

IN THE CUSTOMS, EXCISE & SERVICE TAX

APPELLATE TRIBUNAL

SOUTH ZONAL BENCH, CHENNAI

ST/EH/40193/2014 & ST/147/2012

(Arising out of Order-in-Original No. 5/2011 dated 15.12.2011 passed by the Commissioner of Central Excise, Madurai)

For approval and signature:

Hon'ble Shri P.K. Das, Judicial Member

Hon'ble Shri R. Periasami, Technical Member

1. Whether Press Reporters may be allowed to see the Order for Publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?

3. Whether the Members wish to see the fair copy of the Order?

4. Whether order is to be circulated to the Departmental authorities?

M/s. Jayakrishna Flour Mills (P) Ltd.

Appellant

Vs.

CCE, Madurai

Respondent

Appearance

Shri J. Shankar Raman, Advocate, for the Appellant

Shri P. Arul, Superintendent (AR) for the Respondent

CORAM

Hon^{ble} Shri P.K. Das, Judicial Member

Hon^{ble} Shri R. Periasami, Technical Member

Date of Hearing: 17.07.2014

Date of Decision: 17.07.2014

Final Order No. 40531/2014

Per P.K. Das

The applicant filed this application for early hearing of the appeal. After hearing both sides, we find that the appeal may be decided at the stage of disposal of early hearing application. Accordingly, after disposing early hearing application, we proceed to decide the appeal.

2. After hearing both sides and on perusal of the records, we find that the appellants are engaged in the process of grinding of wheat into wheat products such as maida, atta, suji and bran for various parties. There is a demand of service tax under the category of Business Auxiliary Service. The dispute relates to whether the process amounts to manufacture. The appellant contended that the conversion of wheat into wheat products involves several process, such as cleaning of impurities, grinding, milling etc. by machines and labour. It is also contended that the process amounts to manufacture under Section 2(f) of the Central Excise Act, 1944. The adjudicating authority held that the activity carried out by the appellant will not amount to manufacture and service tax is leviable. We find that CBEC vide their letter F.No.11/01/2012-CX.1 dated 9.7.2013 clarified as under:-

“CX wing has received a representation dated 11.7.2012 from the Tamil Nadu Roller Flour Mills Association, Chennai requesting the Board to clarify a situation arising out of an Order-in-Original passed by Commissioner Central Excise, Madurai confirming the demand of Service Tax under Business Auxiliary Service on a job-worker engaged in the activity of milling of wheat into wheat products like Flour, Suji, Maida etc. on the ground that such an activity does not amount to manufacture and hence chargeable to Service Tax. A copy of the representation is enclosed, the contents of which are self explanatory.”

2. Comments on the representation had been called from CCE Coimbatore, who has informed that a representation dated 26.12.2011 of Tamil Nadu Chamber of Commerce and Industry on this subject had been received earlier from Service Tax wing of CBEC Vide F. No. 137/08/2012-Service Tax and he had sent his comments to ST wing in March 2012. A copy of the comments sent earlier to ST wing was enclosed. In his comments, CCE Coimbatore has taken a view that the activity of conversion of wheat into flour, maida, suji etc. amounts to manufacture and hence not chargeable to Service Tax. He has also stated that even otherwise service tax was not chargeable in the instant case as the activity was with reference to agriculture produce. A copy of the comments of CCE Coimbatore sent earlier to ST wing is enclosed for ready reference.

3. CX wing is in agreement with views of CCE Coimbatore that conversion of wheat into products like Flour, Maida, Suji etc. amounts to manufacture as a new commodity with distinct name, character and use emerges from the activity of milling of wheat. In fact, Central Excise duty was imposed on Maida in 1971 which was subsequently withdrawn. At present wheat flour finds a specific mention in Central Excise Tariff under Chapter 11 and carried a NIL rate of duty.

3. The learned AR for Revenue sought time for verification of the Board's letter. Today, the learned AR placed the letter dated 16.7.2014 of the Joint Commissioner of Central Excise, Madurai. The relevant portion of the letter is reproduced below:-

3. Subsequently, the issue was taken up for clarification with the Board by the Chief Commissioner of Central Excise, Coimbatore, who had opined that the process of grinding of wheat into wheat products would amount to manufacture, and hence no service tax levy would arise. Board vide their letter F. No. 11/01/2012-CX.1 dated 18.7.2013 had confirmed the view of the Chief Commissioners Office Member (Service Tax) also concurred with the above view as communicated vide Boards reference in F. No. 137/154/2012 Service Tax dated 19.6.2013 (mentioned). Copies of the Boards instructions on the above issue was communicated by the Chief Commissioner's Office Vide Ref. C. No. IV/16/305/2011-S.Tax (CCO) dated 4.9.2013 (copy certified and enclosed). It was also directed that pending SCNs/Investigations to be decided accordingly and for informing the field formations. No further communications have been received in this regard.

4. Similar demand in the case of M/s. Naga Ltd. Dindigul on an identical issue was confirmed by the Commissioner in his O/O No.4/2011 dated 25.11.11. On appeal by M/s. Naga Ltd. against the Commissioner's O/O No.4/2011 dated 25.11.11, Hon'ble CESTAT, SZB, Chennai after taking cognizance of the Board's clarification on this issue has granted stay vide Misc. Order No. 42592/2013 dated 5.11.13. Another O-in-O passed by the Commissioner vide O-in-O No.52/2012 ST dated 11.11.12 in the

case of M/s. Rajaram Flour Mills, confirming the demand of Service Tax of Rs.71,28,671/- with equal penalty and interest is also pending with the Hon'ble CESTAT, SZB, Chennai and a stay order via Misc. Order No. 40899/2014 dated 12.6.14 has been granted.

5. On an identical issue pertaining to M/s. Naga Ltd. Dindigul, Additional Commissioner of Central Excise, Madurai confirmed the demand of Rs.48,58,299/- along with interest and penalty vide Order-in-Original No. MAD-CEX-000-ADC 8-12 dated 27.4.2012. On appeal by the assessee, Commissioner (Appeals), Madurai allowed the appeal setting aside the entire demand vide Order-in-Appeal No.MAD-CEX-000-APP-086-13 dated 26.8.2013. The said O-in-A was accepted by the Committee of Commissioners on 6.11.2013, following the principle laid down by the Board, as communicated by the Chief Commissioner's Office. Another Order-in-Original No. MAD-CEX-000-JTC-003-14/2014 dated 24.2.2014 passed by the Joint Commissioner, Madurai on an identical issue, dropping the demand of service tax under BAS, has also been accepted in review in consonance with the Boards instructions.

4. We find that the Board has already accepted this issue that the process would amount to manufacture and no service tax is leviable. Therefore, we set aside the impugned order and allow the appeal with consequential relief, if any. The early application is disposed of.

(Dictated and pronounced in open court)