IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Excise Appeal Nos.41544 to 41546 of 2013

(Arising out of Order in Appeal No. 147/2013 MIV), No. 116/2013 (MII) and 117/2013 (MII) dated 26.3.2013 passed by the Commissioner of Central Excise and Service Tax (Appeals), Chennai)

M/s. Greaves Cotton Ltd. **Appellant**
Petrol Engines Unit
F62 & F63, SIPCOT Industrial Complex
Gummidipoondi 601 201.
Tiruvallur District

Vs.

Commissioner of GST & Central Excise **Respondent**
Chennai Outer Commissionerate
Newry Towers, No. 2054, I Block
12th Main Road, Anna Nagar
Chennai – 600040.

APPEARANCE:

Ms. Pallavi Ganesh, Advocate for the Appellant
Shri S. Balakumar, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order Nos. 40226 - 40228/2023

Date of Hearing: 28.03.2023
Date of Decision: 31.03.2023

Per M. Ajit Kumar,

These appeals are filed by M/s. Greaves Cotton Ltd. against the Order in Appeal No. 147/2013 MIV), No. 116/2013 (MII) and 117/2013 (MII) dated 26.3.2013.

2. The facts of the case are that the appellants are manufacturers of IC Engines, Power Driven Pumps and Gen Sets falling under Chapter 84079010, 84137093 and 85021320 respectively of CETA, 1985. It was noticed that the appellant had cleared raw materials such as aluminum ingots / rough castings to various job workers for rough

casting / machining and had not received back the recoverable scrap arisen in the job worker's premises. The duty thereon had also not been discharged by the appellant thereby the same were confirmed under relevant provisions of the Central Excise Act and Rules by the adjudicating authorities. The learned Commissioner (Appeals) has held that the duty on the scrap generated / cleared from the workers' premises is liable to duty and the same has to be discharged by the appellant as they are the principal manufacturer. Aggrieved by the impugned order the appellants are before us.

3. The learned counsel Ms. Pallavi Ganesh appeared and argued for the appellant. She has contended that the appellant is not the manufacturer of the waste and scrap and therefore there is no liability on the appellant to pay the duty on the waste and scrap manufactured at the job worker's end. Further, the provision of Rule 4(5)(a) of the CENVAT Credit Rules, 2004 nowhere states that the waste and scrap generated at the job worker's end makes the principal manufacturer liable to payment of duty on such waste and scrap. The issue is settled in the appellant's own case for the earlier and subsequent periods vide Final Order No.41307/2017 dated 26.7.2017, Final Order No. 41710/2017 dated 18.8.2017 and Final Order No. 40621/2019 dated 28.3.2019.

4. The learned AR Shri S. Balakumar appeared for the Revenue and reiterated the findings given in the impugned order.

5. We find that the issue contained in these appeals have been considered in Final Order No.41307/2017 dated 26.7.2017. Para 2.1 of the said order is reproduced below;

> *"The lower authorities have confirmed the demand of Rs.38,034/- along with interest and imposition of penalty of Rs.5,000/-, on the*

> *ground that it is the principal manufacturer who is required to pay duty on the waste and scrap arising in the job workers factory and not returned by them to the factory of the principal manufacturer. I find that the issue is no more res integra. An identical issue was considered by the Tribunal in the case of Rocket Engineering Corporation Ltd. Vs. CCE, Pune 2006 (193) ELT 33 (Tri.-Mum.), laying down that such requirement to pay duty in the hands of the principal manufacturer exist only in erstwhile Central Excise Rule 57F (3) and there is no such provision in the subsequent CENVAT Credit Rules 2001. The said decision of the Tribunal stands upheld by the Hon'ble High Court of Bombay reported as 2008 (223) ELT 347 (Bom.)."*

The said order has been followed by other orders of this Tribunal for subsequent periods.

6. We also notice that the decision in Final Order No.41307/2017 dated 26.7.2017 was based on Rule 4(5)(a) of the Cenvat Credit Rules 2001, whereas the impugned orders have invoked Rule 4(5)(a) of Cenvat Credit Rules 2004. We have perused Rule 4(5)(a) of Cenvat Credit Rules 2004 and find that the said Rule has only been made further liberal and nowhere states that the waste and scrap generated at the job workers end makes the principal manufacturer liable to payment of duty on such waste and scrap. This position was also noted with approval in Final Order No. 40621/2019 dated 28.3.2019 in the appellant's own case.

6. In as much the legal issue involved in this appeal has already been settled, we set aside the impugned order and allow the appeals with consequential relief, if any, as per law.

(Pronounced in open court on 31.3.2023)

(M. AJIT KUMAR)
Member (Technical)

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

Rex