FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 27/12/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/71937-71938/2017-EX[DB] dated 31/10/2017

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
1	E/118/2010	**VACMET INDIA LTD. (UNIT-II)** (FORMERLY KNOWN AS M/S VACMET PACKAGINGS (INDIA) PVT. LTD. UNIT-II, A-4/1, UPSIDC INDUSTRIAL AREA, KOTWAN, KOSI KALAN, MATHURA.
2	E/119/2010	**VACMET INDIA LTD. (UNIT-III)** (FORMERLY KNOWN AS M/S VACMET PACKAGINGS (INDIA) PVT. LTD. UNIT-III, A-5 & C-7, UPSIDC INDUSTRIAL AREA, KOTWAN, KOSI KALAN, MATHURA.
		Name and Address of Respondent
3		-C.C.E. LUCKNOW 7-A, Ashok Marg, Lucknow.
4		-C.C.E. LUCKNOW 7-A, Ashok Marg, Lucknow.

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

B.L. Narasimhan & Atul Gupta
(Adocates), ALD
3/1A/3 OPP AUTO SALES,Above
the Office Of Blue Dart/DHL
Courier, COLVIN ROAD, LOHIA
MARG ALLAHABAD-211001

6 Bar Association, CESTAT, Allahabad

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

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

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

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

11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

15 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

16 C.D.R. 17 Office Copy 18 Second Folder Copy 19 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/118 & 119/2010-EX[DB]

(Arising out of Order-in-Original No. 57-60/Commissioner/LKO/CX/2009 dated 30/09/2009 passed by Commissioner of Central Excise & Service Tax, Lucknow)

M/s Vacmet India Ltd., Unit - II & III

(Formerly known as M/s Vacmet Packagings (India) Pvt. Ltd.Unit–II & III)

Appellant

Vs.

Commissioner of Central Excise, Lucknow **Respondent**

Appearance:

Shri B. L. Narasimhan, Advocate &
Shri Atul Gupta, Advocate, for Appellant
Shri Rajeev Ranjan, Joint Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 31/10/2017

FINAL ORDER NO....71937 – 71938/2017

Per: Anil G. Shakkarwar

The above stated two appeals are arising out of common Order-in-Original No. 57-60/Commissioner/LKO/CX/2009 dated 30/09/2009 passed by Commissioner of Central Excise & Service Tax, Lucknow. Therefore, these are taken together for decision.

2. The brief facts of the case are that the appellants were having two manufacturing units. One located at A-4/1, UPSIDC Industrial Area, Mathura which is called Unit No. II

and another at A-5 & C-7, UPSIDC Industrial Area, Mathura which is called Unit No. III. Both the units were having separate independent registration with Central Excise Department. They were also availing facility of Cenvat credit. Both the units were engaged in manufacture of Metalized Polyester Film falling under Tariff Item No. 39219093 of the first Schedule to Central Excise Tariff Act, 1985. The appellants also undertook job work of Metallization of Polyester or Plastic Films for their customers where customers have registered themselves with the Jurisdictional Central Excise Officers for availing exemption under Notification No. 214/86-CE dated 25/03/1986 and used to send semi-finished goods to the appellants and appellants used to undertake job work on the same and used to return the processed goods to customers who were the principal manufacturers and the said processed goods were covered by the Challans prescribed by said Notification No. 214/86-CE dated 25/03/1986. The appellants were availing Cenvat credit of duty paid on inputs and Service Tax paid on input services. The said inputs and input services were consumed both for manufacture of goods which were cleared on payment of duty by the appellants and also in the process of manufacture undertaken in order to complete job work on the semi-finished goods received from principal manufacturers which were subsequently sent back to the principal manufacturers after completion of process of job work. It appeared to Revenue that the semi processed goods which were sent back to the principal manufacturers were exempted goods and therefore, on the value of such goods under Sub-rule (3) of Rule 6 of Cenvat Credit Rules, 2004, appellants were required to pay Service Tax, amount at prescribed rate of 8 or 10% during the relevant period. Therefore, appellants were issued with 4 Show Cause Notices. The details of which are as follows:-

S. No.	SCN No. & Date	Unit of the Noticee	Period	Amount/Duty involved (in Rs.)		
				In r/o job-work	In r/o stock transfer	Total
01.	02/Commr./LKO/ 08-09 dt. 17.06.08	Unit No. II	2003-04 to 2007-08	2,86,41,271.00	1,10,30,517.00	3,96,71,788.00
02.	12/Commr./LKO/ 08-09 dt. 11.11.08	Unit No. III	2003-04 to 2007-08	4,30,44,884.00	3,95,79,868.00	8,26,24,752.00
03.	04/Commr./LKO/ 09-10 dt. 01.05.09	Unit No. II	2008-09 (upto Jan. 09)	1,39,80,219.00	19,12,091.00	1,58,92,310.00
04.	05/Commr./LKO/ 09-10 dt. 01.05.09	Unit No. III	2008-09 (upto Jan. 09)	4,37,86,627.00	86,91,111.00	5,24,77,738.00

The total demand in respect of job work in the Show Cause Notice dated 17/06/2008 was Rs.2,86,41271/- and similarly demands in respect of job work in other Show Cause Notices were as stated above in the table in addition to the said demand. The Show Cause Notices also demanded short paid Central Excise duty which is scribed in the above stated table as in respect of stock transfer. The issue involved was that the final products were sold by the appellants to independent buyers and at the same price the final products were also transferred to their other unit without involving procedure of sale. It appeared to Revenue that the assessment value should be on the basis of assessable value arrived at by following the procedure laid down under Rule 8 of Central Excise Valuation (Determination of Price of Excisable Value) Rules, 2000. The said Rule provides for arriving at the assessable value at 110% of the cost of manufacture. If the goods are not sold but are stock transfer. As per Corrigendum dated 03/12/2008 to said Show Cause Notice dated 17/06/2008 Central Excise duty short paid on account of stock transfer was arrived at Rs.1,10,30,517/- on the basis of copies of Profit & Loss Account. Similar demands in respect of such short levy on account of stock transfers were made through above stated Show Cause Notices. The said Show Cause Notices were adjudicated through impugned common Order-in-Original No. 57-60/Commissioner/LKO/CX/2009 dated 30/09/2009. The appellants submitted before the Original Authority that the entire operation carried out in respect of job work was within the knowledge of the Department/Revenue and therefore, there was no suppression and therefore the extended period of limitation was not invokable in respect of the demand of short payment on account of stock transfer. They submitted that they were selling their goods from the factory gate to independent unrelated buyers as well as captively consumed stock transferred to their own unit and that provisions of Rule 8 were applicable where the entire production was captively consumed by the buyer and relied upon the decision in the case of Ispat Industries Ltd. *Versus* Commissioner of Central Excise, Raigad reported at 2007 (02) L.C.X. 0003. The Original Authority did not appreciate the grounds putforth and confirmed the demand of Rs.4,26,21,490/- under Rule 6(3) of the Cenvat Credit Rules, 2004 read with Rule 14 of the Cenvat Credit Rules, 2004 and further confirmed the demand of Rs.1,29,42,608/- on account of allegation of undervaluation of goods stock transferred to other units under the provisions of Section 11A of the Central Excise Act, 1944 and equal amount of penalty was imposed. In similar manner, the demands raised in other Show Cause Notices stated above were also confirmed and equal amount of penalty was imposed. Being aggrieved by the said orders, the appellant have preferred above stated two appeals in respect of above stated 4 Show Cause Notices before this Tribunal.

3. Heard the ld. Counsel for the appellant, who has submitted that it is well settled principles of law that the procedure set out in Notification No. 214/86-CE dated 25/03/1986 provides that the principal manufacturer undertakes to pay duty of Central Excise on the goods processed by a job worker. It is an admitted fact that semi-processed goods were received by the appellants which were subjected to job work and were returned to the principal manufacturer and principal manufacturer was required to pay Central Excise duty on the same since the goods were

being subjected to duty of Central Excise at the hands of principal manufacturer and therefore they cannot be termed as exempted goods or attracting nil rate of duty, attracting provisions of Rule 6(3) of the Cenvat Credit Rules, 2004. Further, the said Rule 6(3) of the Cenvat Credit Rules, 2004 provides for collection of amount equal to 8 to 10% of the value at which such goods are sold. The fact is that the said goods were never sold and they were returned after the process of job work. Further, if the goods were emerging out of processing were ultimately exempted goods then there was no requirement of following procedure under Notification No. 214/86-CE dated 25/03/1986 in respect of the same. The fact is that the Jurisdictional Assistant Commissioner accepted the declaration under Notification No. 214/86-CE dated 25/03/1986, having jurisdiction over the principal manufacturer and allowing permission to the principal manufacturer and the appellant following the procedure of movement of semi-finished goods on Challan itself established beyond doubt that the goods ultimately manufactured out of such job work were not exempted nor were attracting nil rate of duty and therefore the said provisions of Rule 6(3) of the Cenvat Credit Rules, 2004 did not apply to the same. He has relied upon the ruling by Hon'ble Punjab & Haryana High Court in the case of Commissioner of Central Excise *Versus* Happy Forging Ltd. reported at 2011 (265) E.L.T. 0197 (P & H). He has further submitted that in respect of the alleged short payment of Central Excise duty on account of stock transfer the issue was settled by Larger Bench decision by this Tribunal in the case of Ispat Industries Ltd. *Versus* Commissioner of Central Excise, Raigad reported at 2007 (209) E.L.T. 185 (Tri. – Larger Bench). He has taken us through the issue referred to Larger Bench in the said case, which is as follows:-

> "The issue referred to the Larger Bench is, whether the assessable value in respect of goods which were transferred to another plant of the same assessee is required to be determined as per Rule 4 of the Cenvat Excise Valuation Rules, 2000or as per Rule 8 of the said Rules in a case where the same goods were also sold to independent buyers."

He has further taken us through the decision in the said case recorded at Para 9, which is as follows:-

> "In view of what we have observed above, we answer the reference in the following terms:
>
> (a) The provisions of Rule 8 of the Valuation Rules will not apply in a case where some part of the production is cleared to independent buyers;
>
> (b) The provisions of Rule 4 are in any case to be preferred over the provisions of Rule 8 not only for the reason that they occur first in the sequential order of the Valuation Rules but also for the reason that in a case where both the rules are

> applicable, the application of Rule 4 will lead to a determination of a value which will be more consistent and in accordance with the parent statutory provisions of Section 4 of the Central Excise Act, 1944."

He has further submitted that the Show Cause Notices for demand of duty under Rule 8 did not follow the prescribed procedure of arriving at assessable value on CAS-4 Certificate in violation of standing instructions of C.B.E.C.

4. Heard the ld. A. R. for, who has supported the impugned common Order-in-Original dated 30/09/2009.

5. Having considered the rival contentions and on perusal of the facts on record, we find that the goods which were processed by the appellants on being received from the principal manufacturer, which were returned back to the principal manufacturer were not exempted goods since the same were subjected to Central Excise duty and responsibility to pay Central Excise duty on the said goods was on the principal manufacturer as per the provisions of Notification No. 214/86-CE dated 25/03/1986. Further, the issue settled by Larger Bench decision by this Tribunal in the case of Ispat Industries Ltd. *Versus* Commissioner of Central Excise, Raigad (supra) is squarely applicable in the present case, in respect of the confirmation of demand on account of short payment of levy. In view of the above stated findings, we hold that impugned common Order-in-Original dated 30/09/2009

is bad in law and therefore, we set aside the same and allow both the appeals. The appellant shall be entitled for consequential relief, as per law.

(Dictated & Pronounced in Court)

-Sd/-
(ANIL CHOUDHARY)
Member (JUDICIAL)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

Ansari

प्रमाणित प्रति/Certified True Copy
25/01/18
सहायक पंजीयक/Asstt. Registrar
सीमा शुल्क, उत्पाद शुल्क एवं सेवा कर
अपील अधिकरण (C.E.S.T.A.T.)
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38, M.G. MARG, ALLAHABAD-211001