

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

REGIONAL BENCH- COURT NO.3

Customs Appeal No.69 of 2012

(Arising Out Of OIO-04/COMMR/2012 Passed Commissioner Of CUSTOMS-AHMEDABAD)

Aries Dyechem Industries

C-1/260, Phase-Ii,

Gidc, Vatva, AHMEDABAD, GUJARAT

.....Appellant

VERSUS

C.C.-Ahmedabad

Custom House,

Near All India Radio Navrangpura,

Ahmedabad, Gujarat

.....Respondent

With

Customs Appeal No.70 of 2012

(Arising Out Of OIO-04/COMMR/2012 Passed Commissioner Of CUSTOMS-AHMEDABAD)

Kantilal Ishwarlal Patel

Proprietor Of Aries Dyechem Industries,

C-1/260, Phase-Ii, Gidc, Vatva,

AHMEDABAD, GUJARAT

.....Appellant

VERSUS

C.C.-Ahmedabad

Custom House,

Near All India Radio Navrangpura,

Ahmedabad, Gujarat

.....Respondent

APPEARANCE:

Shri N.K. Tiwari, Consultant for the Appellant

Shri D. Kanjani, Superintendent (AR) for the Respondent

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

Final Order No. A/ 10436-10437/ 2020

DATE OF HEARING: 21.11.2019

DATE OF DECISION: 11.02.2020

RAMESH NAIR

The brief facts of the case are that the appellant is engaged in the manufacture of dye and dye intermediates falling under chapter 32 & 29 of the first schedule to the Customs Tariff Act, 1975 and is holding Central Excise Registration. They are importing raw-materials required for the manufacture of their final product. The appellant had imported Beta Napthol under DEEC and Target Plus Scheme. The said imported goods was removed under Job work challan for conversion into Gamma Acid to M/s. Bondal

Chemical Ltd and M/s Shivam Chemicals, Vapi and M/s. Shree Chemicals, Vapi. After processing the said imported goods, they sent back Gamma Acid on their sales invoices. The case of the department is that since the Beta Naphthol was cleared under DEEC and Target Plus Scheme under Notification No. 93/2004-Customs dated 10.09.2004 and Notification No. 32/2005-Customs dated 08.04.2005, as per the said notifications there is a condition that the license under Advance Authorization Scheme/ certificate under Target Plus Scheme and goods imported against it shall not be transferred or sold. The allegation of the department is that since the appellant have transferred the goods imported under DEEC and Target Plus Scheme to their job-worker, they have contravened the condition of the Notifications. This allegation of the adjudicating authority is based on the fact that the job-worker returned the Gamma Acid under the sales invoices, therefore, the transaction between the appellant and the job-worker is of sale and purchase. Consequently the condition of the notification has been violated, accordingly, the demand of foregone customs duty has been confirmed along with penalties and interests in the impugned order, therefore, the present appeals filed by the appellant.

2. Shri. N.K. Tiwari, Learned Consultant appearing on behalf of the appellant submits that the appellant have sent the imported Beta Naphthol for the job-work to the job worker under the cover of annexure-II challan. The appellant have not sold the goods to the job-worker even though the Job worker issued a sale invoices i.e. only in respect of their raw-material and job charges.

3. As regard, the imported goods in question supplied by the appellant to the job-worker the value of the processed goods to the extent it represent the cost of imported inputs supplied by the appellant was reduced in the job worker's sale invoice, therefore, this clearly shows that the imported goods i.e. Beta Naphthol was neither sold by the appellant to the job-worker nor the same was purchased back by the appellant from the job worker. He submits that in case of job-work the goods is neither sold nor transferred otherwise, therefore, the condition of the notification has not been contravened. He further submits that the same transaction was held as job work by the Commissioner (Appeals) in their own case vide order dated 21.09.2011 and the said order was accepted by the Revenue, therefore, the nature of the transaction as job-work has been endorsed by the department. He further submits that in the appellant's own case under the same nature of transaction where the job-worker has cleared the job-work goods on

payment of duty, the Hon'ble Tribunal in the case reported as M/s. Aries Dye Chem Industries -2010 (257) ELT 113 (Tri.-Ahmd.) endorsed that the transaction is of job-work. This decision of the Tribunal was held by the Hon'ble Gujarat High Court in Tax Appeal No. 874/2010 filed by the Revenue vide order dated 19.06.2012, therefore, there is no doubt that the transaction in the present case is not of sale but of only job-work. In support of his submission, he placed reliance on the following judgments:-

- Modern Food Industries (India) Ltd.-1988 (37) ELT 294 (Tri.)
- Prestige Engineering (India) Ltd-1994 (73) ELT 497 (S.C)
- Tetra Pak (I) Ltd-2005 (190) ELT 257 (Tri.-Mum)
- Somaiya Organo Chem-2007 (213) ELT 130 (Tri.-Mumb.)

4. Shri. D.K. Kanjani, Learned Superintendent, Authorized Representative appearing on behalf of the Revenue reiterates the finding of the impugned order. He submits that since the job-worker has issued sale invoices wherein Excise Duty and VAT were paid, the transaction is clearly of sale and purchase therefore, there is contravention of the condition of Notification No. 93/2004-Customs dated 10.09.2004 and Notification No. 32/2005-Customs dated 08.04.2005. Accordingly the duty was rightly demanded. He placed reliance on the following judgments:-

- Collector of C.E V.s Modern Food Industries (India)Ltd-1988 (37) ELT 294 (Tribunal)
- Prestige Engineering (India) Ltd-1994 (73) ELT 497 (S.C)

5. We have heard both the sides and perused the records. We find that the limited issue in the present case is that whether the transaction of supply of imported Beta Naphthol to the job worker and received back Gamma Acid after job work is amount to sale of imported goods or otherwise to the job worker and consequently whether the appellant is entitled for Exemption under Notification No. 93/2004-Customs dated 10.09.2004 and Notification No. 32/2005-Customs dated 08.04.2005 issued under Advance Authorization Scheme and/or Target Plus Scheme.

6. From the facts of the case, we find that the appellant removed Beta Naphthol to their job workers under cover of Annexure-II challan. As per the said challan the goods supplied for job work is returnable in the form of processed goods i.e. Gamma Acid. From the said annexure-II challan, it is

clear that the Beta Naphthol supplied by the appellant is not on sale basis but only for the job work purpose. We find that the adjudicating authority is heavily emphasized on the invoice issued by the job worker and construed that since the job worker has issued a sale invoice where under the VAT was paid, it is a transaction of sale of goods. From the careful perusal of the said invoice, we find that the job worker has considered the total value including the value of Beta Naphthol but since the Beta Naphthol was given by the appellant to the job worker free of cost the value of the said Beta Naphthol has been reduced from the total value and their final sale value does not include the value of Beta Naphthol, therefore even as per the invoice of the job worker there is no sale of Beta Naphthol to the appellant. It is obvious that when the appellant have not sold the Beta Naphthol to the job worker there is no transfer of right in the property i.e. Beta Naphthol from the appellant to the job worker. Consequently question of sale by the job worker to the appellant does not arise. The job worker also clearly mentioned while reducing the value of Beta Naphthol that " Less: Beta Naphthol supplied by you as per job work annexure-II challan....." With this clear mention in the invoices of job worker coupled with the returnable annexure-II challan there is no doubt that the appellant have not sold or transfer Beta Naphthol to the job worker or to any other person. Therefore, we have no hesitation to conclude that the transaction of the Beta Naphthol by the appellant to the job worker does not fall under the term either "sale" or "transferred in other manner". Therefore, in our considered view there is no contravention of the condition attached to the Notification No. 93/2004-Customs dated 10.09.2004 and Notification No. 32/2005-Customs dated 08.04.2005.

7. We further observed that in the appellant's own case the same transaction has been endorsed as job work in the order of Commissioner (Appeals) dated 21.09.2011 which has been accepted by the Revenue. The Adjudicating Authority has brushed aside the said order not on merit but mentioning that the order of the Commissioner (Appeals) is not binding on him. We find that once the Commissioner (Appeals) has passed an order and the same was accepted by the Revenue, the credence to the said order must be given unless the same is distinguished on merit.

8. We also see that even the Tribunal in the appellant's own case reported at 2010 (257) ELT 113 which was upheld by the Hon'ble Gujarat High Court vide order dated 19.06.2012 that the similar transaction wherein the Beta Naphthol was sent to job worker and the job worker returned the processed goods under sale invoices has been considered as job-work

only. We further find that as per the Hon'ble Supreme Court judgment in the case of Prestige Engineering (India) Ltd it was held that even if a minor items used by the job worker, it would not detract it being a job work an example given in the said judgment that if a tailor stitching shirt or suit out of the cloth supplied by his customers he may use his own buttons and threads and lining cloth and such an activity would amount to job work. In the present case also the appellant have supplied the principle raw-material i.e. Beta Naphthol and some minor items were used by the job worker, therefore, in the light of the above Hon'ble Supreme Court judgment the processing by the job worker will remain as job work.

9. In an identical case of Tetra Pak (I) Ltd.(supra) dealing with the duty free imported goods under DEEC scheme the Tribunal-Mumbai Clearly held that advance license holder cannot be prohibited from out sourcing goods imported duty free for manufacturing to other persons even in the said case the goods imported duty free under DEEC scheme was sold to job worker on cost basis and returned as sale by Job Worker after processing/conversion of cost of other material and labour basis. The tribunal held that this was not violative of the prohibition of selling/transferring such goods. The present case is on a better footing as admittedly the appellant has neither sold Beta Naphthol to the job worker nor purchased back the same from job worker.

10. As regard the judgment relied upon by Learned Authorized Representative on careful reading of the same we find that as regard Hon'ble Supreme Court Judgment in the case of Prestige Engineering (India) Ltd. We discussed above and found that the same is in favour of the appellant.

11. As regard the decision of this tribunal in the case of Modern Food Industries (India) Ltd.(supra). The fact in that case was the goods was transferred to sister concern by Book Adjustment, though no payment is made in cash or because there is book adjustment it cannot be said that there is no sale. Firstly this case is not based on Job Work transaction, secondly as per the facts of the present case there is no book adjustment by the appellant in their books which amount to sale of goods. The goods was admittedly sent on Job work basis under the cover of Annexure-II Challan and no amount on account of such supply was debited to the Job Worker in the books of the appellant therefore, the facts of the cited judgment of Modern Food Industries (India) (supra) is absolutely different from the facts of the present case.

12. As per our above discussion and observation which is supported by various judgments including the judgment in the appellant's own case, We

are of the considered view that appellant have not contravened the condition of Notification nos. 93/2004-Cus & 32-2005-Cus. Hence, the demand of duty, interest and consequential penalties are not sustainable.

13. We, therefore, set aside the impugned order and allow the appeals, with consequential relief, if any, in accordance with law.

(Pronounced in the open court on 11.02.2020)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Mehul