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

S.T.Appeal No.87/09

(Arising out of Order-in-Original No.01/ST/Commr./2009 dated 15.01.2009 passed by Commr. of Central Excise & Service Tax, Ranchi)

M/s Ferro Scrap Nigam Ltd.

Applicant (s)/Appellant (s)

Vs.

Commr. of Central Excise & Service Tax, Ranchi

Respondent (s)

Appearance:

Shri H.Shukla, Advocate for the Appellants(s)
Shri K. Chowdhury, Supdt. (AR) for the Revenue

CORAM:

HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI V. PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing : 16.01.2019
Date of Decision : 16.01.2019

ORDER NO.FO/75155/2019

Per Bench :

The present appeal is filed against the Order-in-Original No.01/ST/Commr./2009 dated 15.01.2009.

2. During the period of dispute i.e. 01.03.2005 to 31.01.2008, the appellant entered into an agreement with M/s Steel Authority of India, Bokaro Steel Plant (in short BSP) to undertake the job of processing and recovery of iron and steel scrap supplied to it by the latter. In terms of the contract with BSL, the appellant was required to undertake processing and recovering of scrap by employing processes such as, screening, digging, magnetic separation etc.. The processes

were required to carried out in the premises of BSP and the iron and steel scrap so recovered were to be returned to BSL for manufacture of excisable goods there from. The Department was of the view that for the consideration received from BSL, the appellant was required to pay service tax under the category of "Business Auxiliary Service". The show-cause notice dated 15.04.2008 was issued to the appellant in this regard proposing levy of service tax under sub-section (b) of Section 65(19) of the Finance Act, 1994. This sub-section reads as:

"production of goods on behalf of client ; or" (upto 15.06.2005).

The said sub-section was amended w.e.f. 16.06.2005 and after amendment, it reads as follows :

"65(19)(v) : production or processing of goods for or on behalf of the client"

3. After due process of adjudication, the lower appellate authority ordered for payment of service tax as proposed in the show-cause notice. In addition, he also ordered for payment of interest as well as penalties under various Sections of the Finance Act, 1994.

This order is under challenge in the present appeal.

4. The appellant is represented by Shri H.Shukla, ld.Advocate and Revenue is represented by Shri K.Chowdhury, ld.D.R.

5.1 The ld.Advocate referred to the definition of the Business Auxiliary Service as outlined above and admitted that the activities were covered within such definition. But he submitted that the identical case in respect of their own other Unit situated at Bhilai, was considered by Delhi Bench of the Tribunal and decided in the case of

Ferro Scrap Nigam Ltd. Vs. CCEx., Raipur reported in 2014 (36) STR 955 (Tri.-Del.). The Tribunal held that the activity was not liable to payment of service tax for the period prior to 16.06.2005. This decision will be applicable to the activity carried out in BSP also for the period prior to 16.06.2005.

5.2 The ld.Advocate further submitted that even for the subsequent period, no service tax will be liable to be paid since the appellant will be entitled to the benefit of Notification No.8/2005-ST dated 01.03.2005. This Notification provides exemption in respect of service of production or processing of goods for or on behalf of the client, as provided under sub-clause (b) of Clause (19) of Section 65 of the Finance Act, 1994.

5.3 Finally, he submitted that the service tax liability may be set aside.

6.1 The ld.D.R. justified the impugned order. He referred to the findings of the adjudicating authority regarding the entitlement of the appellant for the benefit of Notification No.8/2005 ibid. He submitted that the adjudicating authority has considered the said Notification, but held that the appellant will not be entitled to such benefit, since the scrap generated in BSL can neither be considered as raw materials or semi-finished goods as covered by the Notification. He submitted that any exemption Notification is required to be strictly interpreted as held by the Hon'ble Supreme Court in the case of Commr. of Customs (Import), Mumbai Vs. Dilip Kumar & Company reported in 2018 (361) ELT 577 (S.C.).

6.2 Finally, he submitted that the Notification had a further condition that the material after processing is to be returned back to the client for use in or in relation to the manufacture of goods, on which appropriate duty of Excise is payable. He submitted that there is nothing on record to the effect that the second limb of the Notification as above, has been satisfied by the appellant. As such, he submitted that the appellant will not be entitled to the benefit of the Notification.

7. We have heard both sides at length and perused the case records very carefully.

8. The Department had taken the view that the activity carried out by the appellant within the factory premises of M/s BSL by way of recovering of iron and steel scrap and return of the same to BSL, will be liable to payment of service tax. The demand for service tax has been made under Section 65(19)(b) of the Finance Act, 1994. The definition of Business Auxiliary Service prior to 16.06.2005 and also for the subsequent period, has been reproduced supra. For the period prior to 16.06.2005, the service tax was required to be paid for the services of “production of goods for or on behalf of the client”. In this connection, we note that identical issue in respect of the appellant’s other unit which carried the activity at M/s SAIL (Bhilai Steel Plant) came before the Delhi Bench of the Tribunal. The Tribunal held that there was no liability for payment of service tax upto 16.06.2005 on such activity. By following the above decision, we set aside the demand for service tax for the period upto 15.06.2005.

9. Next we consider the liability for the period w.e.f.16.06.2005. When we consider the definition in sub-clause (v) of Section 65(19) for the period prior to and subsequent to 16.06.2005, 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-ST dated 01.03.2005. The lower appellate authority has denied the benefit of the said exemption to the appellant. For ready reference, we reproduce below the Notification No.8/2005-ST ibid :

> *"In exercise of the powers conferred by sub-section (1) of Section 93 of 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 the said 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 [or processed] are returned back to the said client for use in or 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, -*
>
> *(i) 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.D.R. has further raised a doubt about the satisfaction of the condition of the second limb of the Notification i.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 ld.Advocate on behalf of the appellant, has 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 01.03.2005. Consequently, we set aside the demand for service tax made in the impugned order and allow the appeal.

(Dictated and pronounced in the open court)

Sd/
(P.K.Choudhary)
Member (Judicial)

Sd/
(V.Padmanabhan)
Member (Technical)

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