

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

REGIONAL BENCH- COURT NO. 3

Service Tax Appeal No. 379 of 2012

(Arising out of OIO-13/MP/VAPI/2012 Dated- 18/04/2012 passed by Commissioner of Central Excise, Customs and Service Tax-VAPI)

Welspun Syntex Ltd

(Regd Office) Survey No. 394/P, Sayli,
Silvassa, U.T. Of Dadra & Nagar Haveli

.....Appellant

VERSUS

C.C.E. & S.T.-Vapi

4th Floor...Adharsh Dham Building,
Opp. Town Police Station, Vapi-Daman Road, Vapi
Vapi, Gujarat-396191

.....Respondent

APPEARANCE:

Shri. Mihir Mehta & Shri. Suyog Bhavé, Advocates for the Appellant
Shri Rajesh K Agarwal, Authorised Representative for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)**

Final Order No. A/ 11359 /2022

DATE OF HEARING:18.10.2022
DATE OF DECISION:11.11.2022

RAMESH NAIR

The brief facts of the case are that the appellant are engaged, inter alia, in the manufacture of yarn falling under Chapter heading 54 of the Central Excise Tariff Act, 1985 and has its registered office cum factory at Silvassa, Gujarat. The appellant has another factory at Palghar, Maharashtra. During the period under dispute, the appellant entered into a conducting agreement dated 25.08.2004 read with supplemental agreements dated 25.10.2004, 05.08.2005, and 25.08.2007 ("Conducting Agreement") with International Synth Fab Pvt Ltd ("ISFPL") inter alia permitting ISFPL to use the land and plant, machinery and equipment ("PME") at Palghar Factory on rental basis. The consideration received towards renting of land and PME by the appellant from ISFPL, during the

period under dispute. The case of the department is that such consideration is liable to Service Tax under the head of Business Support Service provided by the appellant to ISFPL, accordingly, a show cause notice was issued which was adjudicated by the Commissioner vide Order-In-Original No.13/MP/Vapi/2012 dated 18.04.2012 wherein, it was held that activity of renting PME is classifiable under taxable Business Support Service and confirmed the demand of service tax with effect and imposed equal penalty under Section 76 and penalty under Section 77 and 78 was also imposed. Being aggrieved by the said Order-In-Original. Appellant filed the present appeal.

2. Shri. Mihir Mehta, Learned Counsel appearing on behalf of the appellant submits that the activity in this case is renting of entire unit hold to ISFPL, therefore, at the most the activity can be classified as renting of immovable property. In this regard, he refer to the agreement dated 25.08.2004 whereby, he submits that during the period under dispute the activity of renting of plant (immovable property) and of machinery and equipment (movable) property was not a taxable service in terms of Section 65 (105) of the Act and hence no service tax was paid on the consideration received by the Appellant. He submits that renting of immovable property services became taxable w.e.f. 01.06.2007 and supply of tangible goods service with respect to machinery and equipment became taxable w.e.f. 16.05.2008. It is his submission that the period of dispute in the present case is May 2006 to March 2007, therefore, during the said period the activity of the appellant was not taxable. He referred to the definition of Business Support Service. He also referred to Board Circular dated 01.05.2006. He submits that by no stretch of imagination the activity of renting land and PME to ISFPL can be covered under Business Support Service, more particularly as 'infrastructural support service. He submits that

the appellant is not the one providing any infrastructural support to the IFSP. He placed reliance on the following judgments:-

- Balaji Hindustan Limited commissioner of Central Excise, Lauknow- 2018 (12) G.S.T.L. 111 (Tri- Ahmd.)
- Zee Sports Ltd Vs. CCE Noida, 2018 (9) TMI 34 – CESTAT Allahabad
- Srinivas Transports Vs CCES & ST Vishakhapatnam-I, 2014 (34) STR 765 (Tri.-Bang.)
- Dish TV India Ltd Vs. CCE, Noida,- 2020 (41) GSTL 633 (Tri.-All)
- Air Liquide North India Pvt Ltd Vs. Commissioner of C. EX., Jaipur- 2017 (4) G.S.T.L. 230 (Tri. – Del.)
- Hon'ble Rajasthan High Court- 2019 (27) G.S.T.L. 194 (Raj.)
- Anand Automotive Ltd. Commissioner of Service Tax, Delhi – 2022 (59) G.S.T.L. 66 (Tri.- Del.)

2.1 Without prejudice, he further submits that it is a settled position in law that when a new category of service has been inserted for taxing an activity, the said activity cannot be said to be taxable prior to the said insertion under any other category of services. In the present case the activity of leasing of plant was taxable under the taxable service 'renting of immovable property' w.e.f. 01.06.2007 and leasing/ renting of machinery and equipment was taxable under the taxable 'supply of tangible goods' services w.e.f. 16.05.2008. On this submission, he placed reliance on the following judgments:-

- Commissioner of Central Excise, Cus. & S.T. Vs. Federal Bank Limited- 2016 (42) S.T.R 418 (S.C.)
- Indian National Shipowners' Association v. Union of India-2009 (14) STR 289 (Bom.)
- C.C.E. Cus & S.T. Mumbai vs Kotak Mahindra Capital Co. Ltd-2017 (7) GSTL 401 (Bom)

- DSP Merrill Lynch Limited vs Commissioner of Service Tax, Mumbai-2016 (44) STR 436 (Tri.- Mumbai)

2.2 Without prejudice he further submits that the entire proceeding is without jurisdiction and authority of law. The PME leased / rented to ISFPL were installed/ located in Palghar factory and the consideration was received and accounted b Palghar factory. The Palghar factory was under the jurisdiction of erstwhile Thane-II Commissionerate. In the present case the proceedings are against the appellant's Silvassa factory which was under the then Vapi Commissionerate and accordingly, has no jurisdiction over Palghar factory. He placed reliance on the following judgments:-

- Candid Security Services Vs. Commissioner of C. Ex & S.T., Raipur-2019 (28) G.S.T.L. 281 (Tri.-Del.)
- Inox Leisure Limited Vs. Commissioner of Service Tax, Mumbai-2016 (42) S.T.R 497 (Tri. – Mumbai)

It is his submission that since the entire proceeding is without any jurisdiction over the palghar factory the impugned order is liable to be set aside on this ground alone.

2.3 He also submits that the extended period of limitation cannot be invoked in the present case in as much as the appellant has not suppressed facts of the case with intent to evade payment of tax. He also submits that the issue involved in the present case is that of interpretation of law and it is settled principle that no suppression can be alleged against the appellant in cases involving interpretation of law. He further submits that in view of the above submissions the penalty is also not imposable.

2.4 Without prejudice he submits that in any event penalty under Section 76 and 78 of Finance Act cannot be simultaneously imposed on the appellant. He also submits the appellant is eligible for benefit under Section

80 of the Act and the penalties are liable to be set aside on this ground itself.

3. Shri. Rajesh K Agarwal, Learned Superintendent (Authorized Representative) appearing on behalf of the revenue reiterates the finding of the impugned order. He submits that the appellant by providing Plant Machinery Equipment to M/S International Syntha Fabs Pvt Ltd ("ISFPL") provided infrastructure support for the Business of ISFPL, therefore, the activity clearly falls under Business Support Service read with explanation given in the definition of Business Support Service under Section 65 (104c) read with (Section 65(105)(zzzz)) of Finance Act, 1994.

4. We have carefully considered the submission made by both the sides and perused the records. The revenue has confirmed the demand of service tax during the activity of the appellant. As per the provision of Business Support Service which includes infrastructural support, to ascertain whether the activity falls under Business Support Service, it is necessary to read the definition which is extracted below:-

"Support Services of Business or Commerce" means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfillment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational assistance for marketing, formulation of customer service and pricing policies, infrastructural support services and other transaction processing.

*Explanation- For the purposes of this clause, the expression **"infrastructural support services" includes providing office along with office utilities, lounge, and reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security."***

4.1 The adjudicating authority has categorized the activity of the appellant under the Infrastructural Support Services. From the above definition read with explanation it is seen that Infrastructural Support Services includes providing office along with utilities, lounge and reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security. However, in the present case admittedly the appellant provided the entire plant machinery and equipment to ISFPL and thereafter the appellant was not involved in day to day infrastructural support to M/s International Syntha Fabs Pvt Ltd ("ISFPL"), therefore, the activity of the appellant cannot be classified under the infrastructural support service. As per the Business Support Service mainly those services which are outsourced for provision of day to day activities are classified. In the present case the entire plant and machinery equipment is outrightly leased out to International Syntha Fabs Pvt Ltd ("ISFPL") and it is the International Syntha Fabs Pvt Ltd ("ISFPL") who are conducting the activity on their own with the plant and machinery equipment taken on lease, therefore, the appellant has not provided any service as the service of outsource agency. For further clear understanding about the activity of the appellant the relevant extract of the conducting agreement dated 25.08.2004 is reproduced below:-

"WHEREAS WSL is the owner of the Plant Machinery and Equipment for manufacture of twisted/Dyed yarn as described in Schedule 1 herewith standing on Plots No. 9,10,15,86,87 and 88 at Dewan Industrial Estate Palghar, Maharashtra State and has capacity to manufacture 6.600 M. Tons Dyed yarn Per Annum."

4.2 From the above extract of the agreement, it is clear that the appellant have not provided any regular services to the International Syntha Fabs Pvt Ltd ("ISFPL") whereas they have given their plant and machinery equipment, on rental basis to International Syntha Fabs Pvt Ltd ("ISFPL") for running

their production activity wherein the appellant has not involved. From the said agreement, it is clear that the activity of the appellant falls under renting of immovable property in respect of land/ plant, land fixed plant. In respect of movable machinery equipment, the activity at the best can be classified as supply of tangible goods for use. It is undisputed fact that both services became taxable after the relevant period in the present case. We further observed that since the very activity of the appellant have been brought under the taxable net subsequently it makes clear that the said activity was not covered under any taxable activity for the earlier period. The identical issue has been considered by this Tribunal in case of Bajaj Hindustan Limited commissioner of Central Excise, Lauknow (Supra)-2018 (12) G.S.T.L. 111 (Tri. Ahmd.) wherein it was held as under:-

"We have considered the submissions made by both the sides. We note that the agreement entered into between the appellant and M/s. Shree Radha Krishna Alloys Pvt. Limited was for renting of land and for supply of the plant and equipment and M/s Shree Radha Krishna Alloys Pvt. Limited started their business activities after entering into the said contract with the appellant. As such, the facts lead to the conclusion that the services undertaken by the appellant would fall under the category of renting of immovable property and supply of tangible goods. The explanation appearing under the definition of support services of business refers to altogether different circumstances wherein infrastructure is provided along with the office and other common utility to a person who is conducting his business from that place. The activity of renting of land and renting of plant and machinery cannot fall under the said explanation so as to recovered by the definition of 'support services of business or commerce.'"

Similar view was taken in the cases of following judgments:-

- Zee Sports Ltd Vs. CCE Noida, 2018 (9) TMI 34 – CESTAT Allahabad
- Srinivas Transports Vs CCES & ST Vishakhapatnam-I, 2014 (34) STR 765 (Tri.-Bang.)
- Dish TV India Ltd Vs. CCE, Noida,- 2020 (41) GSTL 633 (Tri.-All)

4.3 From the above judgments, it is clear that the activity of the appellant i.e. of renting of immovable property and supply of tangible goods cannot be classified under infrastructural support service. Accordingly, the impugned order is not sustainable. As regard the other issues raised by the appellant, since, we have decided the case on its merit and accordingly demand is not sustainable. We are not going into the other issues and the same were kept open.

5. As per our above discussion and findings, the impugned order is set aside, the Appeal is allowed.

(Pronounced in the open court on 11.11.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

PRACHI