

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 1860 of 2012

[Arising out of Order-in-Original No. 64-65/CE/CHD-II/2012 dated 30.03.2012
passed by the Commissioner, Central Excise Commissionerate, Chandigarh-II]

Punjab Telenet Cables Limited

Village Bhagwanpur, Barwala Road, Derabassi,
Dist. Mohali SAS Nagar, Punjab

.....Appellant

VERSUS

**Commissioner of Central Excise,
Chandigarh II**

C R Building, Plot No. 19, Sector 17C, Chandigarh

.....Respondent

with

Excise Appeal No. 1861 of 2012

[Arising out of Order-in-Original No. 64-65/CE/CHD-II/2012 dated 30.03.2012
passed by the Commissioner, Central Excise Commissionerate, Chandigarh-II]

Gopal Krishan Gupta

Director of Punjab Telenet Cables Limited,
Village Bhagwanpur, Barwala Road, Derabassi,
Dist. Mohali SAS Nagar, Punjab

.....Appellant

VERSUS

**Commissioner of Central Excise,
Chandigarh II**

C R Building, Plot No. 19, Sector 17C, Chandigarh

.....Respondent

APPEARANCE:

Present for the Appellants: Ms Padmavati Patil & Mr. Nitin Mehta, Advocates

Present for the Respondent: Mr. Manoj Nayyar, Authorized Representative

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60128-60129/2023

DATE OF HEARING: 11.05.2023

DATE OF DECISION: 12.05.2023

PER P. ANJANI KUMAR

Brief facts of the case are that the appellants are engaged in the manufacture of Plastic Furniture; they entered into an agreement for manufacture and sale of the products with M/s Nilkamal Limited on principal-to-principal basis; the appellants used the raw material purchased by them but conforming to the specifications given by the buyers and from the moulds supplied by the buyers; the appellants cleared the manufactured furniture to M/s Nilkamal Limited; the department was of the opinion that the appellants were job workers of M/s Nilkamal Limited as such they were required to pay duty on the sales price of M/s Nilkamal Limited at their depots; two show cause notices dated 23.12.2010 and 27.01.2011 covering the period 01.03.2007 to 31.12.2009 and 01.01.2010 to 30.09.2010 were issued; the Commissioner of Central Excise, Chandigarh-II by a common order dated 30.03.2012 confirmed the demand after allowing cum duty benefit/ imposing penalties on the company as well as on the Director of the company.

3. Ms. Padmavati Patil, Learned Counsel, appearing on behalf of the appellants submits that the contract and relationship between the appellants and M/s Nilkamal Limited is that of principal-to-principal basis; moulds were supplied by M/s Nilkamal Limited on payment of duty to the appellants who availed the credit of the same and returned back to M/s Nilkamal Limited on payment of duty after use; the amortised value of the moulds were included in the assessable value. She submits that just because M/s Nilkamal Limited supplied

the moulds, the appellants cannot be considered as "job workers". She further submits that the issue is no longer *res-integra* having been decided by the Tribunal in the case of ***M/s Nilkamal Limited & M/s Godriwala Plastics Pvt Ltd vs. CCE, Raipur vide Final Order No. 50105-50106/2018 dated 01.01.2018*** and in the case of ***M/s Rustagi Plastics Industries Pvt Ltd vs. CCE, Jaipur-I vide Final Order No. 50317/2018 dated 22.01.2018***. She also submits that for the subsequent period, the Department itself has dropped the proceedings against the appellants themselves vide Order-in-Original No. 35/DC/DB/CE/2012 dated 21.12.2012 which is upheld by the Commissioner (Appeals) and the Department has accepted that order and did not file any appeal. She also submits that in other cases, where M/s Nilkamal Limited entered into similar contract with other manufacturers, demands for subsequent period were dropped by the Departmental Officers. She submits that in view of the same, the demands and penalties imposed on the appellants are liable to be set aside.

4. Shri Manoj Nayyar, Learned Authorised Representative for the Revenue submits that the provisions of Rule 10A of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 are clear in defining the 'job worker' and in view of the definition of 'job worker' under Rule 10A, the appellants are liable to pay duty at the value on which goods were cleared by M/s Nilkamal Limited at their depots. He submits that the contention of the appellants that the demands dropped in their own case for the subsequent period by the

lower authorities were accepted by the Department, is partially correct as the orders dropping the demands was accepted on monetary limits and not on merits. Further, he submits that a case involving similar set of the facts is pending before the Hon'ble Supreme Court in the case of ***Commissioner vs. Innocorp Ltd – 2014 (304) ELT A15 (SC)*** on an appeal filed by the Department.

5. Heard both sides and perused the records of the case.

6.1 We find that the Department is heavily relying on the definition of 'job worker' as provided under Rule 10A. The definition reads as under:-

"Rule 10A –

Explanation – *For the purposes of this rule, job-worker means a person engaged in the manufacture or production of goods on behalf of a principal manufacturer, from any inputs or goods supplied by the said principal manufacturer or by any other person authorized by him."*

6.2 On going through the facts of the case, we find that there is nothing in the contract to show that the appellants have manufactured the goods "on behalf" of M/s Nilkamal Limited despite the facts that the entire manufactured goods were sold to M/s Nilkamal Limited. Moreover, the goods are not manufactured from any inputs or goods supplied by the principal manufacturer i.e. M/s Nilkamal Limited.

6.3 We find that the appellants might have used the raw material as per the specifications supplied by M/s Nilkamal Limited. This fact alone will not satisfy the contention that the inputs for the manufacturing of the goods are supplied by the principal manufacturer. The crux of the definition of job worker is in the use of inputs supplied by the principal manufacturer. It is a common understanding that a job worker is the one who works upon the goods supplied directly or indirectly by the principal manufacturer. This fact is totally missing in this case; neither from the terms of contract nor from the show cause notices, it is inferred that the goods are supplied by M/s Nilkamal Limited; therefore, the appellants do not fit into the definition of 'job worker' even for the purpose of Rule 10A. On this contest, we find that the demand is not sustainable. We find that the adjudicating authority while deciding the appellants' own case vide order dated 21.12.2012 for the period October, 2010 to March, 2011, has clearly brought out as to who would constituted a job worker and observed as under:

"38. From the above terms and conditions, it is noted that the Noticee were manufacturing goods from the moulds provided by Nilkamal. There is no dispute about the fact that M/s. Neelkamal supplied only the moulds and the entire raw materials used are procured from the manufacturers on their own. The assessee main contention is that mere supply of moulds by M/s. Nilkamal will not make the noticee a job-worker. There is force in this contention because in normal course and in common parlance, a job-worker is considered as a person who receives at least the major raw materials/goods out of which he makes the final product.

The definition of job work/job worker given in Cenvat Credit Rules, 2004 and other exemption notifications in this regard confirms this position. As per Rule 2(n) of the Genval Credit Rules, 2004, job work means 'processing or working upon of raw material 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 aforesaid process and the expression "job worker" shall be construed accordingly. Exactly the same definition has been given in Notification No. 214/86-CE dated 25.3.1986, Notification No. 83/94-CE both dated 11.4.1994 etc. Going by these definitions, it is clear that assessee is not a job worker. Of course the definition given in Rule 10A is only relevant here. The question is whether the scope of the definition of job worker given in Rule 10A is something different from that given elsewhere and can cases of supply of moulds alone without supplying any material out of which the goods are to be manufactured, will also come under job work for the purpose of Rule 10A. I do not think so because though supply of "any inputs or goods" is mentioned in the explanation of the job worker in the Rule, such inputs or goods should be those "from" which the final goods are manufactured. The usage of the word "from" instead of expressions such as "using" or "with the help of" etc clearly shows that the term "inputs or goods" mentioned cover only the raw material, component, semi finished goods etc from which or out of which the final goods are manufactured and can not include moulds as the final goods are not manufactured from moulds. As already mentioned, the concept of the work and definition given elsewhere also confirm the position. For the supply of the moulds, the assessee pays excise duty on the mould amortization charges and the same are separately shown on the invoices issued by the assessee for dispatch of chairs to the depots

of M/s Nilkamal and the valuation aspect is thus taken care of as per Rule 6 of the Valuation Rules. The CESTAT, Bangalore decision vide Final Order 101 to 103/2009 dated 23.1.2009 read with ROM Order No. 251/2009 dated 24.09.2009 in the case of Nilkamal Ltd Vs. Commissioner of Central Excise, Cochin in a valuation dispute in respect of an identical situation relied upon by the assessee is also relevant in this regard, though the issue was not regarding the applicability of Rule 10A of the Valuation Rules. It has been specifically held that such manufacture i.e. manufacture using the mould supplied by the buyer is not "job work" but is on principal to principal basis. Accordingly, I hold that the assessee can not be considered as a job worker of M/s Nilkamal for the purpose of Rule 10A of the Valuation Rules and consequently there is no short levy in the case."

6.4 We also find that the Tribunal and the Department themselves have dropped the demands of similar nature against various suppliers of M/s Nilkamal Limited. In the appellants' own case also as mentioned above, the original authority has dropped the proceedings. We are not in agreement with the contention of the learned Departmental Representative that the said orders have been accepted by the Department on monetary grounds.

6.5 We find that the Commissioner of CGST & CE, Nagpur-I vide order dated 31.10.2018 has dropped substantial amounts of demand on this issue. Also, the submissions on the issue pending before the Hon'ble Apex Court has submitted by the learned Departmental Representative will not help the cause of the Department as demands

were dropped in the subsequent period and moreover, Hon'ble Apex Court has not given any stay in the matter.

7. In view of the above findings and discussion, both the appeals are allowed.

(Order pronounced in the court on 12.05.2023)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)