

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 20294 of 2021

[Arising out of Order-in-Appeal No. 173/2020-21-CT dated 25/02/2021
passed by Commissioner of Central Tax (Appeals-II) , BANGALORE]

**M/s Sagittarius Metals Private
Limited**

526 4th Phase Peenya Industrial Area
BANGALORE
KARNATAKA
560058

Appellant(s)

VERSUS

**C.C.,C.E.& S.T-Commissioner Of
Central Tax, Bangalore North
West Commissionerate**

2nd Floor, South Wing,
BMTc Bus Stand Complex
Shivaji Nagar
Bengaluru
Karnataka
560051

Respondent(s)

WITH

Service Tax Appeal No.20419 of 2017

[Arising out of Order-in-Appeal No.1813/2016 dated 29.12.2016 passed by the
Commissioner of Service Tax (Appeals), Bangalore]

**M/s Sagittarius Metals Private
Limited**

526 4th Phase Peenya Industrial Area
BANGALORE
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Appellant(s)

VERSUS

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2nd Floor, South Wing,
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Respondent(s)

APPEARANCE:

Shri Anand Nagaraj, Advocate for the Appellant
Shri P. Gopakumar, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P DINESHA, JUDICIAL MEMBER

Final Order No. 20099-20100 /2022

Date of Hearing: 11/03/2022

Date of Decision: 23/03/2022

Per: P. DINESHA

Both these appeals are filed by the appellant against two separate Orders-in-Appeal passed by the First Appellate Authority and since the issue involved in both the appeals are same, both the appeals are taken up together for final disposal, for convenience.

2. The facts involved in both the appeals are also common; the appellant is undertaking the activity of decoiling, leveling and shearing/slitting and other processes of HR coils or CR coils received from customers including manufacturers, on job work basis. Further, as could be gathered from the impugned order, consequent to investigation conducted by DGCEI, Order-in-Original dt. 31/08/2005 was issued wherein it was held that the activity of cutting would not amount to manufacture and hence exempted from central excise levy, on the said activity, as the appellant was availing exemption as per Notification No.08/2005-ST and No.25/2012-ST; that the primary activity of the appellant being cutting of hot rolled / cold rolled

coils into sheets on job work basis and the job worked goods were returned to the customer under the cover of invoices for labour charges and that the appellant was also engaged in providing taxable services; from which it was evident for the Revenue that the appellant was rendering both taxable as well as exempted services.

3. It is the case of the appellant that it is charging job charges for undertaking its activity, some of the customers were independent manufacturers duly registered as manufacturers under the provisions of Central Excise send coils on job work basis / challans either in terms of Rule 4(5) of the CENVAT Credit Rules or by following procedure under Notification No.214/86-CE dt. 25/03/1986. Those manufacturers would give declaration to the appellant to the effect that the goods have been sent under job work challans for undertaking the process and the processed goods were used by them for further manufacturer of excisable goods on which appropriate duty of excise has been paid / payable by such manufacturers. Based on such declaration, the appellant did not charge any service tax on job work charges billed on such manufacturers in terms of Notification No.8 ibid or Sl.No.30 of Notification 25 ibid. Insofar as the other customers who are not manufacturers, the appellant is duly discharging service tax on job work charges billed on such

customers under the category of Business Auxiliary Service.

4. I have heard Shri N. Anand, learned advocate for the appellant and Shri Rama Holla, learned Superintendent(AR) for the Revenue and have considered the rival contentions and have gone through the documents as well as various decisions/public orders relied upon during the course of arguments. Rule 2(e) of CCR defines exempted services as under:

“exempted services” means taxable services which are exempt from the whole of the service tax leviable thereon, and includes services on which no service tax is leviable under section 66 of the Finance Act.”

5. Admittedly, it is not the case of the Revenue that no tax/duty is paid. From the perusal of the impugned Order-in-Appeal as well as Order-in-Original do I find that the authorities below have not made any efforts to analyse the services provided by the appellant vis-à-vis Rule 2(e), to buttress their contention that what the appellant was doing would or would not fall under the definitions of Rule 2(e). Just because the appellant is not paying the tax/duty, that by itself would not be termed as “exempted services”. The statute has clearly defined “exempted services” to mean those which are exempted from the whole of service tax which would include those services on which no service tax is leviable under Section 66 of the Finance

Act and until or unless the above conditions are satisfied, anything or everything cannot be brought within the purview of exempted services. When the appellant claims right from the beginning that insofar as job work issue was concerned, the applicable duty/tax was paid by the principal manufacturer, no attempt was made to disprove the same by the revenue, they simply went on the premeditated misconception that the job work on which the appellant was not paying taxes, was an exempt service. This is without any basis which cannot be sustained.

6. In the case of Escorts Ltd. Vs. CCE, Delhi [2004(171) ELT 145 (SC)] relied upon by the learned advocate, the Hon'ble Apex Court has held as under:-

8. It is to be seen that the whole purpose of the Notification and the Rules is to streamline the process of payment of duty and to prevent the cascading effect if duty is levied both on the inputs and the finished goods. Rule 57D(2), which has been extracted hereinabove, shows that in the manufacture of a final product an intermediate product may also come into existence. Thus in cases where intermediate product comes into existence, even though no duty has been paid on the intermediate product as it is exempted from whole of the duty or is chargeable to Nil rate of duty, credit would still be allowed so long as duty is paid on the final product.

and thus, there is no bar for a service provider of job-work to avail CENVAT credit, and the same is the settled position in law. Further, exemption under Notification 8/2005 – ST is available only in respect of goods on which central excise duty is paid by the principal manufacturer, which when read harmoniously with Rule 3 of CCR, would make it clear that the job-worker could use the cenvatable input and input services. Scope of Rule 6 therefore is to be of limited applicability in such a scenario, as held by the Learned larger Bench of CESTAT in the case of *STERLITE INDUSTRIES (I) LTD. – 2005 (183) ELT 353*, which order was later-on approved by the Hon'ble Mumbai High Court, in 2009 (244) ELT A89. This very decision has been followed in a number of cases by various benches and hence, I find that this issue does not require any further deliberations.

7. Further, Hon'ble High Court of Judicature at Madras has also dealt with a more or less similar issue, in the case of *Commissioner of Central Excise, Chennai Vs CESTAT Chennai, 2015(322) ELT* wherein the Court has held as under:

“2. *The brief facts of the case are as follows :*

During the periods in dispute, the assessee had manufactured machine forgings on job work basis and supplied the same to the principal manufacturers without payment of duty. The assessee were also manufacturing similar goods on their own and the same were cleared on payment of duty to independent buyers. In such duty payments, the assessee

utilized Cenvat credit on capital goods and inputs which were used in the manufacture of the job-worked goods, which was objected to by the Department. Hence show cause notice was issued alleging that as the inputs have been used in the manufacture of final products which were cleared without payment of duty, any Cenvat credit of the duty paid on such inputs would not be available. The Adjudicating Authority sustained the allegations and ordered recovery of the Cenvat credits in question. On appeal, at the instance of the assessee, the Commissioner (Appeals) upheld the order of the Adjudicating Authority, against which appeal has been filed before the Tribunal by the assessee. The Tribunal, by following the decision rendered in CCE, Chennai v. Ucal Machine Tools Ltd., reported in 2006- TIOL-76-CESTAT-Mad allowed the appeal holding that the said decision of the Tribunal was accepted by the Department. In so holding the Tribunal also held that the machine forgings (job-worked goods) cleared by the assessee to the principal manufacturer during the periods of dispute, without payment of duty, were not to be treated as “goods exempted from duty of excise or chargeable to ‘nil’ rate of duty” so as to attract the bar created under Rule 6(1) of the Cenvat Credit Rules, 2004. Aggrieved by the said order of the Tribunal, the present appeals have been filed by the Revenue raising the question of law mentioned supra.

3. *Both sides fairly conceded before this Court that the issue involved in these appeals are decided by this Court in C.M.A. No. 1490 of 2008, dated 6-12-2013 reported in 2014 (9) TMI 444 (Commissioner v. Hwashin Automotive India Pvt. Ltd.), wherein by following the unreported decision, similar question raised by the Revenue was answered against the Revenue.*

4. *In the decision reported in 2014 (9) TMI 444 (Commissioner v. Hwashin Automotive India Pvt. Ltd.), while dealing with the similar question of law, this Court held as follows :*

“The learned counsel appearing for the second respondent produced before this Court an unreported decision in C.M.A. No. 1568 of 2006 dated 18-7-2013, wherein a similar question raised by the Revenue was answered against the Revenue following the decisions of the Bombay High Court reported in [2009 \(244\) E.L.T. A89](#) - Commissioner v. Sterlite Industries (I) Limited as well as the Punjab and Haryana High Court reported in [2012 \(26\) S.T.R. 488](#) - Commissioner of Central Excise, Ludhiana v. Jainsons Wool Coomers Ltd., which were based on the decision of the Apex Court reported in [2004 \(171\) E.L.T. 145](#) - Escorts Limited v. Commissioner of Central Excise, Delhi.

3. Following the said decision, the questions raised in this appeal stand answered against the Revenue.”

5. Following the above-said decision of this Court, the above Civil Miscellaneous Appeals are dismissed. No costs. Consequently, connected Miscellaneous Petitions are also dismissed.”

8. Hon’ble Madras High Court in a later decision in the case of CCE Vs. Kyungshin Industrial Motherson Ltd. [2016(332) ELT 69 (Mad.)] having considered a similar issue namely

9. We find that in the present case, the manufacture of wiring harness is done at Unit-I. The inputs are sent by Unit-I to Unit-II, viz., the principal manufacturer to the respondent/assessee for manufacture semi-finished wiring harness and the job worked goods are cleared under delivery challans and not on payment of duty. The respondent/assessee is availing the exemption under Notification No. 214/86-C.E. for the job work done by the assessee.

and, after considering the ratio of the Apex Court in Escorts case (supra) and also the decision of the learned Larger Bench of CESTAT in the case of Sterlite Industries Ltd. (supra), has held as under:-

14. *The above order of the Larger Bench of the Tribunal traces the manner in which Modvat credit could be taken by a job worker. The abovesaid decision came to be approved by the Division Bench of the Bombay High Court in the case of Commissioner v. Sterlite Industries (I) Ltd. [2009 (244) E.L.T. A89 (Bom.)].*

15. *Similar view was taken by this Court in Commissioner v. Hwashin Automotive India Pvt. Ltd. [2014 (304) E.L.T. A16 (Mad.)] and Commissioner of Central Excise v. Sivaramakrishna Forgings Pvt. Ltd. [2015-TIOL-813-HC-MAD-CX = 2015 (322) E.L.T. 697 (Mad.)].*

16. *We find on fact that in this case also, the Tribunal was correct in holding that wiring harness was removed without payment of duty under job work procedure to the principal manufacturer and that semi-finished goods removed by the job worker from its unit to the principal, without payment of duty, would not come within the scope of expression “exempted final product” used in Rule 57R(1) equivalent to Rule 6(4) of the Cenvat Credit Rules, 2004. The Tribunal has rightly held that availment of Modvat credit on capital goods to be job work is in order. For the reasons aforesaid, the substantial question of law is answered in favour of the assessee and against the Revenue.*

9. In view of the above clear ratio laid down by Hon'ble higher courts, it is held that demands raised are contrary to law and hence, the same are set aside, being unsustainable.

10. Viewed thus, the view expressed by Delhi Bench of CESTAT in the case of Hema Engineering Industries Ltd. Vs. CST, New Delhi [2017(5) TMI 1347 – CESTAT New Delhi] is of no relevance.

11. In the result, impugned orders are set aside and the appeals are allowed with consequential benefits, if any, as per law.

(Order pronounced in the
Open Court on **23/03/2022**)

(P DINESHA)
JUDICIAL MEMBER

Raja...