CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 29/2/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70078/2016 DB dated 24/02/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
	E/1222/2010DB	VARROC POLYMERS PVT LTD 35A, UDYOG VIHAR GREATER NOIDA
	Name and Address of Respondent	CCE, NOIDA C-56/42, SECTOR -62 NOIDA(UP)

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s

4 Bar Association, CESTAT, ALLAHABAD

5 Director Publications, Customs, Excise, I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector 10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi – 110070
12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38
13 The ICFAI society, 52, Nagarjuna Hill,Panjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Ex. Appeal No.1222/10

Arising out of O/A No.78-CE/Appeal/Noida/2010 dated 26.02.2010 passed by Commr. of Central Excise & Customs (Appeals), Noida.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ASHOK KUMAR ARYA, MEMBER (TECHNICAL)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	: No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	: Yes
3.	Whether His Lordship wishes to see the fair copy of the Order?	: Seen
4.	Whether Order is to be circulated to the Departmental Authorities?	: Yes

M/s Varroc Polymers Pvt. Ltd. ...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Noida RESPONDENT (S)

APPEARANCE

Shri Nagnath Mathdevru, Representative for the Appellant (s)
Shri Pawan Kumar Singh, Supdt. (A.R.) for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ASHOK KUMAR ARYA, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 24. 02. 2016

Final ORDER NO. 70078/2016

सीमा शुल्क, उत्पाद शुल्क एवं सेवा कर अपीलीय अधिकरण
CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL
सत्यमेव जयते

Per Mr. Ashok Kumar Arya :

Both the parties have been heard in detail.

2. The issue concerns with the fixing of responsibility for payment of duty of central excise, where one of the conditions of "job work" under Notification No. 214/86-CE dated 25.03.1986, have not been fulfilled. Here, one of the conditions of the Notification 214/86-CE (Supra) is that the responsibility of discharging liability of Central Excise duty on the final product, is to be honoured by the Principal Manufacturer, as per the Declaration filed with the Central Excise Authority ; this has not been complied with.

3. The appellant was issued SCN by Central Excise treating them as manufacturer under Central Excise law for payment of duty of Central Excise for the "job work" done by them for the Principal Manufacturer (s). The SCN is dated 07.10.2008, which was adjudicated by the Order-in-Original No.47/Addl.Commissioner/Noida/2009 dated 26.10.2009, confirming the demand of Rs.39,53,508/- along with interest and imposing equivalent amount of penalty on the appellant.

3.1 The appellant went in appeal before the Commissioner (Appeals). The ld.Commissioner (Appeals) vide his Order dated 26.02.2010, ordered for adjustment of eligible amount of Cenvat credit against the total amount of duty confirmed and reduced the penalty to equal to the differential amount of duty after adjustment of the eligible amount of Cenvat credit against total confirmed amount of duty.

3.2 The appellant is now before this Tribunal contesting the order of the lower appellate authority.

4. The appellant represented by Shri Nagnath Mathdevru, mainly argues that they are only "job workers" for the Principal Manufacturer (s), namely, M/s PICL and M/s Amargun Overseas and they are working on job charge basis and availing exemption under Notification 214/86-CE (Supra); M/s PICL and M/s Amargun Overseas are located in exempted zone of HP (area based exemption) and therefore, no duty was paid by them on their final product. When for the goods cleared from the job worker of the appellants' premises, the duty was not paid by the Principal Manufacturer (s), the appellant assessee was asked to pay Central Excise duty on the said goods.

4.1 The appellant assessee also mentions that Audit was conducted in their factory during 01.11.2006 to 07.11.2006 and the Audit Team of the Department advised them to pay service tax on job charges collected from the Principal Manufacturer (s) under the category of Business Auxiliary Service; they paid service tax as advised by the Audit Party of the Department.

4.2 The appellant also states that they have already made a predeposit of Rs.15.00 lakhs as per the CESTAT's Stay Order No.694/10-CEX dated 03.09.2010 on 27.09.2010.

4.3 The appellant further states that it is not their fault that the Principal Manufacturer (s) have not paid duty on the goods cleared after job work, when it was their Principal Manufacturer's responsibility to pay Central Excise duty ; they were never informed either by the Department or by the Principal Manufacturer (s) that they were supposed to pay any Central Excise duty. When they were doing job work under Notification 214/86-CE (Supra), it is not their responsibility to pay Central Excise duty on the goods cleared on "job work" by them. The Principal Manufacturer (s) have filed the declaration to the effect that :

"1. (a)..

(b)..

(c)..

(d)..

(e)..

(f)..

(g)..

(h) *We undertake the responsibilities of discharging the liabilities in respect of CE duty leviable on the final products under the laid down provisions of Central Excise if applicable."*

All such declarations of the Principal Manufacturer (s) were all along lying with the Central Excise Department and the Central Excise Department were having full knowledge that the appellant assessee was doing only the job work under Notification No.214/86-CE (Supra) and payment of duty of Central Excise on the goods cleared by them on "job work" was not their responsibility. Further, when the Audit was conducted in their premises, the appellant assessee immediately made the payment of service tax on job work charges as advised by the Audit Party of the Department. Therefore, no liability of Central Excise duty can be fixed on the appellant asseessee.

4.4 The appellant also cites in support the CESTAT's decision in the case of *Adarsh Udyog Vs. Commissioner of Central Excise, Panchkula* : 2012 (280) ELT 118 (Tri.-Del.) saying that this decision is applicable in their case and Department cannot fix the responsibility of payment of Central Excise duty for the job work done by them.

5. The Revenue represented by ld.A.R., Shri Pawan Kumar Singh, vehemently argues that as one of the conditions of the Notification 214/86-CE (Supra) i.e payment of duty on the goods cleared by the job worker has not been honoured, it is the responsibility of the job worker, who has done the manufacturing job to pay the duty of Central Excise. The job worker cannot argue that it is not their responsibility to pay duty when actually, it is they, who have done the job work for the Principal Manufacturer and when there has been a declaration filed with the Central Excise (though by the Principal Manufacturer), that the responsibility of discharging liability of payment of Central Excise duty has been undertaken by the Principal Manufacturer (s).

6. We have carefully considered the facts on record as well as the submissions made by both the sides. There are two sets of period involved herein. One is from 24.06.2005 to 31.03.2008 in case of M/s Amargun Overseas Ltd., Principal Manufacturer and the other period is from 11.07.2006 to 31.03.2008 in case of M/s PICL, another Principal Manufacturer (s). It is a fact that for the goods, which were cleared on job work basis, the duty of Central Excise was not paid either by the job worker or by the Principal Manufacturer (s), whereas the Notification No.214/86-CE lays down that the Central Excise duty is liable to be paid on the final product to be cleared by the Principal Manufacturer ; the said final product would cover definitely the goods, which have been cleared by the job worker to the Principal Manufacturer (s).

6.1 It is also a fact that the Principal Manufacturer (s) have not been issued any SCN by the Revenue and the job worker, who is the appellant assessee, has only been issued the SCN (Show-Cause Notice). The job worker, who is the appellant assessee has been treated by the Revenue as the manufacturer by the Central Excise Authorities, with whom the Principal Manufacturer (s) filed the declaration under Notification 214/86-CE (supra) saying that they undertake to discharge liability of Central Excise duty, if applicable. It is, therefore, not a question of hiding any facts from the Revenue authority. Therefore, when there is not any suppression of facts by the appellant, any demand of Central Excise duty can be made for normal period of one year only. In other words, liability of payment of duty would be for the preceding one year from the date of SCN, i.e. 07.10.2008 ; Central Excise duty liability will be for the clearances made by the appellant assessee for the said period of preceding one year.

6.2 The appellant has already been given the benefit of refund of service tax paid by the lower adjudicating authority, which can be adjusted against their liability of payment of Central Excise duty for the one year period being confirmed by this order. We also take note that the appellant made a predeposit of Rs.15.00 lakhs, which can also be adjusted against their liability of payment of duty of Central Excise being confirmed here.

6.3 We take note of the decision of this Tribunal in the case of *Adarsh Udyog* (cited supra). However, we find that the facts in the said case make a mention that demand raised therein, was for the period of beyond "four five years", whereas in the present case, we are confirming the demand for the normal period of one year. It is also obvious that the appellant would be liable to pay applicable interest on the Central Excise duty from the day it became due till the payment of the same. Original adjudicating authority is hereby directed to compute the liability of duty of Central Excise and the interest of the appellant in terms of this order and inform the appellant within three months of receipt of this order.

6.4 It is made clear that we have taken note of the fact that there has been no any kind of concealment of the facts on the part of the appellant and all along Revenue was in full knowledge of the facts and even the Audit team of the Department visited the appellant's premises and advised them to pay service tax instead of Central Excise duty and the appellant had paid the said service tax then. Consequently, there is no justification for imposition of any penalty on the appellant under the law of Central Excise.

The Penalty imposed on the appellant is, therefore, hereby set aside.

7. The Appeal is decided in the above terms.

(Dictated and pronounced in the open Court)

Sd/-

(ASHOK K. ARYA)
MEMBER (TECHNICAL)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

प्रमाणित प्रति / Certified True Copy
15.3.16
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
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38, M. G. MARG, ALLAHABAD-211001