CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL CHENNAI

Regional Bench – Court No. III

Excise Appeal No. 40034 of 2019

(Arising out of Order-in-Appeal No. 473/2018 (CTA-II) dated 28.09.2018 passed by the Commissioner of G.S.T. & Central Excise (Appeals-II), Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

M/s. National Plastic Technologies Ltd., **: Appellant**
C-12, SIPCOT Industrial Park,
Irungattukottai, Sriperumbudur Taluk,
Kancheepuram Dist. – 602 105

VERSUS

The Commissioner of G.S.T. & Central Excise, **: Respondent**
Chennai Outer Commissionerate,
Newry Towers, No. 2054/1, II Avenue,
12th Main Road, Anna Nagar,
Chennai – 600 040

APPEARANCE:

Shri. T.R. Ramesh, Advocate for the Appellant

Shri. L. Nandakumar, Authorized Representative for the Respondent

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)

FINAL ORDER NO. 40664 / 2019

DATE OF HEARING: 12.04.2019

DATE OF DECISION: 12.04.2019

Brief facts are that the appellants are engaged in the manufacture of Interior and Exterior Parts of Passenger Cars, parts of Air Conditioner, parts of Washing Machine, etc., falling under Chapter Headings 85 and 87 of the Central Excise Tariff Act, 1985. They are availing CENVAT Credit of duty paid on inputs, capital goods and service tax paid on input services.

2.1 During the course of audit of accounts, it was noticed that they had declared receipt of amounts of Rs. 66,98,571/-, Rs. 6,56,793/- and Rs. 49,108/- under job work charges for the periods 2012-13, 2013-14 and 2014-15 respectively. On enquiry, it was informed that the appellants carried out job work for M/s. Valeo Lighting Systems India Pvt. Ltd., Vallam, Sriperumbudur. The job work carried out by the assessee was conversion of polypropylene material into 'Automobile Lighting Equipment Parts' by the process of injection moulding. The movement of materials for job work was carried out under job work challans. On further enquiry, the appellant stated that they collected job work charges only as their customer was the manufacturer who used the said goods as inputs/intermediate goods in further manufacture and paid Excise Duty on the same.

2.2 According to the Department, the said activity of carrying out an intermediate production process is job work in relation to any goods on which appropriate duty is payable by the principal manufacturer and is exempted from payment of service tax initially by Notification No. 12/2012-ST dated 17.03.2012 vide Sl. No 30(c) and later by Notification No. 25/2012-ST dated 20.06.2012 vide Sl. No. 30(c). Earlier, the said job work activity was covered under the category of 'Business Auxiliary Service' and such exemption was available in the definition of 'Business Auxiliary Service' itself. Therefore, it appeared to the Department that the job work activity carried out by the appellant is liable to be treated as an exempted service.

2.3 The Department arrived at the conclusion that the appellant is engaged in the manufacture of dutiable goods as well as provision of exempted service of job work and used common input services such as Manpower for the manufacture of dutiable goods as well as for providing exempted services. As per Rule 6(1) of the CENVAT Credit Rules, 2004, the appellant is not eligible for CENVAT Credit in respect of inputs and input services used in the manufacture of exempted goods or in providing exempted services and in such cases, the appellant has to maintain separate accounts. If the appellant opts not to maintain separate accounts, they have to reverse the credit or pay 5%/10% of the value of the exempted goods or services.

2.4 That the appellant did not comply with the provisions contained in Rule 6(3) of the CENVAT Credit Rules, 2004 for which, a Show Cause Notice was issued proposing to recover the irregularly availed credit along with interest and also for imposing penalties. After due process of law, the Original Authority confirmed the demand of Rs. 4,44,268/- along with interest and also imposed equal penalty under Rule 15(2) of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

In appeal, the Commissioner (Appeals) vide impugned order dated 28.09.2018 upheld the same. Hence, this appeal.

3. On behalf of the appellant, Ld. Advocate Shri. T.R. Ramesh appeared and argued the matter. He filed written submissions which can be summarized as under :

(i) The period involved is from April 2012 to March 2015. For the period prior to 01.07.2012, the definition of 'Business Auxiliary Service' excludes manufactured goods from its purview. The definition clearly stated that any process undertaken for or on behalf of the client, does not include "any activity that amounts to manufacture of excisable goods" for the purpose of classification of the activity under Business Auxiliary Services.

(ii) For the period after 01.07.2012, the Negative List of services under Section 66D of the Finance Act, 1994 explained that "services by way of carrying out any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption" is not taxable. Accordingly, the Negative List applies only in respect of processes amounting to manufacture of goods which are not excisable.

(iii) The term 'excisable goods' is referred to under Section 2(d) of the Central Excise Act, 1944. The activity of the appellant is manufacturing of intermediate products required for the manufacture of excisable goods. The principal manufacturer is paying Central Excise Duty on the finished products. The raw materials are supplied to the appellant by the principal manufacturer under the provisions of Rule 4(5)(a) of the CENVAT Credit Rules, 2004.

(iv) The Department does not have a case that the activity carried out by the appellant does not amount to manufacture. So also, the emergence of a new excisable product after the activity carried out by the appellant is not disputed. Therefore, the activity carried out by the appellant being a process of manufacture, the allegation of the Department that the appellant is providing an exempted service is an erroneous interpretation of law. The demand raised on this misconception of law cannot sustain.

4. Ld. AR Shri. L. Nandakumar appearing on behalf of the respondent supported the findings in the impugned order. He emphasized on Sl. No.

30(c) of Notification No. 25/2012. He submitted that any intermediate production process carried out by the appellant as job work in relation to any goods on which appropriate duty is paid by the principal manufacturer, is regarded to be an exempted service. The appellants having provided exempted service as well as manufactured dutiable products, cannot avail CENVAT Credit on Manpower Recruitment or Supply Agency Services which are input services common to both manufacture of finished goods and exempted services. Therefore, the demand raised is legal and proper.

5. Heard both sides.

6.1 The allegation is mainly based on Sl. No. 30(c) of Notification No. 25/2012 which is the Mega Exemption Notification. The relevant portion of the same is reproduced as under :

"30. Carrying out an intermediate production process as job work in relation to-

(a) Agriculture, printing or textile processing;

(b) Cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act, 1985 (5 of 1986);

(c) Any goods on which appropriate duty is payable by the principal manufacturer; or

(d) Processes of electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black, during the course of manufacture of parts of cycles or sewing machines up to an aggregate value of taxable service of the specified processes of one hundred and fifty lakh rupees in a financial year subject to the condition that such aggregate value had not exceeded one hundred and fifty lakh rupees during the preceding financial year."

6.2 For better appreciation, the definition of 'Business Auxiliary Service' prior to 01.07.2012 is also reproduced as under :

" 'business auxiliary service' means any service in relation to –

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[(v) production or processing of goods for, or on behalf of, the client;]

but ***does not include any activity that amounts to manufacture of excisable goods.****"*

(Emphasis added)

7.1 The said definition would show that any activity which amounts to manufacture of excisable goods is not subject to levy of service tax under the category of 'Business Auxiliary Service'. After 01.07.2012, the Negative List of services under Section 66D of the Finance Act, 1994 specifically stated that any process that is carried out for manufacturing of goods is not subject to levy of service tax. A careful reading of paragraph 30 of Notification No. 25/2012 in this background would show that 'carrying out' an intermediate production process as job work in relation to any goods on which appropriate duty is payable by the principal manufacturer, is not taxable.

7.2 The Department has been carried away by these words to hold that when the appellant has carried out an activity on the intermediate products, such activity is an exempted service. Interestingly, the Department does not have a case that the appellant is not engaged in the manufacture of goods. The Show Cause Notice itself starts with the averment that the appellant is "engaged in the manufacture of Interior and Exterior Parts of Passenger Cars, …". Thus, when the process carried out by the appellant amounts to manufacture, the very same activity cannot be considered as a service. Merely because the said activity is carried out on an intermediate product, Sl. No. 30(c) cannot be applied. Sl. No. 30 states "an intermediate production process as job work", but does <u>not</u> say that 'such process will include manufacturing process'. When the activity of manufacture is subject to Central Excise Duty, the very same activity cannot be subjected to levy of Service Tax. The entire Show Cause Notice is based on a wrong perspective or interpretation of law. The appellant is not engaged in providing any exempted service.

8. The demand, therefore, cannot sustain. The impugned order is set aside.

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

(Dictated and pronounced in open court)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

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