CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, ALLAHABAD

REGIONAL BENCH : COURT NO.I

Excise Appeal No.70718 of 2018

(Arising out of Order-in-Appeal No.NOIDA-EXCUS-002-APP-1749-50-17-18 dated 23.02.2018 passed by Commr.(Appeals) of Central Tax, Noida.)

M/s. Vishal Pipes Ltd.
(A-71, Industrial Area, Sikandrabad,
Distt.Bulandshahar (U.P.) -203205)

...Appellant

VERSUS

Commr. of Central Excise, Noida-II

.....Respondent

(Hotel Formule-I, Wegmens Business Park,
KP-III, Greater Noida(U.P.))

APPEARANCE

Written Submission for the Appellant (s)
Shri Anupam Kr. Tiwari, Authorized Representative for the Respondent

CORAM: HON'BLE MRS. ARCHANA WADHWA, MEMBER(JUDICIAL)

FINAL ORDER NO. 71506/2019

DATE OF HEARING : 5 August 2019
DATE OF DECISION : 5 August 2019

MRS. ARCHANA WADHWA :

As per facts on record, the appellants are engaged in the manufacture of Steel Tubes & Pipes, structural Pipes and rigid PVC Pipes chargeable to duty under Chapter 73 of the Central Excise Tariff Act, 1985 and were availing the cenvat credit on various input services and capital goods used in the manufacture of their final product.

2. Apart from the manufacturing goods on their own, the appellantwas doing job work with the principal manufacturer. Revenue by entertaining a view that the manufacture of the goods on job work basis amounts to providing services, which were exempted from payment of service tax and the appellant was not entitled to cenvat credit of service tax paid on common inputs and common services, raised the demand at the rate of 6% of the job charges in terms of the provisions of Rule 6 (3) (1) (i) of Cenvat Credit Rules, 2004. A demand so raised by invoking longer period of limitation was confirmed. The said confirmation was upheld by the Commissioner (Appeals) . Hence the present appeal.

3. After hearing both sides, I find that admittedly the appellant was doing job work in their manufacturing units and were clearing the goods to the principal manufacturer without payment of duty. The principal manufacturer was paying duty on their final product, which included the job work manufactured goods. The Larger Bench of the Tribunal in the case of Sterlite Industries (I) Ltd. Vs. CCEx. Pune reported in 2005 (183) ELT 353 (Tri.LB.), has observed that the goods manufactured on job work basis, cannot be considered to be exempted goods inasmuch as the same are sent back to the principal manufacturer, who undertakes to pay the duty in respect of the same. The said decision stands followed by the Tribunal in a number of judgements. Reference can be made to the decisions of the Tribunal in the cases of (i) JBF Industries Vs. Commr. of Central Excise & S.Tat, Vapi : 2014 (34) STR 345 (Tri.-Ahmd.) & (ii) Alkyl Amines Chemicals

Ltd. Vs. 2015 (40) STR 757 (Tri.Mumbai). Further, a reference can be made to the decision of the Tribunal in the case of New Era Handling Agency Vs. Commissioner : 2015 (37) STR 344 (Tri.Mumbai). The said decision of the Tribunal stands confirmed by the Hon'ble Supreme Court in the case of Commissioner Vs. New Era Handling Agency reported in 2016 (44) STR J278 (S.C.). It was held that the packing of fertilizer is a manufacturing activity and does not fall under service industries. As reported in the case of Alkyl Amines Chemicals Ltd. referred (supra), it was again observed that the activity of conversion, amounts to manufacturer and falls outside the purview of business auxiliary service and demand in terms of Rule 6 is not sustainable.

4. Inasmuch as the issue stands decided, I find no justifiable reason to uphold the impugned order of the authorities below. Accordingly, the same are set aside and both the appeals are allowed with consequential relief.

(Dictated and pronounced in the open Court.)

SD/
(ARCHANA WADHWA)
MEMBER (JUDICIAL)

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