CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

MISC Application No. : E/MISC/26235/2013
Appeal(s) Involved: E/567/2007-DB

[Order-in-Appeal No.102/2007-CE dt. 25/05/2007 passed by CCE(Appeals-I), Bangalore]

SIGMA PUNCH FORMS PRIVATE LIMETED
C-299/300, 9TH CROSS, 3RD MAIN, PEENYA
1ST STAGE, BANGALORE

Appellant(s)

Versus

C.C.E.-BANGALORE-II
PB 5400 CR BUIDING...QUEENS ROAD,
BANGALORE,
KARNATAKA
560001

Respondent(s)

Appearance:

Shri T.V. Ajayan, Advocate
Chander Kumar & Associate
504, 4th Floor,Oxford Tow
Bangalore
Karnataka
560008

For the Appellant

Shri Pakshirajan, Asst. Commissioner(AR)

For the Respondent

Date of Hearing: 05/12/2017
Date of Decision:………………..

CORAM:
HON'BLE SHRI S.S GARG, JUDICIAL MEMBER
HON'BLE SHRI V. PADMANABHAN, TECHNICAL MEMBER

Final Order No. ________________

Per : S.S GARG

The present appeal is directed against the impugned order dt. 25/05/2007 passed by the Commissioner(Appeals) whereby the Commissioner(Appeals) has upheld the Order-in-Original and rejected the appeal of the appellant.

2. Briefly the facts of the present case are that the appellants are job workers for M/s. L&T Komatsu Ltd. and receives certain materials free of cost under delivery challan which they use for the process and clear the goods to L&T on payment of duty. On verification, it was found by the Internal Audit party of the Department that the appellants are not paying Central Excise duty on the value of free supplied items, while clearing the semi-finished goods to their principal L&T. On this allegation, a show-cause notice was issued and after following the due process, the Additional Commissioner confirmed the demand of duty on the findings that as per Rule 6 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and also the apex court's judgment in the case of Ujagar Prints, the value of job worked goods shall be determined based on the landed cost of the materials including the cost of free supplied materials. Aggrieved by the said order, appellant filed appeal before the Commissioner(Appeals) who rejected the appeal of the appellant and hence the present appeal.

3. Heard both the parties and perused records.

4. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same is contrary to the binding judicial precedent. He further submitted that on an identical issue in an earlier case, the demand was dropped by the same authority in respect of TAFE Ltd. The Additional Commissioner vide order No.28/12/2005 has dropped

the proceedings initiated in the show-cause notice and the same was accepted by the Department on 01/08/2006 in file No.IV/03/287/2006-Review. He further submitted that the appellate authority failed to appreciate that the raw material received by the appellant from its customers was under Rule 57F(4) and Rule 57AC(5)(a)-Challans and the Customers supplying the raw materials have availed modvat/CENVAT credit on such materials and had supplied the said materials free of cost to the appellant for carrying out further processing of raw material for the manufacture of final product. He further submitted that once the goods are manufactured by the appellant as a job worker in terms of Rule 57F(4), then the liability to be discharged on the processed goods / manufactured by the job worker in law rest upon the customer/supplier of the raw material. He further submitted that this issue has been considered by the Tribunal in various cases and also the apex court in the case of International Auto Ltd. Vs. CCE, Bihar [2005(183) ELT 239 (SC)] wherein it has been held by the apex court that intermediate product manufacturer is not liable to pay duty on inputs supplied by final product manufacturer nor value of such inputs be added to the excisable value of intermediate product. He further submitted that the Commissioner(Appeals) has wrongly held that the transaction between the appellant and the supplier of the material was a sale on principal to principal basis. Merely the appellant issued an invoice for the value of the goods used by them in the process of job worker. Learned counsel further submitted that the appellant had paid the duty on the finished goods on a mistaken belief of law that the duty was payable to the extent of value addition made by the appellant. He further relied upon the following decisions to support his submission that the appellants are not liable to pay duty on the raw material supplied free of cost by the supplier:-

i. Krishna Fabrications Pvt. Ltd. Vs. CCE, Bangalore [2006(206) ELT 1008 (Tri. Bang.)]
ii. Mag Finishers Pvt. Ltd. Vs. CCE, Bangalore [2006(205) ELT 370 (Tri. Bang.)]
iii. Orissa Industries Ltd. Vs. CCE, Bhubaneshwar-II [2007(220) ELT 236 (Tri. Kolkata)]
iv. M.Tex & D.K. Processors Ltd. Vs. CCE, Jaipur [2001(136) ELT 73 (Tri. Del.)]
v. CCE, Jaipur Vs. D.K. Processors (P) Ltd. [2000(122) ELT 802 (Tri.)]
vi. Vako Seals Pvt. Ltd. Vs. CCE, Mumbai-V [2016(344) ELT 482 (Tri. Mum.)]

5. On the other hand, the learned AR defended the impugned order and submitted that the Commissioner(Appeals) has rightly held that the transaction between the appellant and his raw material supplier attracts Rule 6 of the said Valuation Rules, 2000. The learned AR referred to the explanation 1 attached to the Rule and also relied upon the following decisions:-

i. Lear Automotive India Pvt. Ltd. Vs. CCE, Nashik [2012(286) ELT 558 (Tri. Mum.)]
ii. Burn Standard Co. Ltd. Vs. UOI [1992(60) ELT 671 (SC)]

6. After considering the submissions of both parties and perusal of the material on record, we find that the appellants have received raw material from its customers under Rule 57F(4) and Rule 57AC(5)(a)-Challans. We also find that the customers supplying the raw material have

availed the CENVAT credit on such material and supplied the said material free of cost to the appellant for carrying out further processing of the raw material for manufacture of final product. Further we find that the decision of the apex court in the case of International Auto Ltd. cited supra which has been relied upon by various decisions passed by the Tribunal cited supra squarely covers the issue in favour of the appellant whereas the decisions relied upon by the learned AR are distinguishable and are not applicable in the facts of the present case. Therefore by relying on the ratios of the said decisions, we are of the considered view that the impugned order is not sustainable in law and therefore the same is set aside by allowing the appeal of the appellant with consequential relief if any.

(Pronounced on …………………..)

V.PADMANABHAN	**S.S GARG**
TECHNICAL MEMBER	**JUDICLAL MEMBER**

Raja...