Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

Service Tax Appeal No. 10117 of 2014- DB

(Arising out of OIA-VAD-EXCUS-001-APP-413-2013-14 dated 07/10/2013 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I(Appeal))

Pharmanza India Pvt Ltd **.....Appellant**
70/1, G.I.D.C. Estate,
Kansari, Khambhat, Anand, Gujarat

VERSUS

C.C.E. & S.T.-Vadodara-i **.....Respondent**
1st Floor...Central Excise Building,
Race Course Circle, Vadodara, Gujarat - 390007

APPEARANCE:
Shri. Amal Dave, Advocate for the Appellant
Shri Prakash Kumar Singh, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C.L. MAHAR

Final Order No. A/ 11703 /2023

DATE OF HEARING: 27.04.2023
DATE OF DECISION: 17.08.2023

RAMESH NAIR

The brief facts of the case are that the appellant are engaged in the activity of manufacturing of drugs like Tetracycline, Neocycline etc as a loan licensee for various companies. The case of the department is that since the drugs manufactured by the appellant are exempted from payment of central excise duty. Hence, the appellant is liable to pay service tax under the category of business auxiliary service on the gross amount received by the appellant for manufacture and supply of the drugs.

2. Shri Amal Dave, Learned Counsel appearing on behalf of the appellant at the outset submits that the activity carried out by the appellant is admittedly a manufacturing activity of excisable goods in terms of Section 2 (f) of Central Excise Act, 1944. He further submits that the manufacturing activity in terms of section 2 (f) isexcluded from the definition of Business

Auxiliary Service where under the demand was confirmed under sub head "production of goods on behalf of the clients". Therefore, the demand is not sustainable.

2.1 He further submits that the entire basis for confirmation of demand is that the appellant is not eligible for exemption notification No. 08/2005- ST dated 01.03.2005 since the final product is exempted. It is his submission that as submitted above when activity itself is nota taxable activity being the activity is a manufacturing in terms of Section 2 (f) the said notification is irrelevant and on that basis the demand cannot be confirmed. He placed reliance on the following judgments:-

- Alkly Amines Chemicals Ltd vs. CCE, Pune- III- 2015 (40) STR 757 (Tri. Mumbai)
- Ramdarshan Rolling Mills vs. CCE & ST, Indore – 2017 (51) STR 462 (Tri.Del)
- Endurance Systems India P. Ltd vs. CCE &Cus., Aurangabad- 2016 (46) STR 426 (Tri. Mumbai)
- Mistair Health & Hygiene Pvt. Ltd vs. CCE, Pune -II – 2015 (40) STR 148 (Tri. Mumbai)

3. Shri Prakash Kumar Singh, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

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 underdispute thatthe 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 (f) 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 Auxiliary Service. Therefore, in the present case the activity admittedly amounts to manufacture of excisable goods i.e., 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.

(Pronounced in the open court on 17.08.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

C.L MAHAR
MEMBER (TECHNICAL)

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