CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 03

Excise Appeal No. 113 of 2009-DB
[Arising out of OIA-119/2008-AHD-II/CE/SBS/COMMR-A-/AHD passed by Commissioner of Central Excise-AHMEDABAD-II]

M/s Hi Scan Pvt Ltd **...Appellant**
Survey No. 304, Sarkhej Bavla Highway, Changodar,
Ahmedabad-Gujarat

VERSUS

C.C.E.-Ahmedabad-ii **...Respondent**
Custom House... First Floor,
Old High Court Road, Navrangpura,
Ahmedabad,Gujarat-380009

APPEARANCE:
Shri. P.M. Dave (Advocate) for the Appellant
Shri. Govind Jha, Authorized representative for the Respondent

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

FINAL ORDER NO. A/ 11071 /2019

DATE OF HEARING:29.03.2019
DATE OF DECISION:05.07.2019

RAJU

This appeal has been filed by M/s Hi Scan Pvt. Ltd. against confirmation of demand and imposition of penalty.

2. Ld. Counsel pointed out that the appellants are engaged in manufacturing plane/ printed cartons and boxes, lebels, envelopes etc. on their own. They are also manufacturing various goods of Chapter 38, 48 and 49 on job work and using material supplied by various principals like Vinay Printing Press, Gujarat Education Board etc. The appellant were availing benefit of small scale exemption Notification 8/03-CE. The appellant had taken into account only the value of clearance of those goods which were being manufactured by them on their own while availing Notification 8/03. They had not included the value of goods which was manufactured by them on job work basis on behalf of the various principals. On 13.09.2006 the appellant had

taken the Central Excise Registration after crossing the Rs. 400 Lakhs limit in the year 2005-06. On 30.09.2006 and 04.07.2006 Central Excise Officers visited the premises and withdrew samples and documents and also recorded statements of various employees. The appellant deposited duty of Rs. 6,80,253/- for clearance from 01.04.2006 to September 2006. Thereafter a SCN was issued to the appellant seeking to include the value of goods manufactured on job work basis for the period 2003-04 to 2006-07. After such addition, it was alleged that the appellants were not entitled to small scale exemption from the entire period of financial year 2003-2004 to 2006-2007 and duty of Rs. 26,51,382/- was demanded. All the above allegation were bases on the assertion that none of the principals who had supplied the goods for manufacture of job work basis to the appellant were registered and they had not filed any declaration/ undertaking under Notification 214/86-CE. Ld. Counsel pointed out that Tribunal had held in many cases that the benefit of job work notification cannot be denied to job worker even if the supplier of raw material had not followed the procedure prescribed in Notification 214/86. He pointed out that even the Additional Commissioner had in the O-I-O held that the benefit of job work notification cannot be denied merely because the supplier of material had not followed the procedure of the Notification. He pointed out that para 3A(e) of SSI Notification 08/03 provides that clearance value of the goods laid on job work under Notification 214/86 or 83/94 or 84/94 are not to be taken into account the aggregate value of excisable goods under 2(vii) of SSI Notification. Consequently, the original adjudicating authority had dropped the demand for the period prior to 01.04.2006 and the demand for the period after 01.04.2006 was confirmed. Revenue reviewed the said decision and Commissioner (Appeals) in the impugned order confirmed the demand and also imposed equal penalty.

2.1 It was argued that all the goods like books, catalogues, booklets etc. exempt under Notification 214/86 if manufactured on job work basis out of material supplied by principals they had not included the said aggregate value while computing the aggregate value of clearance of Rs. 300 Lakhs/ 400 Lakhs in a financial year. He pointed out that in the following decision, it has been held that benefit of Notification

214/86 cannot be denied to a job worker only because the principal has not follow the procedure of filing the declaration/ undertaking.

- Sree Rayalseem Dutch Kassenbouw Ltd. 2006(203)ELT248 (Tri. Bang)
- Moon Chemicals 2007 (83) RLT 253 (CESTAT-Che.)
- Salem Weld Mesh 2007 (83) RLT 568 (CESTAT-Che.)
- Suvikram Plastex (P) Ltd. 2008 (84) RLT 605 (CESTAT Bang.)
- Aggarwal Rolling Mills 1997 (93) ELT 615 (Tri.)
- India Fabricators 2005 (191) ELT 339.

2.2 It was argued that in terms of Section 35A(3) of the Central Excise Act, the Commissioner and enhance penalty only after giving reasonable opportunity of showing cause against the proposed order and that Commissioner can pass any order requiring payment of any duty not levied or paid or short payment only giving notice within the time limit prescribed under Section 11A to SCN against the proposed order. He argued that in this case no notice was issued thus the order of Commissioner (Appeals) confirming demand of duty and imposition of penalty are without jurisdiction. He pointed out that in the instant case the receipt of goods, manufactured of finished goods on job work basis and returned of goods is not disputed and thus benefit of Notification 214/86 cannot be denied only because the supplier of raw material had not furnished an undertaking upon himself to pay Central Excise duty on the goods produced on job work basis. He relied on the following decisions in support of his case:

- Commr. v/s Bharat Foundry 2009 (246) ELT 561
- G.G. Automotive Gears Ltd. 2014 (308) ELT 546
- Inar Profiles Pvt. Ltd. 2014 (310) ELT 200

2.3 He further argued that the notice is barred by limitation the appellant had a bonafide belief that in these circumstances the goods manufactured on job work basis are exempted from Central Excise duty. He further pointed out that all the decisions rendered by Tribunal also held that if the supplier of raw material does not follow any procedure the benefit of Notification 214/86-CE cannot be denied. He argued that since the appellant took registration as soon as they cross the limit of 400 Lakhs by the end of financial year 2005-06 it shows the bonafide of the appellant.

3. Ld. AR relies on the decision of Larger Bench of the Tribunal in the case of Tehrmax Babcock & Wilcox Ltd. 2018 (364) ELT 945 (Tri. LB). He pointed out that in case of job work the liability to duty is of the job worker and not of the principal. He argued that in the instant case it was not merely a case of failure to give declaration but a case of ineligibility of the principals to avail notification to supply the goods under Notification 214/86. He pointed out that only registered persons who are paying Central Excise duty can supply the goods under Notification 214/86.

4. Subsequently, vide additional submissions Ld. Counsel submitted that liability to duty in case of job work was in doubt and that doubt was settled to rest by decision of Larger Bench in case of Thermax Babcock & Wilcox Ltd. (supra). He argued that since there was a dispute in law and the matter was referred to Larger Bench extended period of limitation cannot be invoked. He relied on the decision of Tribunal in the case of Marsha Pharma Pvt. Ltd. 2009 (248) ELT 687. He argued that the fact that the matter was referred to Larger Bench, itself indicate that there was a reason to have a bonafide doubt.

5. We have gone through rival submissions. We find that in the instant case it is not in dispute that the appellant has received material for manufacture under job work and has failed to take into account the goods manufactured on job work basis into the aggregate value of goods cleared by the appellant. It is also not in dispute that the supplier of goods have not followed the procedures prescribed under Notification 214/86.

6. The appellants have pointed out that at the material time there were various decisions which held that failure to follow the procedure prescribed under Notification 214/86-CE does not disentitle the assessee from the benefit of the said notification. Moreover, it has been argued that the liability of duty on goods manufactured on job work basis, on the manufacture vis a vis the principal who supplied the material, was also in doubt. The issue regarding liability of manufacturer vis a vis the principal was referred to Larger Bench of Tribunal. Larger Bench in case of Thermax Babcock & Wilcox Ltd. (supra) finally resolved the doubt. He pointed out that in view of above, the extended period of limitation cannot be invoked. In

support of this contention, he relied on the decision of Tribunal in the case of Marsha Pharma Pvt. Ltd. (supra).

7. We find that as per the decision of Thermax Babcock & Wilcox Ltd. (supra) the liability to pay duty in respect of goods produced on job work basis lies with the appellant being manufacturer of goods. However, since the issue regarding liability of duty on manufacturer vis a vis principal was referred to Larger Bench of Tribunal in case of Thermax Babcock & Wilcox Ltd. (supra) extended period of limitation cannot be invoked in view of the decision of Tribunal in case of Marsha Pharma Pvt. Ltd. In view of above, demand beyond the normal period of limitation is set aside. The penalty is also set aside. Appeal is partly allowed in above terms.

(Order pronounced in the open court on 05.07.2019)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

Neha