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: 19/09/2017

To

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

Final Order No. A/71081-71082/2017-EX[DB] dated 07/09/2017

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/3112/2007	**INDIAN PERFUMES AND FLAVOURS** B-5, Road No. 7, Indl. Area, Sikandrabad, Bulandshahar, U.P.
2	E/3113/2007	**SHRI ACHAL GUPTA, PARTNER INDIAN PERFUMES AND FLAVOURS** B-5, Road No 7, Indl. Area, Sikandrabad, Bulandshahar, U.P.
		Name and Address of Respondent
3		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307
4		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

Vivek Kohli
2, PALAM MARG, VASANT VIHAR, NEW DELHI-110057

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, 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 Guard File

Asstt. Registrar

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

APPEAL No. E/3112 & 3113/2007-EX[DB]

(Arising out of Order-in-Original No. 27/Commr./07 dated 17/07/2007 passed by Commissioner of Central Excise & Customs, Noida)

M/s Indian Perfumes and Flavours (in Appeal No. E/3112/2007) **&**

Shri Achal Gupta, (in Appeal No. E/3113/2007) **Appellant(s)**

Vs.

Commissioner of Central Excise, Noida **Respondent(s)**

Appearance:

Shri Vivek Kohli (Advocate) & Shri Ashwani Sharma (Advocate) for Appellant(s)

Shri Rajeev Ranjan (Joint Commr.) AR for Respondent(s)

CORAM:

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

Date of Hearing : 07/09/2017
Date of Decision : 07/09/2017

FINAL ORDER NOs. 71081-71082/2017

Per: Anil Choudhary

The issue in these appeals are whether the appellant have violated the provisions of job work and/or the scheme of job work as notified under Notification No. 214/86 – CE dated 25 March, 1986.

2. The brief facts as per the show cause notice dated 09 March, 2006 is that the appellants are engaged in production of various grade of 'Attars' falling under Chapter 33 of CETA, 1985 and it is alleged that they have wrongly availed

exemption benefit under Notification No. 214/86 – CE and cleared the goods without payment of duty amounting to Rs. 4,61,33,313/- as leviable thereon in contravention of the Rules read with Section 11 A of the Act. Upon scrutiny of the documents resumed etc. and the process of manufacture of said goods was examined critically to see as to whether the said process is covered under the definition of job work and as to whether the exemption under Notification No. 214/86-CE was available in respect of the clearance of the said goods. From the process of manufactureds declared by the appellant, It was seen that the process of production of said goods, ~~that is~~ Attars involves processing of various herbs in different proportions dependent upon the final product to be manufactured by close distillation. Considering the statement of the partner Shri Achal Gupta it appeared that the process of manufacturing is very complicated in which selection of specific herbs, petals, leaves etc. in precise quantity for extraction is a specialized job and it requires meticulous planning during whole process. It further appeared that Notification No. 214/86-CE defines job work as – job work means processing or working upon of raw materials or semi finished goods supplied to the job worker, so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for the aforesaid purposes. Further reference was also made to the definition of job work under Rule 2(l) of CER, 2002 which provides – "for the purposes of this notification, The expression job work means processing or working upon of raw materials or semi-finished goods supplied to the job worker so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for the aforesaid process and the expression job worker shall be so construed". Hence it appeared to Revenue that from the nature of work being done and the transaction as well as the billing pattern that the appellant was not undertaking job work, but were selling the product. Accordingly, for the period 1st January, 2005 to 23rd February, 2006 it was proposed to levy duty, ~~which period,~~ Subsequently corrected by corrigendum to 1st February, 2005 to 31st January, 2006, demanding an amount of Rs. 4,61,33,313/- towards duty adjustment not paid along with interest and further penalty under Rule 27 was proposed. Further, the partner of the appellant firm Shri Achal Gupta was also required to show cause why not penalty be imposed under Rule 26 of CER, 2002. The SCN was adjudicated vide Order-in-Original dated 17 July, 2007, wherein the proposed demand was confirmed with interest and further penalty Rs. 5,000/- was imposed on the firm under Rule 27 of CER, 2002. Further, the partner Shri Achal Gupta the penalty of Rs. 70 lakhs was imposed under Rule 26.

3. Being aggrieved the appellants are before this Tribunal. The learned counsel for the appellant have taken us through

the scheme of job work under the said Notification which provides that the job worker shall not be liable to pay excise duty, subject to the condition that the supplier of raw materials or semi-finished goods avail of the credit of duty paid on inputs under Rule 57A of the said Rules, and gives an undertaking to the Assistant Collector of Central Excise. Having jurisdiction over the factory of the job worker that the said goods have been used in or in relation to the manufacture of the final products. The said supplier produces evidence that the said goods have been so used and the said supplier undertakes the responsibilities of discharging the liability in respect of Central Excise duty leviable on the finished products. Further, in the table Chapter 33 is also included in the said Notification. As such there is no dispute with regard to the activity of the appellant whether falling under the scheme of job work or not. Further admitted facts are that the principal of the appellant, namely M/s Flakes N Flavourz, New Delhi, have filed undertaking/intimation dated 13 April, 2004 as required under Notification No. 214/86 to the Assistant Commissioner, Central Excise Division, Division-V, Noida, U.P. Giving all the necessary details are required for engaging the appellant for job work. We also find that the appellant herein also vide their letter dated 15 April, 2004 informed the Superintendent of the range in response to his query dated 13 April, 2004 informing that the goods sent by the principal manufacturer of sandalwood oils and other essential oils falling under Tariff Heading 3301, as has been mentioned in their declaration under Notification No. 214/86-CE. Further stating that they will not be manufacturing the above said basic raw materials, but the same is supplied by the principal manufacturer and they will only be making a thorough masala of the same by undertaking certain process like act was distillation and sending it back to the principal manufacturer for use in their excisable products. Further informing that in the course of manufacture there were no wastage of basic raw material and also stating that the principal manufacturer have undertaken to pay the duty liability if any and also category mentioned that they are entitled to exemption from payment of duty under Notification No. 214/86 – CE. We also find that such intimation were also filed by the principal manufacturer dated 31st May, 2004 along with the necessary undertaking, 15 July, 2004. Pursuant to change of the address of the principal manufacturer and also on 17 November, 2004 stating that apart from masala attars. The principal manufacturing also getting a Attar Shamama processed on job work by them on the material supplied to the appellant.

4. Heard the parties.

5. Having considered the rival contentions, we find that there is no allegation in the show cause notice of the violation of any of the conditions of the Notification No. 214/86 – CE. We further find that proper declarations have been filed by

the principal manufacturer, which have been accepted by the Department, particularly by the Assistant Commissioner of Central Excise having jurisdiction over the factory of the appellant. We further find from the impugned order that the learned Commissioner have observed that there is only a venial or technical breach and the whole situation is Revenue neutral. There being no malafide intention on the part of the appellants to evade payment of duty. Under such admitted facts and circumstances we find that the show cause notice is misconceived and not maintainable. Accordingly, we allow these appeals and set aside the impugned orders. The appellant shall be entitled to consequential benefits if any in accordance with law.

(Dictated pronounced in Court)

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

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

Ankit

प्रमाणित प्रति/Certified True Copy
02\10\17
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण(C.E.S.T.A.T.)
38, एम.जी.मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001