

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL,
SOUTH ZONAL BENCH, CHENNAI
COURT HALL No.III**

EXCISE APPEAL No.40769 OF 2014

(Arising out of Order-in-Original No.3/2014-Cx. dt. 27.01.2014 passed by
Commissioner of Central Excise and Service Tax, No.1, Williams Road,
Cantonment, Tiruchirappalli 620 001)

M/s.M.M. Forgings Ltd.

Plant No.2, Erasanayakanpatti,
Fathimanagar Post,
Viralimalai - 621 316
Pudukottai District.

.... Appellant

Versus

The Commissioner of GST & Central Excise,

Tiruchirapalli Commissionerate,
No.1, Williams Road, Cantonment,
Tiruchirapalli-620 001.

...Respondent

APPEARANCE :

Ms. J. Ragini, Advocate
For the Appellant

Mr. Harendra Singh Pal, Assistant Commissioner (A.R)
For the Respondent

CORAM :

**HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

Date of Hearing : 30.10.2023
Date of Decision : 30.10.2023

FINAL ORDER No.40968/2023**ORDER : Per Ms. SULEKHA BEEVI C.S.**

Brief facts are that the appellant is engaged in manufacture of forgings and are also registered with the Central Excise Department. During the course of audit of accounts, it was noticed by the department that the appellant has received raw materials like Steel Bars, Steel Rounds from M/s.Tractor Engineers Ltd., Pune (TENGE) for conversion into forgings on job work basis. After the job work, the appellant cleared the forgings to M/s.TENGE without payment of duty. The appellant received conversion charges for the job work of manufacture of forgings. The appellant also manufactured forgings as an independent manufacturer on their own account and cleared these forgings on payment of duty. It was found that the inputs in the nature of bars for Dies, Welding Rods, Furnace Oil, Steel sheets, Lubricants and LPG, and input services like GTA, Manpower and Courier had been commonly used by the appellant in the manufacture of their own dutiable final products as well as in the manufacture of forgings which was cleared to M/s.TENGE without payment of duty. The Department was of the view that the goods cleared to M/s.TENGE without payment of duty has to be construed as exempted goods and that the appellant has to maintain separate accounts of inputs and input services used in relation to the

manufacture of dutiable goods and those in relation to the goods manufactured on job work basis and cleared to the principal manufacturer without payment of duty. According to the department, the appellant has to reverse the credit that is attributable to the exempted goods (goods cleared to the principal manufacturer). Show cause notice dt. 09.05.2013 was issued for the period 2008-09 to 2012-13 upto June 2012 proposing to demand credit availed on common inputs and input services for dutiable goods and exempted goods. After due process of law, the original authority confirmed the demand, interest and imposed penalties. Aggrieved by such order, the appellant is now before the Tribunal.

2. The Ld. Counsel Ms. J. Ragini appeared and argued for the appellant.

2.1 It is submitted by the counsel that as per the purchase order, for job work, the tax/duty on the dutiable products has to be paid by the principal manufacturer. The forgings cleared to the principal manufacturer M/s.TENGEL cannot be considered as exempted goods. These are dutiable goods and the duty is discharged by the principal manufacturer. This being so, the appellant is not required to maintain separate accounts, for the inputs and input services used in regard to goods manufactured on job work basis and on their own account. Show cause notice has been issued on erroneous understanding of provision of law and also on the wrong assumption that the goods cleared to the principal manufacturer is exempted goods. The appellant is not clearing any exempted goods.

2.2 The Ld. Counsel relied upon the decision of the Hon'ble Apex Court in the case of *Escorts Ltd. Vs CCE Delhi - 2004 (171) ELT 145 (SC)* to argue that in the said case, the Hon'ble Apex Court reversed the judgment of the Tribunal wherein it was held that when the goods have been cleared to another factory of the assessee without payment of duty, the credit availed on common inputs and input services is not eligible. The Hon'ble Apex Court held that when the final product is subject to duty, the credit cannot be denied.

2.3 The Larger Bench of the Tribunal in the case of *Sterlite Industries (I) Ltd. Vs CCE Pune - 2004 (12) TMI 108 CESTAT MUMBAI* was relied by the counsel to submit that the Larger Bench considered the issue as to whether the credit of duty paid on the inputs used in the manufacture of final products cleared without payment of duty for further use in the manufacture of final product which is cleared on payment of duty by the principal manufacturer would be hit by the provisions of Rule 57C (erstwhile Modvat Credit Rules which stated that credit cannot be availed on exempted goods). The issue was answered in favour of the assessee as decided by the Hon'ble Supreme Court in the case of *Escorts Ltd. (supra)*.

2.4 Ld. Counsel also relied upon the decision of the Tribunal in the case of *Deccan Alloys Pvt. Ltd. Vs CCE Chennai-III - 2018 (9) TMI 1058 - CESTAT CHENNAI* to argue that the facts are almost similar to the case on hand and it was held by the Tribunal that there is no requirement to maintain separate accounts. Ld. Counsel prayed that the appeal may be allowed.

3. Ld. A.R Shri Harendra Singh Pal appeared for the Department. It is submitted by the Ld. A.R that the forgings cleared to the principal manufacturer has been cleared without payment of duty. The appellant has also manufactured forgings on their own account and cleared them on payment of duty. Those forgings cleared without payment of duty has to be considered as exempted goods and therefore Rule 6 (3) has to be followed by the appellant. The appellant having not maintained separate accounts, is liable to reverse the credit or pay 10% / 5% / 6% as applicable to the exempted goods. It is prayed that the appeal may be dismissed.

4. Heard both sides.

5. We have to say that show cause notice has been issued alleging that the appellant has cleared the final product to the principal manufacturer without payment of duty and also cleared the final product manufactured on its own account by paying duty. It is thus the case of the department that the appellant has cleared exempted goods as well as dutiable goods. The department has consciously not used the words 'exempted goods' in the SCN and has stated 'goods cleared without payment of duty'. Rule 6 (1) bars the availment of credit on exempted goods. By invoking Rule 6 (3) the department has assumed the goods cleared without payment of duty as exempted goods.

6. On perusal of the facts as brought out from the records we understand that goods cleared to the principal manufacturer has suffered duty at the hands of the principal manufacturer. This being

so, the final product cleared by the appellant to the principal manufacturer cannot be considered as exempted goods. All the products cleared by the appellant viz. forgings are dutiable products and has suffered duty at the hands of the appellant or the principal manufacturer. Then, Rule 6 (3) does not come into application. The appellant is not liable to reverse the credit.

7. The issue was considered by the Hon'ble Apex Court in the case of Escorts Ltd. (supra) wherein the Hon'ble Apex Court held that when the final product has been subject to duty, it cannot be said that intermediate product which is cleared without payment of duty is an exempted good for compliance with the provisions of Rule 57C of erstwhile Modvat Credit. Relevant para of the judgment reads 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.

9. In cases of manufacturers like the Appellants the final product is the tractor. The intermediate product would be parts which are manufactured for being used in the tractor. In such a case the parts would not be the final product. Thus Rule 57C would have no application. The mere fact that the parts are cleared from one factory of the Appellants to another factory of the Appellants would not disentitle the Appellants from claiming benefit of Notification No. 217/86-C.E., dated 2nd April, 1986. As stated above, the Notification itself clarifies that the inputs can be used within the factory of production or in any other factory of the same manufacturer.

10. Mr. Lakshmikumaran relied upon the decision of this Court in the case of *Collector of Central Excise, New Delhi v. Hindustan Sanitaryware & Industries* reported in [2002 \(145\) E.L.T. 3](#) (S.C.), wherein, in respect of this very Notification, this Court has held that so long as duty is paid on the final product, the mere fact that duty was not paid on the intermediate product would not disentitle the

manufacturer from the benefit of Notification No. 217/86-C.E., dated 2nd April, 1986. In that case, the input was plaster of paris, the intermediate product was moulds made out of the plaster of paris, the final product was sanitaryware. In our view, the facts of that case are identical to the facts of the present case. The ratio laid down therein fully applies to this case.

11. In this view of the matter, we set aside the impugned Judgment and the Order of the Commissioner of Central Excise. It is held that the Appellants will be entitled to Modvat credit on duties paid for the inputs used for manufacture of parts, so long as the parts are used in the manufacture of tractors on which duty is paid. We clarify that in respect of parts which are sold in the open market and/or used for manufacture of tractors on which no duty is paid, the benefit of the Notification No. 217/86-C.E., dated 2nd April, 1986 may not be available.”

8. The Larger Bench of the Tribunal in the case of *Sterlite Industries (I) Ltd.* (supra) had occasion to consider a similar issue and held as under :

“3. We are also in agreement with the appellant's contention that Rule 57C debars taking of credit in respect of the inputs used in the manufacture of the final product, if final product is exempted from the whole of duty of excise leviable thereon or chargeable to nil rate of duty. As such, to attract the provisions of Rule 57C, two situations in respect of the final product should be satisfied. Either the final product should be exempted, which situation can arise only when there is an exemption notification issued under Section 5A of the Central Excise Act or the final product is chargeable to nil rate of duty. Expression chargeable to nil rate of duty or exempted from whole of duty was considered by the Tribunal in the case of *Orissa Synthetics Ltd. v. Collector of Central Ex.* [1995 (77) E.L.T. 350 (Tri.)] and after taking note of the Ministries clarifications issued vide Circular No. 10/75/CX.6. it was held that clearance under goods under provision of 191BB for export without payment of duty would not get covered by the above expression. Reference was made to the advice received from the Ministry of Law dealt in the paragraph of 9 in the said decision. It was opined in the said letter of the Law Ministry that the term 'exempted' has a definite connotation. The same as attributed to the notification issued by the Central Government. Similarly, the chargeable to nil rate of duty would refer to the tariff rate being nil and the goods cleared in terms of provision of Rule 199BB would not be covered by the said expression inasmuch as the same are not chargeable to nil rate. In the present case, we find the job worker could have cleared the goods on payment of duty and manufacturer could have claimed credit of the same. It is only under the special procedure laid down in terms of the Rule 57F(3) that the duty does not get paid at the job worker's end at the time of clearance of the goods, but ultimately gets paid at the manufacturer's end. In these

circumstances, we are in agreement with the decision rendered in the case of Bajaj Tempo and Jindal Polymers.

3. Apart from the above two decisions, we also note that identical view was taken in the case of Shakti Insulated Wires Ltd. v. CCE & C, Mumbai-V [2002 (149) E.L.T. 668 (Tri.) = 2002 (51) RLT 115 (CEGAT-Mum)] & also in the case of CCEx, Jaipur v. Noorani Textiles Mills [2000 (122) E.L.T. 744 (Tribunal)].

4. In only case of Escorts Ltd. v. CC Ex, Delhi (2003 (160) E.L.T. 623 (Tri-Del.)) while interpreting Rule 57C of the Central Excise Rules, the Tribunal rejected the appellants claim of Modvat credit of duty paid on the inputs used in the manufacture of the parts, which were cleared without payment of duty to, appellant's other unit under Chapter X procedure and utilised in the manufacture of tractor which were cleared on payment of duty by observing that since no duty was paid on the part at the time of clearance, Rule 57C will apply and no Modvat credit would be admissible. However, the said decision was subsequently reversed by the Supreme Court as reported in Escort v. C.C.Ex. [2004 (171) E.L.T. 145 (S.C.)]. For appreciation, We reproduce paragraphs 8 & 9 of the said decision.

"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 may also come into existence. Thus in cases where intermediate product comes into existence, even though no duty has been chargeable to Nil rate of duty, credit would still be allowed so long as duty is paid on the final product.

9. In cases of manufacturers like the Appellants the final product is the tractor. The intermediate product would be parts which are manufactured for being used in the tractor. In such a case the parts would not be the final product. Thus Rule 57C would have no application. The mere fact that the parts are cleared from one factory of the Appellants to another factory of the Appellants would not disentitle the Appellant from claiming benefit of Notification No. 217/86-C.E., dated 2nd April, 1986. As stated above, the Notification itself clarifies that the inputs can be used within the factory of production or in any other factory of the same manufacturer."

By applying the ratio of the above decision, it becomes clear that Modvat credit of duty paid on the inputs used in the manufacture of final product cleared without payment of duty for further utilisation in the manufacture of final product, which are cleared on payment of duty by the principal manufacturer, would not be hit by provision of Rule 57C. Inasmuch as, the matter stands decided by the Honourable Supreme Court, we would hold in favour of assessee.

5. As regards the decision in the case of Alpha Lavan laying down that the Modvat credit could be claimed in such a situation, we find the earlier decision of the Bajaj Auto was not followed. However, in view of the facts that the ratio of Bajaj Auto decision stands approved by the Supreme Court decision in the case of Escort Ltd. referred supra, we are of the view that the Alpha Lavan is no longer good law.

6. In view of the foregoing, we answer the reference in favour of the assessee. The papers may be placed orders. before the original Bench for passing the appropriate orders.”

9. The Tribunal in the case of *Deccan Alloys Pvt. Ltd. Vs CCE Chennai* (supra), had considered the very same issue in which the facts are almost similar. Relevant para of the Final Order reads as under :

“7. The show cause notices from which the proceedings are initiated have found fault with the appellants for not having maintained separate accounts for common input (furnace oil) on the ground that such input is being used in the manufacture of dutiable goods manufactured on the appellant's own goods and goods manufactured on job work for principal manufacturer. No duty has been discharged by appellants. The adjudicating authority has found merit with the arguments of appellants that Notification No.214/86-CE is not an exemption Notification but it is merely postponing payment of duty at the time and removal of finished goods by principal manufacturer. However having come to this conclusion, the adjudicating authority has held that there is yet another condition that input should be used by manufacturer of final products, and has held that since appellants are not manufacturer of final products, the credit availed on furnace oil used by them for job work basis cannot be allowed since the same are not used for final products of the appellants. This being so, we find merit in the Ld. Advocate's contention that adjudicating authorities have gone beyond the scope of the SCNs. The adjudicating authorities have surely changed the goal post to a proposition which was not at all presented in the SCNs. On this very ground, we find that impugned orders will suffer from infirmity of having gone beyond the scope of SCNs and applying the ratio laid down in a number of cases, for example in *Commissioner Vs Marubeni India Pvt. Ltd. - 2018 (8) GSTL J143 (SC)*, *CCE Nagpur Vs Ballarpur Industries Ltd. - 2007 (215) ELT 489 (SC)*, *H.S. Nataraj Vs CCE Bangalore - 2016 (338) ELT 674 (Kar.)*, *Tube Products of India Ltd. Vs CCE Chennai - 2007 (216) ELT 245 (Tri.-Chennai)* and in *Varsed Detective & Security Pvt. Ltd. Vs CCE Jaipur - 2017 (5) GSTL 327 (Tri.-Del.)*, we find that impugned orders cannot be sustained.

8. Even on merits, we find that the matter is amply covered by the Tribunal in *Federal Mogul Goetze India Ltd. Vs CCE Bangalore - 2015*

(318) ELT 340 (Tri.-Bang.) where inter alia, it was held that Notification No.214/86-CE, though issued under Section 5A of Central Excise Act, 1944, is not *per se* an exemption notification. The relevant portion of the order is reproduced below :

“10.2 The Notification 214/86, though has been issued under Section 5A of the Central Excise Act, the same is not an exemption notification *per se*. A job worker who undertakes the job work which is amounting to manufacture is, legally, the manufacturer. In respect of goods manufactured on job work basis cleared by the job worker, he is required to pay excise duty due at the time of clearance of job-worked goods to the raw material supplier. Notification 214/86 basically provides an option to the job worker not to pay the excise duty if the raw material supplier undertakes to pay the excise duty on the said products and undertakes to use them for further manufacture of excisable goods which are ultimately cleared on payment of duty. In other words, it does not exempt the duty on the job-worked items but it merely shifts the liability to a person other than the job worker and also shifts the date of payment of duty that is instead of reckoning from the date of clearance from the premises of the job worker, the same is to be reckoned from the date of clearance by the principal manufacturer (the person who supplied material to the job worker for the purpose of getting job work done). To consider this notification as an unconditional notification and to hold that the job worker-appellant should not have paid the duty may not be appropriate.

10.3 There is another reason for not forcing any job worker to avail the benefit of Notification No. 214/86-C.E., dated 25-3-1986. The job worker is not expected or required to know the nature of disposal of job-worked goods sent by him to the supplier. The condition regarding payment of the duty on the final products manufactured using job-worked items sent by the job worker is to be fulfilled by the principal manufacturer. The job worker cannot be expected to compel the principal manufacturer to take over the responsibility of payment of duty on the job-worked items. Unless the supplier of the raw materials or semi-finished goods gives an undertaking to the jurisdictional central excise authority in charge of the job worker for discharging the liabilities in respect of Central Excise duty leviable on the finished products, the question of job worker even opting for the same does not arise.”

9. The Tribunal in the above case had relied upon Tribunal's Larger Bench decision in *Sterlite Industries (I) Ltd. Vs CCE Pune* 2005 (183) ELT 353 (Tri.-LB), where, relying upon the ratio laid down by Hon'ble Apex Court's in *Escorts Ltd. Vs Commissioner – 2004 (171) ELT 145 (SC)*, it was inter alia held that “*modvat credit of duty paid on inputs used in manufacture of final product cleared without payment of duty for further utilisation in manufacture of final product, which are cleared on payment*

of duty by principal manufacturer, not hit by provisions of Rule 57C of erstwhile Central Excise Rules, 1944.” The appeal against the said *Sterlite* decision was rejected by the Hon’ble High Court of Bombay as reported in 2009 (244) ELT A89 (Bom.).

10. In the event, we find in favour of the appellants. Impugned orders cannot then sustain and will require to be set aside which we hereby do. All the appeals are allowed with consequential relief, if any, as per law.”

10. After appreciating the facts as well as the evidence placed before us, and following the decisions cited supra, we are of the considered opinion that the demand cannot sustain. The impugned order is set aside. Appeal is allowed with consequential relief, if any.

(dictated and pronounced in court)

sd/-

(VASA SESHAGIRI RAO)
Member (Technical)

sd/-

(SULEKHA BEEVI C.S.)
Member (Judicial)

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