

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 3**

SERVICE TAX APPEAL NO. 52618 of 2018

[Arising out of Order-in-Appeal No.265-266(SM)ST/JPR/2018 dated 28.03.2018 passed by the Commissioner (Appeals), Central Excise and Central Goods and Service Tax, Jaipur]

M/s. Shri Vardhman Milk Dairy Pvt. Ltd.,
221, Navjeevan Complex,
Station Road, Jaipur (Rajasthan).

...Appellant

Versus

**Commissioner of CGST
& Central Excise,**
Jaipur-I, NCR Building,
Statue Circle, C-Scheme,
Jaipur, Rajasthan-302 005.

...Respondent

AND

SERVICE TAX APPEAL NO. 53231 of 2018

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M/s. Shri Vardhman Milk Dairy Pvt. Ltd.,
221, Navjeevan Complex,
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**Commissioner of CGST
& Central Excise,**
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Jaipur, Rajasthan-302 005.

...Respondent

Appearance:

Shri A.K. Prasad, Advocate for the appellant.

Shri Anand Narayan, Authorised Representative for the respondent.

CORAM:**HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)****HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)****Date of Hearing: 27.06.2025****Date of Decision:03.07.2025****FINAL ORDER NOs.50970-50971/2025****BINU TAMTA:**

1. The issue for consideration in the present appeals is whether the activity of procuring raw material (milk) from suppliers and subjecting the same to the process of chilling, cut open of bulk packing, pasteurisation, standardization, and packing into pouches for retail sale amounts to 'manufacture' or is in the nature of providing 'Business Auxiliary Service'¹ taxable under Section (65)(105)(zzb) read with section 65(19) of the Finance Act, 1994².

2. M/s. Shri Shri Vardhman Milk Dairy Private Limited³ subjected to the above processes on behalf of M/s Reliance Dairy Foods Limited⁴ under an agreement. Show cause notice dated October 24, 2013 was issued to the appellant considering that the activities carried out by the appellant were in the nature of providing "BAS" and hence demand of service tax amounting to Rs.43,64,774/- was raised, invoking the extended period of limitation along with interest and penalties under Section 77 and 78 of the Act. On adjudication, it was held that only the process of packing of milk in pouches would be covered under the definition of 'manufacture' and not the process

¹ "BAS"

² Act, 1994

³ The Appellant

⁴ RDFL

of Standardisation/Pasteurisation/Chilling. The SSI benefit for the year 2011-12 was extended in favour of the appellant and hence the demand of service tax was reduced to Rs.16,17,598/-. Both sides filed appeals as the appellant challenged the confirmation of demand on the process of chilling, standardization, and pasteurization. Whereas the Department challenged dropping of the demand in respect of packing charges. By the impugned order, the Commissioner (Appeals) rejected the appeal filed by the appellant and allowed the appeal filed by the Department. Consequently, the demand in the show cause notice amounting Rs.43,64,774/- was upheld. Hence, the present appeals have been filed before this Tribunal.

3. Heard both sides and perused the records of the case.

4. Mr. A.K. Prasad, learned Counsel for the appellant while explaining the process undertaken by the appellant on the raw milk, submitted that the process undertaken on behalf of RDFL amounts to 'manufacture' as per Chapter Note-6 of Chapter 4 of Schedule-I to the Central Excise Tariff Act, 1985 and once it amounts to manufacture, it cannot fall within the purview of 'service' as the definition of "BAS" specifically excludes the activity that amounts to 'manufacture'. He submitted that the process cannot be bifurcated to say that part of it amounts to manufacture rather the process has to be taken in its entirety as a whole. The learned counsel has also challenged that the show cause notice is time barred and there is no reason for invoking the extended period of limitation.

5. Shri Anand Narayan, learned Authorised Representative for the Revenue has relied on the findings of the Commissioner (Appeals) and

referred to the decision of this Tribunal in the case of **M/s Jai Durge Ice Factory⁵**.

6. The processes on the raw milk of chilling and then subjecting the milk to the process of separation, standardisation, and pasteurisation and then packing it into pouches makes the milk marketable. Such process has been held to be 'manufacture' in several decisions of the Tribunal and the contention of the Department that it amounts to service under the category of "BAS" has been rejected. We may first refer to the provisions of Chapter Note 4 of Chapter 6, which reads as under: -

"DAIRY PRODUCE; BIRD'S EGGS; NATURAL HONEY; EDIBLE PRODUCTS OF ANIMAL ORIGIN, NOT ELSEWHERE SPECIFIED OR INCLUDED

NOTES: 1. The expression "milk" means full cream milk or partially or completely skimmed milk.

"6. In relation to products of this Chapter, 1[labelling or relabelling of containers or repacking] from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to "manufacture".

The aforementioned provisions with reference to similar activities undertaken in connection with milk has been analysed by the Tribunal in the case of **Shri Vrindavan Dairies versus Commissioner of Central Excise and Service Tax, Jaipur –1⁶** and the controversy stands answered by the Bench in the following terms:

"6. As is evident from above notes to Chapter 4 of Central Excise Tariff Act, 1985 even adoption of any other treatment by itself or with packing/repacking, labeling/relabeling to make the product marketable amounts to manufacture. We are of the view that the definition under Chapter 4 of Central Excise Tariff Act, 1985 of manufacture is much wider and leaves no doubt in our mind that pasteurization, packing from bulk pack to branded consumer packs undertaken by the appellant clearly amounts to

⁵ Final Order No.50409/2025 dated 17.02.2025

⁶ 2018(6) TMI 804 (CESTAT-New Delhi)

manufacture as per Note 6 of Chapter 4 of the Central Excise Tariff Act, 1985. As a consequence we are of opinion that they get covered under the scope of definition “manufacture” as provided under Section 2 (f) of Central Excise Act, 1944. We also find that the provisions of law are absolutely unambiguous on this aspect and conclude that since the activity of manufacture, as discussed above, is excluded from the scope of classification and levy of service tax under business auxiliary service, we are of view that the activity undertaken by the appellant are not leviable to service tax under business auxiliary service and, therefore, we do not find any merit in the order-in-original. Accordingly, the appeal is allowed and we set aside the order-in-original, with consequential relief, if any.”

7. To appreciate the submissions of the department that the activity performed by the appellant amounts to ‘service’ as defined under Section 65(19) of the Act under the category “BAS”, the said provisions are quoted below:

“65(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 2[****]
- (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 3[Explanation.— For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, “inputs” means all goods or services intended for use by the client;]
- (v) production or processing of goods for, or 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 commission agent, 5[but does not include any activity that amounts to “manufacture” of excisable goods”**

8. As can be seen from the provisions of Section 65(19) that the "BAS" does not include any activity that amounts to manufacture of excisable goods. Since the activity of chilling, separation, pasteurization, standardization, and packing in pouches have been held to be manufacture, the same is excluded from the purview of service under the category of "BAS". The terms of the Section are clear and unambiguous. There is only one interpretation which can be ascertained from the contents of the Section, i.e. the activity if it amounts to 'manufacture' would not be covered under the definition of "BAS". The decision of this Tribunal in the case of **Shri Vrindavan Dairies versus Commissioner of Central Excise and Service Tax, Jaipur-1**⁷ have also noted that Clause (iv) of Section 65(19) of the Act provides that service in relation to production or processing of the goods for or on behalf of a client is covered under "BAS", however, the definition of "BAS" specifically excludes any activity, which amounts to manufacture within the meaning of Section 2(f) of the Central Excise Act, 1994 from levy of service tax. The argument of the appellant was accepted by the Bench that Section 2(f) mentions that 'manufacture' includes any process, which is specified in relation to any goods in Section or Chapter Notes of the First Schedule to the Central Excise Tariff Act, 1985 and amounts to manufacture. It appears that the decision of the Tribunal was challenged by the Department and the Apex Court vide Order dated 26.11.2018 admitted the appeal, however, there is no stay in favour of the Department.

9. Learned Counsel for the appellant has relied on the decision in their own case, which was decided by this Tribunal vide Order dated 26.09.2017

⁷ 2018 (6) TMI 804 (CESTAT)

titled as “**Vardhman Dairy Milk Pvt Ltd. Vs. Commissioner of Central Excise, Jaipur**”⁸. The Tribunal relied on the earlier decision in the case of **Sharma Ice Factory Vs. CCE, Jaipur**⁹ and it was held that chilling of milk is not “BAS” covered under Section 65(19) of the Act and, therefore, the appeal was allowed.

10. The period in dispute is October 1, 2011 to March, 2013 which falls both in the pre-negative and post-negative era. The provisions during the pre-negative era has been discussed above. With reference to the post-negative period, provisions of Section 66D provides for the negative list and clause (f) during the relevant period puts the ‘manufacturing process’ outside the net of ‘service’, in the following terms:-

“(f) services by way of carrying out any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption;”

11. In view of the provisions of law including the Chapter Note and the interpretation placed by the various decisions, we are of the view that the activities carried out by the appellant in respect of raw milk amounts to manufacture and, therefore, stands excluded by the express terms of Section 65(19) of the Act.

12. Before concluding the present order, we would like to clarify that the contention raised by the learned Authorised Representative for the Department that the facts of the present case are identical to the case of **M/s Jai Durga Ice Factory (supra)** is not correct as the process in that case was exclusively of chilling of milk during the post-negative period. The

⁸ 2018 (18) GSTL 477 (T-Delhi)

⁹ 2015 (37) STR 660 (T-Delhi)

relevant para from the appeal memo in the case of **Jai Durga Ice Factory** is quoted below:

“From the aforesaid obligation in the agreement, it is clear that appellants have to provide chilling facility by way of providing chilling plant and the chilled water and at no stage they have to take the possession of milk for processing. Therefore, appellants have not processed the milk. Under this belief only they did not seek registration and paid the service tax, which is otherwise not required to be paid.”

13. Since the issue has been decided in favour of the appellant, it is not necessary to go into the other contentions regarding limitation etc. In view of our discussion above, the impugned order is unsustainable and is hereby set aside. The appeals are, accordingly allowed.

[Order pronounced on 3rd July, 2025]

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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