 25.09.2014 was issued to the appellant *inter alia* demanding Service Tax to the tune of Rs.50,35,765/- (inclusive of cesses), under the category of "business auxiliary service".

3.1. The Notice was adjudicated by the Ld. Commissioner of Central Excise and Service Tax, Durgapur Commissionerate vide the impugned Order-in-Original No. 114/COMMR/DGP/ST/15-16 dated 10.03.2016 wherein the Ld. Commissioner has confirmed the demand of Service Tax raised in the Notice, along with interest. He also imposed equal amount of tax as penalty under Section 78 of the Finance Act, 1994 and penalties of Rs.10,000/- each under Section 77(1)(a) and 77(2) *ibid*.

3.2. Aggrieved against the confirmation of the demands, the appellant has filed this appeal.

4. The appellant submits that they have undertaken the work of segregating the metal and slag, sizing and packaging, as per the requirement of their clients; the activity undertaken by them makes the goods saleable and marketable. They contend that the activity undertaken by them falls within the ambit of Section 2(f) of the Central Excise Act, 1944 and hence, the same amounts to 'manufacture'; since their activity amounts to manufacture, no Service Tax is payable on the said activity.

4.1. The appellant also relied on Notification No. 08/2005-S.T. dated 01.03.2005 wherein the processing of raw materials or semi-finished goods supplied by the client are exempted from the purview of Service Tax when the goods, after processing, are used in the production of the final product, on which appropriate duty of excise is payable/paid. Accordingly, the appellant submits that they are eligible for the benefit of Notification No. 08/2005-S.T. also.

4.2. In view of the above, the appellant prayed that the demands confirmed in the impugned order be set aside.

5. The Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order.

6. Heard both sides and perused the appeal records.

7. We observe that the appellant has been undertaking the activity of segregation of metal and slag, sizing and packaging, as per the requirement of their customers. It is observed that the activity of sizing and packaging is an essential process, which makes the final product viz. Fe-Mn/Fe-Si-Mn/HCFC, marketable.

7.1. We observe that the Department classified the activity undertaken by the appellant as 'business auxiliary service' liable to service tax. For the purpose of ready reference, the definition of "business auxiliary service" as provided under Section 65(19) of the Finance Act, 1994 is reproduced below:

"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

Explanation. — For the removal of doubts, it is hereby declared that for the purposes of

this sub-clause, "inputs" means all goods or services intended for use by the client;

(v) production or processing of goods for, or on behalf of, the client;

(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 commission agent, but does not include any activity that amounts to manufacture of excisable goods."

7.2 From the above, we observe that in order to classify the activity as liable to service tax, the said activity should fall under any of the above sub-clauses. According to the Id. adjudicating authority, the activity undertaken by the appellant falls under sub-clause (v) of Section 65(19). However, the appellant has submitted that as per the definition cited above, 'business auxiliary service' does not include any activity that amounts to 'manufacture'. According to the appellant, the activity undertaken by them amounts to 'manufacture' and hence it goes out of the purview of the definition of 'business auxiliary service'.

7.3. Thus, we observe that we have to examine whether the activity undertaken by the appellant amounts to 'manufacture' or not, as defined under section 2(f) of the Central Excise Act, 1944.

7.4. We find that Section 2(f) of the Central Excise Act, 1944, defines the term "manufacture" as under:

"(f) "manufacture" includes any process, -

(i) incidental or ancillary to the completion of a manufactured product;

(ii) which is specified in relation to any goods in the Section or Chapter notes of [the Fourth Schedule] as amounting to [manufacture; or]

(iii) which, in relation to the goods specified in the Third Schedule, 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,

and the word "manufacturer" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account;"

7.5. We find that the definition of 'manufacture' as provided under Section 2(f) is wide enough to cover all processes which create a change in the product whereby a new product emerges in the end, which is marketable. In the present case, the appellant is undertaking the work of sizing and packaging and these are essential processes required to make the product marketable. Accordingly, we hold that the activity undertaken by the appellant falls squarely within the ambit of the definition of 'manufacture' as defined under Section 2(f) of the Central Excise Act. Once the activity is held as amounting to 'manufacture', it is excluded from the purview of Service Tax as per the definition of 'business auxiliary service'. Thus, we hold that the demand of Service Tax under the category of 'business auxiliary service' is not sustainable.

8. Since the demand itself is not sustainable, the question of demanding interest and imposing penalties does not arise.

9. In the result, the demands confirmed in the impugned order are set aside and the appeal filed by the appellant is allowed, with consequential relief, if any, as per law.

(Order pronounced in the open court on **08.10.2024**)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd