CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. I

Excise Appeal No. 40468 of 2015

(Arising out of Order-in-Appeal No. 21/2014 (M-III) dated 01.12.2014 passed by Commissioner of Central Excise (Appeals), No. 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

M/s. Deccan Alloys Private Ltd. **...Appellant**
No. 62, SIPCOT Industrial Complex,
Hosur – 635 126.

Versus

Commissioner of GST and Central Excise **...Respondent**
Chennai III Commissionerate,
No. 26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034.

APPEARANCE:

For the Appellant : Shri A.S. Monappa, Advocate
For the Respondent : Shri Harendra Singh Pal, Authorized Representative

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No. 40825 /2024

DATE OF HEARING : 10.06.2024
DATE OF DECISION : 09.07.2024

Order : [Per Mr. VASA SESHAGIRI RAO]

Brief facts of the Excise Appeal No. 40468 of 2015 are that the Appellant *viz.,* M/s. Deccan Alloys Pvt. Ltd. are engaged in the manufacture of TMT Bars, Angles, Rounds, Flats, *etc.,* and are availing CENVAT credit on input and input services under CENVAT Credit Rules, 2004. The appellant is manufacturing the above goods on their own amount and also on Job Work basis to their principal *viz.,* M/s. Bhuwalka Alloys Private Limited, Bangalore.

1.2 The Appellant had availed CENVAT credit on the Furnace Oil which was used for re-heating the ingots / billets used in manufacture of the finished goods, manufactured on their own account and also on job work basis. The ingots / billets were received for conversion into TMT Bars on job work basis, under challans in terms of Rule 4(5)(a) of the CENVAT Credit Rules, 2004 and the finished goods were sent back to the principal manufacturer after job work without payment of duty in terms of Notification No. 214/86 dated 25.03.1986

1.3 The Appellant was issued with a Show Cause Notice No. 18/2012 dated 29.06.2012, proposing to demand CENVAT credit taken on that quantity of Furnace Oil used in the manufacture of job worked goods amounting to Rs.45,03,502/- for the period from June 2011 to December 2011 along with interest and also for imposition of penalty.

1.4 After due process of law, the above Show Cause Notice was adjudicated by the Additional Commissioner *vide* Order-in-Original No. 02/2013 dated 21.03.2013 confirming the demand for Rs.45,03,502/- along with interest and imposed penalty of Rs.45,03,502/- on the appellant. Aggrieved, the appellant has filed an appeal before the Commissioner of Central Excise (Appeals) who has upheld the Order-in-Original dated 21.03.2013 *vide* his Order-in-Appeal dated 01.12.2014 on the ground that the usage of input in the manufacture of final product is the essential condition that ought to be satisfied by the person availing CENVAT credit and that the appellant who availed CENVAT credit on Furnace Oil as a job worker had no *locus standi* to stake a claim that the job worked goods were indeed used in the final product, when its usage or otherwise by the principal was beyond his control. As such, Appellant's claim for CENVAT credit on Furnace Oil which has been used in or in relation to the manufacture of final products for the principal manufacturer was rejected. Being aggrieved, the Appellant came before this forum.

1.5 The notice was issued on the premise that the goods cleared in terms of Notification No. 214/86-CE dated 25.03.1986 were exempted goods and therefore the Appellant was required to maintain separate inventory of accounts and inputs used in the manufacture of dutiable goods and exempted goods. Therefore, the Appellant were required to pay an amount equal to 10% / 5% on the value of exempted goods in terms of Rule 6(3)(b) / 6(3)(i) of the CENVAT Credit Rules, 2004. However, the main contention of the Appellant was that the job worked goods cannot be treated as exempted goods as the Notification No. 214/86-CE dated 25.03.1986 was not an exemption notification and that duty payment is merely postponed and the liability to duty payment is placed on the principal manufacturer who have supplied the raw-materials.

3.1 Representing the appellant, the Ld. Advocate A.S. Monappa has argued that they availed CENVAT credit on Furnace Oil as a Job Worker, that MS Ingots and MS Billets received from the principal manufacturer were converted into rolled products which themselves are finished products and which are cleared by the principal manufacturer on payment of duty. He has mainly contended that the manufactured goods cleared by the job worker without payment of duty after job work under the provisions of Notification No. 214/86-CE dated 25.03.1986 were not exempted goods, so as to attract the mischief of CENVAT Credit Rules and therefore the provisions could not be made applicable in their case and the appellant was not required to reverse the CENVAT credit on the Furnace Oil used in or in relation to the manufacture of the job worked goods.

3.2 It was submitted that the credit taken and utilized by the appellant on the furnace oil used in the manufacture of job work goods for heating the M S Ingots/Billets was for and on behalf of the Principal manufacturer and these are final products and only the onus of payment of duty is cast on the Principal manufacturer. Merely because duty liability is discharged by the principal manufacturer in respect of such job worked goods, the said goods manufactured by the Appellant would not cease to be the final products of the appellant.

3.3 Further, the Ld. Counsel has submitted that in the Show Cause Notice the said demand was proposed on the ground that CENVAT credit was availed of the duty paid for entire quantity of furnace oil received by the appellant and the furnace oil stored in the tanker was used in the manufacture of both dutiable goods as well as exempted TMT bars and that the exempted goods were those goods manufactured under job work scheme by virtue of Notification No.214/86- CE. But, in the impugned order, the demand was confirmed on the ground that the credit taken and used by the appellant on the quantity of furnace oil used in the manufacture of job work goods was inadmissible as the furnace oil used by the appellant for manufacture of rolled products on job work basis did not satisfy the definition of "inputs" as such rolled products are the final products of the principal manufacturer and not final products of the appellants. Hence demand confirmed in the impugned orders is altogether on a different ground which was not canvassed in the SCN and it is beyond the scope of the SCN. Merely because the duty liability is discharged by the principal manufacturer in respect of such job work goods, the said goods manufactured by the appellant does not cease to be the final product of the appellant. Under the said notification, the job worker is the manufacturer of the final product but the duty is discharged by the principal manufacturer on the said goods on behalf of the job worker in terms of the said Notification.

3.4 The Notification No. 214/86-CE dt. 25.03.1986 does not exempt the goods manufactured by a job worker unconditionally but merely postpones the time of payment of duty and shifts the liability to pay duty on the principal manufacturer. The goods cleared by the appellant without payment of duty after job work under Notification No. 214/86, are therefore not exempted goods. In support of their contention that job worked goods are not exempted goods and the Notification No. 214/86-CE dated 25.03.1986 is not an exemption Notification and they have correctly availed CENVAT credit on Furnace Oil used in job work. The appellant has relied on the case laws as given below:-

i. *Commissioner of Central Excise, Ludhiana Vs. Modi Sales [2010 (253) ELT 782 (P&H)]*
ii. *Vishal Pipes Ltd. Vs. Commissioner of Central Excise, Noida [2011 (263) ELT 81 (P&H)]*
iii. *Commissioner of Central Excise Vs. Happy Forging Ltd. [2011 (265) ELT 197 (P&H)]*

3.5 He has also averred that the imposition of penalties is unjustified since there has been no suppression of facts on the part of appellants with intent to evade payment of duty. They were under a *bonafide* belief that they were eligible for CENVAT credit on the input (furnace oil) used in the manufacture of the final product both for on their own behalf and on behalf of the principal manufacturer.

4. The Ld. Authorised Representative Shri Harendra Singh Pal have reiterated the findings of the Lower Adjudicating Authorities. He has contended that as the goods manufactured under job work notification cannot be treated as final goods to become eligible to avail CENVAT credit on the Furnace Oil which

was used both for their own manufactured goods and also for job worked goods, CENVAT credit availed is liable to be recovered.

5. We have heard both the sides and considered the evidences available on record.

6. The only issue that is required to be decided in this appeal is whether the appellant is eligible for availing CENVAT Credit on Furnace Oil used for manufacture of job worked goods. Any manufacturer is eligible to avail CENVAT credit on inputs and input services used in the manufacture of excisable goods and for provision of taxable output services subject to certain conditions and restrictions in terms of CENVAT Credit Rules, 2004. In case of job work, the principal manufacturer can transfer inputs, raw materials or even semi-finished goods to the job worker for carrying any process or operation to make them fully finished and the duty liability has to be discharged on such manufactured goods either by the principal manufacturer or by the job worker.

7. As per Rule 2(n) of the CENVAT Credit Rules, 2004, and explanation in the Notification No. 214/86-CE dated 25.03.1986, 'Job Work', means processing or working upon of raw materials or semi-finished goods supplied to the job worker, so as to complete a part or whole of the process resulting in the manufacture of finishing of an article or any operation which is essential for aforesaid process.

8. It appears that the case of the Department is that on harmonious reading of Rule 2(K) and Rule 6 of the CENVAT Credit Rules, 2004 would reveal that to avail CENVAT credit of duty paid on the inputs, two conditions have to be satisfied. The first condition is that the input should be used in the factory by the manufacturer of the final products and the other condition being that the inputs should not be used in the manufacture of exempted goods. The furnace oil used by the Appellant for heating the MS Ingots / Billets for the manufacture of rolled products on his own account satisfies the definition of the term 'input' but the furnace oil used in the manufacture of finished goods on behalf of the principal manufacturer does not satisfy the definition of inputs, as the rolled products manufactured on job work basis are the final products of the principal manufacturer and not the final products of the Appellant.

9. We find that the above issue is no more *res integra* as in the appellant's own case, the issue was decided in favor of the appellant for the earlier periods by the Tribunal *vide* its Final Order Nos. 42077-42079/2018 dated 18.07.2018. The relevant portion of the decision is extracted below:-

> *"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 jobworked 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.*
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> *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. In view of the above, we order to set aside the impugned order dated 01.12.2014 passed by the Commissioner of Central Excise (Appeals), Chennai. Consequently, the appeal is allowed with consequential relief, if any, as per the law.

(Order pronounced in the open court on 09.07.2024)

Sd/-	Sd/-
(VASA SESHAGIRI RAO)	**(P. DINESHA)**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

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