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

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 10356 of 2017

[Arising out of Order-in-Original No. OIO-AHM-EXCUS-003-COM-023-16-17 dated 15.11.2016 passed by Commissioner (Appeal) of Central Excise & ST, Ahmedabad]

Multi Scaff India **.... Appellant**
Plot No. 3471 To 3474, Phase IV, GIDC, Chhatral,
Taluka- Kalol, Gandhinagar, Gujarat-382729.

VERSUS

Commissioner of Central Excise & ST, Ahmedabad **.... Respondent**
Custom House. 2nd Floor,
Opp. Old Gujarat High Court, Navrangpura,
Ahmedabad, Gujarat-380009

APPEARANCE :

Shri Anandodaya Mishra, Advocate for the Appellant-Revenue
Shri S.K. Shukla, Superintendent (AR) for the Respondent

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

FINAL ORDER NO. A/12211 / 2019

DATE OF HEARING : 02.08.2019
DATE OF DECISION: 19.11.2019

RAMESH NAIR :

The brief facts of the case are that the appellant received Methanol, a raw material under job work challan from various principal manufacturers and carried out process of converting into Formaldehyde. The said processed Formaldehyde was returned to the principal manufacturers under the job work challan and the same was duly accounted for in the statutory registers. Based upon the audit objection, the department denied benefit of Notification No. 214/86-CE dated 25.03.1986 to the appellant on the ground that principal manufacturers have not complied with the conditions stipulated in the said notification inasmuch as the principal manufacturers have not filed required undertaking. The demand was confirmed for the longer period.

2. Shri Anandodaya Mishra, Learned Counsel appearing on behalf of the appellant submits that there is no lapse on the part of the appellant. They have received the raw material under job work challans and after processes on job worked goods, the same were returned to the principal manufacturers under job work challans. The principal manufacturer have used the said job worked goods in the manufacture of final products which were cleared on payment of duty. Therefore, the appellant's job work is exempted under Notification No. 214/86-CE.

3. As regards the sole reason for denial of exemption that the principal manufacturer have not filed undertaking, Learned Counsel submits that, for non-compliance of condition on the part of the principal manufacturer, the appellant should not be made sufferer as on their part, there is no non-compliance. He further submits that even though the undertaking was not submitted by the Principal Manufacturer, the exemption cannot be denied as the requirement of filing of undertaking is only a procedural requirement. As regards the ingredients of the undertaking that the Principal Manufacturer should use the job worked goods in the manufacture of final product and should be cleared on payment of duty, stands complied with. Therefore, merely for non filing of an undertaking, substantial benefit of exemption notification cannot be denied.

4. He further submits that since there is no lapse on the part of the appellant, extended period cannot be invoked as there is no suppression of facts on the part of the appellant. He further submits that in respect of one of the suppliers, undertaking was filed therefore, to that extent the demand is wrongly made. He further submits that all the suppliers of raw materials have filed undertaking from 2014 and despite this, the demand for the period 2014 is also confirmed, which is absolutely incorrect. He submits that

the Principal Manufacturers have submitted affidavit with regard to the undertaking required under Notification No. 214/86-CE. It is his submission that despite the appellant's claim that Principal Manufacturers clearing their final products wherein the job worked goods are used, on payment of duty, the department has not made any effort to consider the fact of payment of duty, demand is not sustainable on this ground. He placed reliance on the following judgments:-

(a) Uniworth Textiles Limited vs. CCE, Raipur – 2013 (1) TMI 616

(b) Cosmic Dye Chemical vs. CCE, Bombay – 1994 (9) TMI 86

(c) CCE, Hyderabad vs. Chempar Drugs and Liniments – AIR 1989 SC 832

(d) Continental Foundation Joint Venture Sholding vs. CCE, Chandigarh – (Hon'ble Supreme Court judgment dated 29.08.2007)

(e) Hershey India Pvt. Limited vs. CCE & ST, Bhopal – (Order No. 50769/2019 dated 01.02.2019)

5. Shri S.K. Shukla, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

6. We have heard both sides and perused the record. We find that there is no dispute that the appellant have manufactured Formaldehyde from Methanol supplied by Principal Manufacturers on job work basis. The job worked goods were returned back to the Principal Manufacturer. It is a claim of the appellant that said job worked goods were used in the manufacture of dutiable final products. To this effect, the appellant submitted affidavit given by the Principal Manufacturers. In our view, if it is found that job worked goods were used in the manufacture of final products by the Principal Manufacturer and the said final product is cleared on

payment of duty, the appellant is clearly entitled for exemption Notification No. 214/86-CE.

7. As regards the undertaking required to be submitted, we find that in the said under taking also the Principal Manufacturer has to undertake that job worked goods will be used in the manufacture of final product which shall be cleared on payment of duty for the home consumption and/ or for the purpose of export. Therefore, on verification, if it is established that final products wherein the job worked goods i.e. Formaldehyde was used, has been cleared on payment of duty in the home consumption and/ or cleared for export without payment of duty under Bond then, appellant's manufacture on job work basis is clearly covered by exemption Notification No 214/86-CE. It is also observed that the appellant have submitted affidavit which was not taken stock of by the Adjudicating Authority. We make it clear that the undertaking even if it is found not filed, for the job work assigned, exemption cannot be denied. Since the Adjudicating Authority has not verified the facts regarding nature of clearances of final product by the Principal Manufacturers that, for the home consumption on payment of duty and/ or export under Bond, the matter needs to be remanded for the limited purpose of this verification and all other issues raised by the appellant, are kept open. We, therefore, set-aside the impugned order and remand the matter to the Adjudicating Authority for passing a fresh order.

(Pronounced in the open court 19.11.2019*)*

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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