IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

Appeal No.: E/40400/2018

(Arising out of Order-in-Appeal No. 57/2017 SLM-CEX dated 08.11.2017 passed by the Commissioner of G.S.T. & Central Excise, Salem)

M/s. Classic Welding Products Pvt. Ltd., : Appellant
No. G-12, G-13, IX Phase,
SIDCO Industrial Estate,
Hosur – 635 126

Versus

The Commissioner of G.S.T. & Central Excise, : Respondent
Salem Commissionerate

Appearance:-
Ms. D. Naveena, Advocate
for the Appellant
Shri. R. Subramaniyan, AC (AR)
for the Respondent

CORAM:
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of Hearing/Decision: **30.10.2018**

Final Order No. 42765 / 2018

The appellant is registered with the Department vide Central Excise Registration Certificate and are engaged in the manufacture of Articles of Plastic falling under Chapter 39 of the Schedule to the Central Excise Tariff Act, 1985 and are availing CENVAT Credit on inputs and input services and utilizing the same for payment of duty.

2. A Show Cause Notice dated 22.12.2015 was issued alleging that the activity carried out by the appellant's Attibele Unit, Bangalore, amounted to manufacture which was exempted under Clause (c) of Sl. No. 30 of Notification No. 25/2012-ST and thereby demanding duty along with applicable interest and penalty. The adjudicating authority vide Order-in-Original dated 20.02.2017 confirmed the duty as well as interest and penalty as proposed after observing that the appellant had not submitted any evidence to show that no manufacturing activity had taken place at job worker's premises. The appellant being unsuccessful in its first appeal, has filed this appeal.

3. Today when the matter came up for hearing, Ld. Advocate Ms. D. Naveena appeared on behalf of the appellant and Ld. AC (AR) Shri. R. Subramaniyan appeared on behalf of the Revenue.

4.1 During the course of hearing, Ld. Advocate submitted that the demand has been confirmed solely based on the fact that the job work activity carried on by the appellant at its Attibele Unit, Bangalore, was treated as manufacture which according to the Revenue, was exempted from payment of service tax; the appellant's Attibele Unit having charged an amount representing service tax on the product value of job work for which the appellant had taken service tax credit on such invoices.

4.2 She further submitted that the Principal Manufacturer can avail credit of the duty paid by the job worker even though the latter was not required to pay such duty. In this regard, she placed reliance on decisions/Orders of various higher fora. She further relied on a recent decision of the Hon'ble High Court of Madras in the case of ***M/s. Modular Auto Ltd. vs. Commissioner of Central Excise, Chennai – 2018 (8) T.M.I. 1691 (Mad.)*** and stresses that the issue involved in the case on hand is no more *res integra*.

5. Ld. AR appearing for the Revenue however supported the findings of the lower authorities.

6. I have considered the rival contentions, perused the documents placed on record and have also gone through the Orders/judgements referred to during the course of arguments.

7.1 On a perusal of the Order-in-Original and the findings of the adjudicating authority, I find that there was only an allegation that the appellant's Attibele Unit amounted to an activity of carrying out intermediate production process as job work. This was rebutted by the appellant by saying that the further manufacturing activities were done at their Hosur Unit which proved that the products received from its job worker/Attibele Unit were only semi-finished products.

7.2 At page 6 of the impugned Order, I find that the adjudicating authority has recorded both the Department's allegation as well as the appellant's reply. He has also noted that in the invoice raised by the Attibele Unit they have mentioned that they were the manufacturers of "HM/HDPE, LDPE, LLDPE BAGS……AND EMBOSSIED SHEET ROLLS ETC." which clearly showed to him that the appellant's Attibele Unit is manufacturing and supplying goods to the appellant's Hosur Unit for further manufacturing process and thus concludes that the appellant's plea was not right. The assessing officer cannot conclude a proceeding based on his assumptions or presumptions; he has to weigh each case on the facts unearthed as a result of investigation. When there are allegations and counter-allegations, it is expected that a further investigation be done, to unearth the real facts. The assessing officer without any reference to any further investigation and by simply relying on the invoice which did not even specify whether they are manufacturing those items for the assessee alone, has concluded the proceedings to hold it against the assessee. Unfortunately, the Commissioner (Appeals) has also upheld this Order.

7.3 It is a settled position of law that the jurisdiction of the Central Excise authorities is specific and equally so when it comes to the questioning of correctness, legality or otherwise of the tax paid by the service providers, by the Central Excise Officers having jurisdiction over the service recipients/assessees availing the credit.

8. In view of the above and in the light of judicial pronouncements, I am of the considered opinion that the demand sustained by the Commissioner (Appeals) in the impugned Order is incorrect and unsustainable for which reason I set aside the same.

9. The appeal is therefore allowed with consequential reliefs, if any, as per law.

(Operative part of the order was pronounced in open Court)

(P Dinesha)
Member (Judicial)

Sdd