CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH – COURT NO.I

Excise Appeal No.70727 of 2017-Division Bench

(Arising out of Order-in-Appeal No.GZB-EXCUS-000-APP-818 & 819-17-18 dated 31/08/2017 passed by Commissioner (Appeals), Central Goods & Service Tax, Noida)

M/s ABC Technologies **.....Appellant**

(49/23, Site-IV, Industrial Area,

Sahibabad, Ghaziabad-U.P.)

VERSUS

Commissioner of Central Excise **.....Respondent**

(Ghaziabad, U.P.)

WITH

(i) Excise Appeal No.70728 of 2017 (Mr. V.K. Gupta Vs. Commissioner of Central Excise, Ghaziabad)

(Arising out of Order-in-Appeal No.GZB-EXCUS-000-APP-818 & 819-17-18 dated 31/08/2017 passed by Commissioner (Appeals), Central Goods & Service Tax, Noida)

(ii) Excise Appeal No.70729 of 2017 (Mr. Siddhant Engineering Pvt. Ltd. Vs. Commissioner of Central Excise, Ghaziabad)

(iii) Excise Appeal No.70730 of 2017 (Mr. S.P. Gupta Vs. Commissioner of Central Excise, Ghaziabad)

(Arising out of Order-in-Appeal No.GZB-EXCUS-000-APP-820 & 821-17-18 dated 31/08/2017 passed by Commissioner (Appeals), Central Goods & Service Tax, Noida)

APPEARANCE:

Shri Praveen Sharma, Advocate for Appellant
Shri Shiv Pratap Singh, Authorized Representative for Respondent

CORAM :

Hon'ble Mrs. ARCHANA WADHWA, MEMBER (JUDICIAL)
Hon'ble Mr. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 71560-71563/2019

DATE OF HEARING : 20 June, 2019
DATE OF PRONOUNCEMENT : 19 August, 2019

ARCHANA WADHWA

All the four appeals are being disposed of by a common order as they arise out of the same set of facts and circumstances. M/s ABC Technologies (hereinafter referred to as M/s ABC) are engaged in the manufacture of various sheet metal parts, mechanized components, laser cutting, bending and machine on job work for others and is registered with the Central Excise Department for payment of duty of excise. They are regularly discharging their duty liabilities. Shri V.K. Gupta is the partner in the said M/s ABC.

M/s Siddhant Engineering is engaged in the manufacture of couplers and kiosks and were availing the benefit of small scale exemption Notification No. 8/2003 and as such are not registered with the Central Excise Department. Shri V.K. Gupta and Shri S.P. Gupta are the directors in the said M/s Siddhant Engineering.

2. The premises of both the units were visited by the Anti-Evasion Branch, Central Excise Commissionerate, Ghaziabad on 8.11.2013, who undertook various checks and verifications. Excess goods to the tune of around Rs 28.90 lakhs were found in M/s ABC, which were not recorded in their statutory records. On a belief that the same were meant for clandestine removal, the officers seized the same, for which purpose a separate show cause notice stands issued to the appellant and is not subject matter of present appeal.

3. On a belief that the said two units were unauthorizedly availing the benefit of small scale exemption notification, further investigations were undertaken and statements of various persons were recorded. On the basis of the outcome of the same, proceedings were initiated against the appellant by way of issuance of show cause notice dated 6.1.2015 proposing clubbing of clearances of both the units and consequently confirming the demand and imposing penalties. The said show cause notice culminated into an order passed by the original adjudicating authority confirming the demand of Rs. 36,61,768 against M/s ABC along with imposition of penalty of identical amount. In addition, penalty of Rs 1 lakh (one lakh) stands imposed on M/s Siddanth Engineering and of Rs. 50,000/- each on Shri V.K. Gupta and Shri S.P. Gupta. The said order of the original adjudicating authority stands upheld by the Commissioner (Appeals). Hence the present appeals.

4. In M/s Siddanth Engineering, process of manufacture of couplers is as follows:

Raw material is procured in the form of round rods of different diameters;

Parting/cutting them to the desired length on bandsaw machines;

Drilling theses blanks from both sides on lathe machines;

Threading in the drilled holes on both sides on lathe/CNC turning machines;

Packing in boxes.

The Revenue has clubbed the clearance of M/s Siddanth with M/s ABC on the grounds that no manufacturing activity had taken place in the factory premises of Siddanth; one CNC machine required for threading of couplers was installed in the factory of ABC; threading of couplers on CNC machine was done in the factory of M/s ABC; packing material and packed couplers of Siddhant found in the factory of ABC; process of bending and welding required for manufacture of Kiosks done in the factory of

ABC; working of both the entities monitored by Mr. V.K. Gupta and hence no manufacturing activity in Siddhant.

5. The appellants in their written submissions have taken the following grounds:

1. M/s Siddhant has independent fully functional factory with all the required machines and trained labour (refer panchnama & statement of SP Gupta recorded on the spot-pages 63 to 69). Manufacturing operations were going on in the factory at the time of visit of the officers. Material found at various stages of the manufacturing process. Raw material such as MS Rods, Rounds, plates, flanges and scrap generated during manufacturing operations also found in the factory. Finished and semi-finished couplers found in the factory premises. All these materials were seized as detailed in panchnama. Thus M/s Siddhant had a fully functional factory with purchase of raw material, labour, machinery required where the goods in questions were manufactured.

2. Separate registrations with VAT, labour and other departments as well as income tax assessments.

3. CNC machine found in the premises of ABC was the property of Siddhant which was purchased vide invoice dt. 9.4.12 and initially installed in the factory of Siddhant. (invoice, asset register & CA Certificate at page 57 to 59). Theft occurred in the factory on 22.1.13 (report to police at page 60) and for the security reasons and lack of space, the CNC machine shifted to Siddhant in April, 2013. Office records were also shifted there. Therefore, all the operations for manufacture of couplers were done by Siddhant in its factory till March, 2013.

4. Threading on the couplers is also done on lathe machines as the CNC machine was purchased in April, 2012. After purchase of CNC machine, threading was done on both the machines in the factory of Siddhant till March, 2013.

5. The sole ground taken for demand that the CNC machine was installed in the factory of M/s ABC and threading done in its premises, is therefore, not valid for the period upto April, 2012, prior to the purchase of CNC machine in Arpril, 2012.

6. From April, 2013 onwards, whenever the demand was high, semi-finished couplers were sent to the premises of ABC for threading on CNC machine and packing on job work basis. After packing, the couplers were dispatched by Siddhant on their own invoices from there and duly accounted for in its books of accounts. Job charges were paid to ABC on which service tax liability was discharged by ABC (invoice for job charges at page 62). Also, the raw material for Kiosks were sent for operations of bending and welding and thereafter returned back for further manufacturing. In November, the CNC machine was shifted back to the factory of Siddhant.

7. The working of Siddhant was controlled by Mr. SP Gupta, as also found at the time of visit. Mr. VK Gupta only looked after sales and taxation matters. As director, he can share the responsibilities.

8. M/s Siddhant was within its right to send the goods for job work to ABC in terms of notification no. 83/94. The job charges were duly paid. Even a principal can remove the goods after job work from the premises of the job worker as provided in rule 4(60 of Cenvat Credit Rules. In the present case, M/s Siddhant was not registered with the department and as such, permissions etc. as required in case of registered manufacturer were not applicable. Further, substantive benefit cannot be denied for any procedural lapse.

9. The figures of power consumption of ABC relied upon in the SCN has no relevance. The figures of power consumption have been taken in terms of value and not units. The unit cost of power increases with every year and for the same production, the value of power consumed *will increase each year. Further, turnover includes the job charges also in which the value of power consumed will be much more than the manufactured goods, as it will not have any raw material cost.*

10. There was no allegation or any evidence of any financial integration. The working of both the entities was separated right from the stage of procurement of raw material, machinery required, labour employed, manufacturing operations, sale of finished goods and receipt of the sale proceeds.

11. No evidence that the threading operations on CNC machine were done before April, 2013 in the factory of ABC. The CNC machine was purchased only in April, 2012. No enquiry or any investigation was ever made by the officers about the fact that for how long, this was done at the factory of ABC. No presumptions can be made that for the past period also, this was the practice, in absence of any enquiry or the evidence. Thus the demand prior to April 2013 is not sustainable.

They have further contested the demand on the following grounds:-

1. *That the appellant is entitled for the exemption under notification no. 8/2003-CE as the declaration under para 2 is required only when the assessed want to start paying duty within the exemption limit of Rs. 1.5 crores. Thus the major ground taken by the Commissioner appeals to confirm the demand is totally misplaced.*

2. Separate registration with VAT, labour and other departments as well as income tax assessments.

3. M/s Siddhant has independent fully functional factory with all the required machines and trained labour. Manufacturing operations were going on in the factory at the time of visit of the officers. Material found at various stages of the manufacturing process. Raw material such as MS Rods, Rounds, plates, flanges and scrap generated *during manufacturing operations also found in the factory. Finished and semi-finished couplers found in the factory premises. All these materials were seized as detailed in panchnama. Thus M/s Siddhant had a fully functional factory with purchase of raw material, labour, machinery required where the goods in question were manufactured.*

4. CNC machine found in the premises of ABC was the property of Siddhant which was purchased vide invoice dt. 9.4.12 and initially installed in the factory of Siddhant. Fixed assets register with CA certificate was produced before the Commissioner. This conclusively proves that the CNC machine was the property of M/s Siddhant. Further, the threading operations were done on lather machines before the purchase of CNC machine and after that on both the machines.

5. The sole ground taken for demand that the CNC machine was installed in the factory of M/s ABC and threading done in its premises, is therefore, not valid for the period upto April, 2012, prior to the purchase of CNC machine in Aprial, 2012.

6. That the theft occurred in the factory on 22.1.13 and for the security reasons and lack of space, the CNC machine shifted to Siddhant in April, 2013. Office records were also shifted there. The order in original admits that this may have been the reason for shifting of some of the machinery (para 25). Therefore, all the operations for manufacture of couplers were done by Siddhant in its factory till March, 2013. The demand upto March, 2013 is not sustainable.

7. From April, 2013 onwards, whenever the demand was high, semi-finished couplers were sent to the premises of ABC for threading on CNC machine and packing on job work basis. After packing, the couplers were dispatched by Siddhant on their own invoices from there and duly accounted for in its books of accounts. Job charges were paid to ABC on which service tax liability was discharged *by ABC. Also, the raw material for Kiosks were sent for operations of bending and welding and thereafter returned back for further manufacturing. In November, the CNC machine was shifted back to the factory of Siddhant. A manufacturer can send the semi finished goods for further processing to another person and this is permissible under the law.*

8. The working of Siddhant was controlled by Mr. SP Gupta, as also found at the time of visit. Mr. VK Gupta only looked after sales and taxation matters. As director, he can share the responsibilities.

9. M/s Siddhant was within its right to send the goods for job work to ABC in terms of notification no. 83/94. The job charges were duly paid. Even a principal can remove the goods after job work from the premises of the job worker as provided in rule 4(6) of Cenvat Credit Rules. In the present case, M/s Siddhant was not registered with the department and as such, permissions etc. as required in case of registered manufacturer were not applicable. Further, non filing of declarations or other procedural lapses cannot be made a ground to deny substantive benefit.

10. There was no allegation or any evidence of any financial integration. The working of both the entitities was separate right from the stage of procurement of raw material, machinery required, labour employed, manufacturing operations, sale of finished goods and receipt of the sale proceeds.

11. Neither the Additional Commissioner nor the Commissioner Appeals considered the submission of the appellant that the demand for the period prior to April, 2013 cannot be confirmed as there is no evidence that the threading operations on CNC machine were done before April, 2013 in the factory of ABC. No enquiry or any investigation was ever made by the officers about the fact that for how long, this was done at the factory of ABC. No *presumptions can be made that for the past period also, this was the practice, in absence of any enquiry or the evidence.*

7. On going through the impugned order of Commissioner (Appeals), we note that all the above issues raised by the appellants have not been considered by him. There is no finding on the issue of theft; on purchasing the CNC machine by M/s Siddanth; on the issue of the goods having been sent on job work; on the financial intertwining between the two units; on M/s Siddhant, being independently registered with other government departments etc. In the absence of these findings on the factual aspects, we set aside the impugned order and remand all the four appeals to the original adjudicating authority for fresh decision after taking into consideration each and every issue raised by the appellants and in the light of the precedent decision on the issue.

All the four appeals are allowed by way of remand.

` (Order Pronounced in the open Court on 19 August, 2019)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

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