(2021) 05 CESTAT CK 0032

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 11616 Of 2016, 10897 of 2018

Sureel Enterpries P Ltd APPELLANT

Vs

C.C.E. And S.T.--Bhavnagar RESPONDENT

Date of Decision : 25-05-2021

Acts Referred:

Citation : (2021) 05 CESTAT CK 0032

Hon'ble Judges : Ramesh Nair, J;Raju, Technical Member

Bench : Division Bench

Advocate : Amal Dave, S.N, Gohil

Final Decision : Allowed

Judgement

1. The brief facts of the case are that the appellant entered into an agreement dated 20.11.1999 with M/s Nirma Limited for conversion of raw

material into synthetic detergent. According to the agreement the appellant produce detergents at factory of M/s Nirma at village Chattral and the

other at Bhavnagar utilizing raw materials and packing materials provided by M/s Nirma and issued debit notes for job work charges basedon the

quantity (in Kilograms) of detergent powder produced on monthly basis.

1.1 Another agreement dated 28.05.2005 was also entered into with M/s Nirma Limited for conversion of raw materials into soaps and detergents at

Bhavnagar factory of M/s Nirma.

1.2 In accordance with above agreement the appellant produced soap and detergent utilizing land building, plant, machinery, raw material and packing

materials provided by M/s Nirma and issued bills for such production work on the basis of quantity of goods so produced. M/s Nirma has paid excise

duty on full value of soaps and detergents so produced through contract

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/sureel-enterpries-p-ltd-appellant-...

manufacturing by the appellant upon recording such production in RG-1 and

returns were also filed by M/s Nirma.

1.3 Show cause notices dated 12.04.2013, 20.05.2014, 13.02.2015 and 20.06.2015 were issued to the appellant demanding service tax form the

appellant on the contract manufacturing undertaken at M/s Nirma's factory under manpower recruitment or supply agency service. the said Show

Cause Notices were adjudicated by the adjudicating authority by dropping the demand. Being aggrieved by the orders in original Revenue filed appeals

before the Commissioner (Appeals), who vide the impugned orders set aside the order-in-original and allowed the appeals filed by the Revenue.

Therefore, the appellant are before us.

2. Shri Amal Dave, Learned Counsel appearing on behalf of the applicant submits that on the identical fact, in the case of the appellant itself for the

previous period, the matter came before this Hon'ble Tribunal. The Tribunal vide Order No. A/11947-11949/2019 dated 18.10.2019 allowed the

appeals. He submits that since there is no change of circumstances, the same order may be followed and the present appeals may also be allowed

accordingly. He further submits that this Tribunal order dated 18.10.2019 was challenged by the Revenue before the Hon'ble Gujarat High Court in

Tax Appeal No. 289/2020 which was dismissed on the ground of jurisdiction, therefore, the Tribunal order attained finality. He also placed reliance on

the following judgments: Â

Â· Ramesh Chandra C. Patel 2012 (25) STR 471 (Tri. Amd.) Â

Â· Jubilant Industries Limited 2013 (31) STR 181 (Tri. Del.)

Â· Shiv Narayan Bansal 2013 (31) STR 747 (Tri. Del.) Â

Â· ALi Dhara Tax Spin Engineers 2010 (30) STR 315 (Tri. Amd) Â

Â· Allengers Medical Systems Limited 2009 (19) STR 361 (Tri. Amd.)

Â· Neo Stracto COnstruction Limited 2010 (19) STR 361 (Tri. Amd.) Â

Â· K. Damodar Reddy 2010 (19) STR 593 (Tri. Bang.) Â

Â· Hemant V Deshmukh 2014 (35) STR 602 (Tri. Mum.) Â

Â· Ritesh Enterprises 2010 (18) STR 17 (Tri. Bang.) Â

Â· Divya Enterprise 2010 (19) STR 370 (Tri. Bang.)

3. On the other hand Shri S.N. Gohil, Learned Superintendent (Authorized

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/sureel-enterpries-p-ltd-appellant-…

Representative) appearing on behalf of the Revenue reiterates the findings

of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the records. we find that the issue involved in the present case is

that whether the activity of appellant i.e. conversion of raw material to soap and detergent on behalf of M/s Nirma Limited in the factory of M/s

Nirma Limited is amount to provision of service classifiable under Manpower Recruitment Agency Service or otherwise.

5. We find that very identical issue in the appellant's own case for the previous period i.e. June 2005 to June 2010 was considered by this Tribunal in

Service Tax Appeal Nos. 2327 of 2011, 768 of 2011 and 10391 of 2013.In these appeals this Tribunal has passed a Final Order No. A/11947-

11949/2019 dated 18.10.2019 whereby it was held that the appellant's activities amount to manufacture and does not amount to service of Manpower

Recruitment Agency Service. Accordingly, the appeals were allowed. This Tribunal following various judgment namely, Ramesh C. Patel 2012 (25)

STR 471 (Tri. Amd.), Jubilant Industries Limited 2013 (31) STR 181 (Tri. Del.) and Shiv Narayan Bansal 2013 (31) STR 747 held that contract

between the appellant and M/s Nirma Limited is of contract manufacturing hence demand under manpower supply cannot be made. Concluding and

operating portion of the order is reproduced below:

From the above judgments the issue in hand is settled that when the contract between the service provider and service recipient is admittedly

of contract manufacturing in such case demand under man power supply cannot be made. The appellant have vehemently argued on

Revenue neutral situation on the ground that if at all the appellant is liable to pay service tax the same is available as cenvat credit to the

service recipient i.e. M/s. Nirma Ltd. In this regard, he also submitted the details of payment of excise duty of M/s. Nirma Ltd from PLA/cash.

This prima facie show that it is a case of Revenue neutral and by not paying the service tax by the appellant the Government Exchequer is

not at any loss, however, since, we have already decided the issue on merit, we are not giving our concluding opinion on Revenue Neutral

position. The issue of jurisdiction raised by the appellant is also kept open.

As per our above discussion the impugned order is not sustainable. Hence, the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/sureel-enterprises-p-ltd-appellant-…

same is set aside. The appeals are allowed with

consequential relief, if any, in accordance with law.

6. In view of above decision of the Tribunal in the appellant's own case on the same issue, the issue in the present case is no longer res integra. The

only difference in the present case and the case decided supra is the difference of period. However, there is no change in the facts and the law point,

therefore, the Tribunal's decision given by Order dated 18.10.2019 is squarely applicable in the present case. Accordingly, the impugned orders are set

aside. The appeals are allowed.

(Pronounced in the open court on 25.05.2021)

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/sureel-enterpries-p-ltd-appellant-…