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

Appeal(s) Involved:

E/585/2008-DB

[Arising out of Order-in-Appeal No. 165/2008 dated 30/04/2008 passed by Commissioner of Central Excise (Appeals), Bangalore]

M/s. INTERLINK PLASTICS & FIBRES (P) LTD
C/O. BOOLANI ENGINEERING CORPORATION, UNIT 303, PRABHADEVI INDUSTRIAL ESTATE, 402, VEERSAVARKAR MARG, MUMBAI-400025

Appellant(s)

Versus

Commissioner of Central Excise And Service Tax BANGALORE-III
NULL PB.NO.5400...QUEENS ROAD, CENTRAL REVENUES BUILDING, BANGALORE, - 560001 KARNATAKA

Respondent(s)

Appearance:

None For the Appellant

Dr. J.Harish, AR For the Respondent

Date of Hearing: 10/12/2018

Date of Decision: 10/12/2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 21890 / 2018

Per : P. ANJANI KUMAR

The appellants, M/s. Interlink Plastics & Fibres Pvt. Ltd. are manufacturer of HDPE Woven Sacks and HDPE Monofilament yarn. They also undertook job work by manufacturing yarn from

the plastic granules for other parties like M/s. Elastic Enterprises, M/s. Ratna Fibre Industries and M/s. Bangalore Monofilament. The Department alleged that they have manufactured and cleared HDPE Monofilament yarn during the year 1994-95 under job work without payment of Central Excise duty. The Department alleged that the appellants have suppressed the facts and have cleared the goods after conversion without cover of any invoice i.e. Annexure-II challan under Rule 57F(2)/57F(3) are under the cover of any other document prescribed by the Department. The case has reached up to Tribunal, which vide Order No. 239/2007 dated 09.02.2007 remanded the matter back to the Adjudicating Authority for de novo consideration. The Additional Commissioner vide Order No. 04/2007 dated 28.09.2007 has confirmed a duty of Rs.2,76,654/- on the appellants and also imposed a penalty of Rs.25,000/-. The Commissioner (A) vide Order No. 165/2008- B.III has upheld the OIO. Hence, this appeal.

3. The learned AR has reiterated the findings of OIO and OIA and submitted that the contention of the appellants that, the appellants argued that they have manufactured and cleared Monofilament yarn on job work basis for a total value of Rs.13,85,268/- and have also manufactured and cleared goods

worth Rs.50,56,801 on their own account therefore the total value of clearances during the period is Rs.29,40,069/- which is within the exemption limit under Notification No. 1/93, is not acceptable. The Notification has different provisions for manufacturers who avails CENVAT credit and who do not avail CENVAT credit. Therefore, the appellants are not eligible for Notification No. 1/93. The appellants did not dispute the duty liability on the goods cleared for job work therefore they are liable to pay duty and also penalty under Section 173(Q)

4. None appeared for the appellants and heard the learned AR and perused the records of the case.

5. We find that in the instant case, the CESTAT Order cited supra has remanded the case back to the original authority for computation of duty on the goods manufactured and cleared by the appellants on job work basis. We find that though the appellants have contended that they have received the goods on job work basis and have cleared the same without payment of duty as their respective customers have indicated that they will discharge the duty on them by including same in their clearances. However, we find from the records of the case that the customers have not confirmed the same. M/s. Ratna Fibres are found to be

not registered and have not maintained any records. M/s. Bangalore Monofilament has stated that they have not included such clearances in their turn over and M/s. Elastic Enterprises have, however, accepted that they have included. Moreover, it is seen that the Central Excise Acts and Rules existing at that point of time had a clear provision in movement of goods under job work. The appellants have not used the challan as prescribed under Rule 57F(2)/57F(3) or any other document prescribed by the Department. If the appellants had bona fide intentions, nothing prevented them from following the established procedure as per law. The Revenue has issued a Notification No. 1/93 for facilitating the work of small-scale units. It clearly specifies the category of manufacturers who are availing the CENVAT credit and who are not availing CENVAT credit to prevent any misuse of the provision of exemption a clear cut procedure has been provided in the rules for Monofilament of goods on job work basis. The job work procedure cannot claim at any after thought the procedure and forms prescribed therein are fundamental to the working of the procedure. Non-adherence to the same will dis-entitle the appellants to the exemption they have claimed. Therefore, we have no hesitation in finding that by not adhering to the substantial provisions of law, the appellants were dis-entitled themselves to the exemptions therein.

6. In view of the above, we dismiss the appeal.

(Operative portion of the Order was pronounced
in Open Court on **10/12/2018**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

Parveen...