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

REGIONAL BENCH - COURT NO. I

**Excise Appeal No. 55641 of 2014**

[Arising out of Order-in-Appeal No. CHD-EXCUS-000-APP-213-14-15 dated 23.07.2014 passed by the Commissioner (Appeals) Customs & CE, Chandigarh-I]

**Vasantham Enterprises** **......Appellant**
C/o Jai Mata Glass Ltd, Hul Godown
Barotiwala, Dist Solan,
Himachal Pradesh-174103

*VERSUS*

**Commissioner of Central Goods & Service Tax, Shimla** **......Respondent**
Commercial Parking Complex, Ground &
First Floor, Chhota Shimla,
Shimla, Himachal Pradesh-171002

**APPEARANCE:**

Present for the Appellant: Shri Sachin Chitnis, Advocate

Present for the Respondent: Sh. Aneesh Dewan, Authorized Representative

**CORAM:**

**HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)**
**HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 60478/2024**

DATE OF HEARING: 08.08.2024
DATE OF DECISION: 14.08.2024

***PER: P.ANJANI KUMAR***

M/s Vasantham Enterprises, the appellants, are engaged in re-packing of soaps under a Contract with M/s Hindustan Unilever vide letter dated 17.11.2006, M/s Hindustan Unilever informed the Department that they are sending their finished goods outside the factory, to their own warehouses, for banding operation for multi-piece banding of toilet soap tablets and that all materials for undertaking banding are supplied by them; the appellants are one of such job-workers for M/s Hindustan Unilever; the appellants, entertaining a belief that the activity undertaken by them amounted to supply of manpower, registered themselves on 06.07.2005 under "Manpower Recruitment and Supply Agency" and were paying service tax. On conduct of an investigation, Department issued a Show Cause Noticed dated 07.09.2009, to the appellants, covering the period 10.09.2008 to 31.12.2008, seeking to recover Central Excise Duty of Rs.32,04,169/-, on the grounds that the activity undertaken by the appellants amounted to manufacture and exemption under Notification No.50/2003 was not applicable to them as they did not fulfill the conditions therein; Additional Commissioner vide order dated 25.10.2011 confirmed the duty demanded along with penalty; on an appeal filed by the appellants, Commissioner (Appeals) vide impugned order dated 23.07.2014 upheld the order of the Original Authority. Hence, this appeal.

2. Shri Sachin Chitnis, learned Counsel for the appellant, submits that M/s Hindustan Unilever had informed the Department about the fact of sending their goods for job-work i.e banding to their job-workers who performed the work in the godowns of M/s Hindustan Unilever themselves; in a way, they adopted the procedure under Rule 4 (5) (a) of CCR, 2004 read with Notification No.214/86; the appellants were having a bona fide belief that the activity undertaken by them did not amount to manufacture and that they did not give a separate declaration under Notification No.50/2003 as their principal have already submitted a declaration and were operating under Notification No.50/2003.

3. Learned Counsel submits that the issue is no longer res integra. The Revenue have earlier raised the issue and have issued a Show Cause Noticed dated 24.11.2008, to the appellants, covering the period 01.01.2006 to 09.09.2008, seeking to recover Central Excise Duty of Rs.37,46,69,391/-; the proposals in the Show Cause Notice have been confirmed by the Commissioner vide Order dated 31.08.2009; on an appeal preferred by the appellants, CESTAT vide Final Order No.A /54420/2014- EX (DB) dated 12.11.2014 set aside the order of the Commissioner; Hon'ble Supreme Court dismissed the appeal filed by the Revenue in Civil Appeal No.35283/2017. Learned Counsel submits that since the issue is settled in the appellant's own case in their favour, the present proceedings, initiated by the Revenue, do not survive.

4. Shri Aneesh Dewan, learned Authorized Representative for the Department, reiterates the findings of the OIO and OIA.

5. Heard both sides and perused the records of the case. We find that the issue is squarely settled in favour of the appellants by the Tribunal vide Final Order cited above. We find that the Bench observed as follows:

> **19.** Registration of the appellant under Finance Act, 1994 and its existence in the specified area of Himachal Pradesh, as well as its activity carried out as job worker of HUL was well known to record. Appellant *bonafidely* believed that it was not manufacturer and not liable to Excise duty and if held to be manufacturer, it is entitled to the exemption by Notification No. 50/2003 read with the Board circulars aforesaid. There is nothing on record to show that either appellant or HUL suppressed any fact to the authority. Record also

> reveals that appellant has not acted *mala fide*. It is primarily entitled to the benefit of exemption notification aforesaid. It only failed to file necessary declaration under *bona fide* belief as stated above. Non-filing of declaration is not suppression of fact. So also there is nothing on record to appreciate that appellant had any intention to evade duty. Therefore, appellant acting *bona fide* is not debarred it to file the same before the authority to re-examine its eligibility to the exemption, otherwise that would defeat object of the area-based exemption as observed by Apex Court in *Commissioner of Sales Tax* v. *Industrial Coal Enterprises,* (1999) 2 SCC 607 :
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> "11. In *CIT* v. *Straw Board Mfg. Co. Ltd.* this Court held that in taxing statutes, provision for concessional rate of tax should be liberally construed. So also in *Bajaj Tempo Ltd.* v. *CIT* it was held that provision granting incentive for promoting economic growth and development in taxing statutes should be liberally construed and restriction placed on it by way of exception should be construed in a reasonable and purposive manner so as to advance the objective of the provision. "[Emphasis supplied]
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> **20.** On the aforesaid factual background and law, remanding the matter for filling of necessary declaration by the appellant for scrutiny of the adjudicating authority to grant area-based exemption shall serve interest of justice. The Authority granting reasonable opportunity of hearing to the appellant shall pass appropriate order. It is, ordered accordingly.

6. We also find that this Bench following the decision of the Tribunal as above, held in the case of Pearl Enterprises, vide Final Order No.60693/2023 dated 08.12.2023, as follows:

> 20. We find that the Adjudicating Authority pursuant to the directions given by the Tribunal as above has allowed the benefit of notification on the basis of the declaration submitted by the appellants therein on 11.12.2014. We find that the above case squarely covers the issue before us and is applicable on four legs. We further find that the decision of the Tribunal has been affirmed by the Hon'ble Apex Court. In the instant case, the appellants have filed a declaration on 20.02.2009

as required by the Department. We find that thus the appellants have fulfilled the conditions of the notification making themselves eligible for availing the benefit thereof. We find support from the observation of Allahabad Bench of the Tribunal in the case of Krsna Urja Projects Ltd. wherein it is held as under:

" 4. Being aggrieved, the appellants are before this Tribunal. The Learned Counsel for the appellants urges that the issue is no longer res integra and the same are decided in favour of the appellants vide the precedent orders of this Tribunal. So far the merits are concerned. A similar issue came up before this Tribunal in the case of M/s. Controls & Switchgears Company Ltd. v. Commissioner of Central Excise, Meerut-I, reported in 2017-TIOL-1960-CESTAT-Delhi. Wherein under similar facts and circumstances, under the same Notification No. 50/2003-C.E. this Tribunal held, intimation to the Department about the option for claiming benefit of the exemption appears to be only procedural requirement. A liberal attitude, therefore, has to be taken in this regard, when the assessees otherwise are entitled to the benefit of exemption notification. It was also observed that exemption provisions have to be complied with strictly, but some latitude may be shown in case of some requirements which are directory in nature, the non-compliance of such requirements would not affect the substantive benefit of notification, granting exemption."

21. We further find that CESTAT, New Delhi in the case of Gillette India (supra) held that the declaration filed by the principal manufacturer should be treated as the declaration filed by the job-worker. Tribunal held that:

"5. We have carefully considered the submissions from both the sides and perused the records. Without going into the merits of the Department's case, that in terms of the agreement between M/s. Gillete and M/s. M.J., it is the M/s. Gillete, who is the actual manufacturer, even if the department's allegation is accepted and M/s. M.J. is treated as an agent of M/s. Gillete, since any action of an agent is to be treated as the action of the principal and since in this case, it is not disputed that the required declaration had been filed by M/s. M.J.,

> the same will have to be treated as the declaration filed by M/s. Gillete. In view of this, even if the department's allegation that the relationship between M/s. Gillete and M/s. MJ is that of master and servant, is accepted, the exemption under Notification No. 50/03 cannot be denied. There is, therefore, no merit in the department's case. The impugned orders, therefore, not being sustainable, are set aside. The appeals are allowed."
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> 22. Thus, we find that either on the strength of the declaration filed by the principal manufacturer i.e. M/s CPIL or on the strength the declaration filed by the appellants themselves though belatedly, the appellants are eligible to avail the exemption contained in the Notification No.50/2003. Further, we find that in the case of Gillette India Ltd (supra) Hon'ble High Court of Himachal Pradesh held that, the amended condition to the effect that articles manufactured in places other than specified area will not be applicable to the items manufactured after 18.01.2008, shall not apply to units set up prior to 18.01.2008. Further, we find that Department has been changing the stand. In the case of Gillette India, the Department was pleading that it is for the principal manufacturer to file the declaration and not the job-worker, whereas in the impugned case, Department refuses to accept the declaration filed by M/s CPIL. We find that such a stand is not acceptable.

6. In view of the above, we are of the considered opinion as long as the appellants are eligible to avail the benefit of a notification, the same cannot be denied for procedural violations. We find that as the appellants have given a declaration though belatedly, the same must be treated as a valid declaration in view of the Tribunal's order in the case of Vasantham Enterprises (supra). Therefore, the impugned order is liable to be set aside, we do so.

7. In the result, the appeal is allowed with consequential relief, if any, as per law.

(Order pronounced in the open court on 14/08/2024)

**(S. S. GARG)**
**MEMBER (JUDICIAL)**

**(P. ANJANI KUMAR)**
**MEMBER (TECHNICAL)**

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