CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT CHENNAI

Division Bench - Court – IV

CENTRAL EXCISE APPEAL No. 41640/2014
(Arising out of Order-in-Original No. 11 & 12/2014, dated 28.05.2014 passed by Commissioner of Central Excise, Chennai IV Commissionerate, Chennai)

Oerlikon Friction Systems India Limited .. **APPELLANT**
Shed No. 50, Thirumazhisai,
SIDCO Industrial Estate,
CHENNAI – 600 124.
Tamilnadu

Vs.

Commissioner of GST & Central Excise .. **RESPONDENT**
Chennai Outer Commissionerate,
Annanagar,
CHENNAI – 600 040.

WITH

CENTRAL EXCISE APPEAL No. 41641/2014
(Arising out of Order-in-Original No. 11 & 12/2014, dated 28.05.2014 passed by Commissioner of Central Excise, Chennai IV Commissionerate, Chennai)

Oerlikon Friction Systems India Limited .. **APPELLANT**
Shed No. 50, Thirumazhisai,
SIDCO Industrial Estate,
CHENNAI – 600 124.
Tamilnadu

Vs.

Commissioner of GST & Central Excise .. **RESPONDENT**
Chennai Outer Commissionerate,
Annanagar,
CHENNAI – 600 040.

AND

CENTRAL EXCISE APPEAL No. 41814/2015
(Arising out of Order-in-Original No. 24/2015, dated 7.06.2015 passed by Commissioner of Central Excise, Chennai I Commissionerate, Chennai)

Oerlikon Friction Systems India Limited .. **APPELLANT**
Shed No. 50, Thirumazhisai,
SIDCO Industrial Estate,
CHENNAI – 600 124.
Tamilnadu

Vs.

Commissioner of GST & Central Excise .. RESPONDENT
Chennai Outer Commissionerate,
Annanagar,
CHENNAI – 600 040.

APPEARANCE:
Shri V. Ravindran, Advocate for the appellant

S/Shri S. Govindarajan, Asst. Commissioner & Arul C.Durairaj, Supdt./ARs for the respondent

CORAM: HON'BLE Mr. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER Nos. 40775-40777/2020

DATE OF HEARING: 25.09.2019
DATE OF PRONOUNCEMENT: 08.06.2020

[ORDER PER: Mr. P. VENKATA SUBBA RAO)

1. All these three appeals are on the same issue and hence being decided together.

2. Heard both sides and perused the records.

3. The appellant does the technically specialized manufacture of bonding the carbon-lining on the inner cone/dual cone cores on job work basis. They receive cones from the principal manufacturers and after processing, return the same to them. It is the case of the appellant that their manufacture was in terms of Notification No. 214/1986-CE, dated 25.03.1986 or Rule 4(5) of CCR 2004. The aforesaid notification fully exempts the goods which are manufactured by the job worker which are used in and in relation to manufacture of the final product by the main manufacturer subject to some conditions indicated therein. It is the case of the appellant that they have also operated under Rule 4(5) of CCR 2004. The aforesaid notification reads as under:

"Notification No. 214/86-CE Dated 25/3/1986

Exemption to specified items if manufactured in a factory as a job work and used in the manufacture of final products

In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), (herein after referred to as Special Importance Act), the Central Government, being satisfied that it is necessary in the public interest so to do hereby exempts goods specified in column (1) of the Table hereto annexed (herein after referred to as the "said goods") manufactured in a factory as a job work and:-

(a) used in relation to the manufacture of final products, specified in column (3) of the said Table, –

(i) on which duty of excise is leviable in whole or in part; or

(ii) for removal to a unit in a free trade zone or to a hundred per cent. export-oriented undertaking or to a unit in an Electronic Hardware Technology Park or Software Technology Parks or for supply to the United Nations or an international organisation for their official use or for supply to projects funded by them, on which exemption of duty is available under notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 108/95-Central Excises, dated the 28th August, 1995, or

(iii) for removal under bond for export, or

(iv) by a manufacturer of dutiable and exempted final products, after discharging his obligation in respect of said goods under rule 6 of the CENVAT Credit Rules, 2002; or

(b) cleared as such from the factory of the supplier of raw materials or semi-finished goods – (i) on payment of duty for home consumption (on which duty of excise is leviable whether in whole or in part); or

(ii) without payment of duty under bond for export; or

(iia) by a manufacturer of dutiable and exempted final products, after discharging his obligation in respect of said goods under rule 6 of the CENVAT Credit Rules, 2002;

(iii) without payment of duty to a unit in a free trade zone or to a hundred per cent. export-oriented undertaking or to a unit in an Electronic Hardware Technology Park or Software Technology Parks or supplied to the United Nations or an international organisation for their official use or supplied to projects funded by them, on which exemption of duty is available under notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 108/95-Central Excise, dated the 28th August, 1995, from whole of the duty of excise leviable thereon, which is specified in the Schedules to the Central Excise Tariff Act, 1985 (5 of 1986), the additional duty of excise leviable thereon, which is specified in the Schedule to the said Special Importance Act.

(2) The exemption contained in this notification shall be applicable only to the said goods in respect of which, –

(i) the supplier of the raw materials or semi-finished goods gives an undertaking to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise having jurisdiction over the factory of the job worker that the said goods shall be

(a) used in or in relation to the manufacture of the final products in his factory; or

(b) removed from his factory without payment of duty –

(i) under bond for export; or

(ii) for removal to a unit in a free trade zone or to a hundred per cent. export-oriented undertaking or to a unit in an Electronic Hardware TechnologyPark or Software Technology Parks or for supply to the United Nations or an international organisation for their official use or for supply to projects funded by them, on which exemption of duty is available under notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 108/95-Central Excises, dated the 28th August, 1995, or

(iii) by a manufacturer of dutiable and exempted final products, after discharging his obligation in respect of said goods under rule 6 of the CENVAT Credit Rules, 2002; or

(c) removed on payment of duty for home consumption from his factory; or

(d) used in the manufacture of goods of the description specified in column (1) of the Table hereto annexed by another job worker for further use in any of the manner provided in clause (a), (b) and (c) as above.

(ii) the said supplier produces evidence that the said goods have been used or removed in the manner prescribed above; and

(iii) the said supplier undertakes the responsibilities of discharging the liabilities in respect of Central Excise duty leviable on the final products.

Explanation I. – For the purpose's of this notification, the expression "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 or finishing of an article or any operation which is essential for the aforesaid process.

TABLE

Description of inputs	*Description of final products*
(1)	*(2)*
All goods falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), other than polyester filament yarn falling under heading No. 54.02, light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol	*All goods falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), other than matches*

4. It is the case of the appellant that they have paid excise duty on the value addition component i.e. the cost of the carbon lining used by them plus job charges and raised excise invoices accordingly. They have not paid excise duty on the cones supplied by their principals because they were received either under the aforesaid notification or the provisions of Rule 4(5) CCR 2004. The show cause notices demanded duty from the appellant on the entire value of the final product cleared by them i.e. including the value of the cones supplied by their principals. According to the appellant, this is not correct.

5. Ld. Counsel for the appellant also disputes the facts captured in the impugned order. According to him, contrary to what was recorded in the impugned order, the goods which they cleared to their principals cannot meet the functional requirement (fit to use). They are further subjected to the process at the recipient's ends and only thereafter they are cleared by the principals either in the form of assembly or sub assembly or as tested spares. It is his assertion that they have fairly paid duty on the value addition part of the product.

6. Ld. Departmental Representatives reiterates the findings of the impugned orders and asserts that it is not open for the appellant to pick and chose as to on what part of the value they would pay duty and on what part they would not. It is his assertion that Section 4 of Central Excise Act as well as Central Excise (Valuation) Rules, nowhere provide for the appellant to pay duty only on the "value addition". Therefore, the demands have been correctly confirmed and need to be upheld.

7. After hearing both sides and perusing the records, we find that the crux of the matter is whether the appellant has operated under Notification

No. 214/1986-CE, dated 25.03.1986 as asserted by the assessee or not operated under it, as asserted by the department. This fact needs to be ascertained. It may be ascertained by examining the records and returns of the appellant and whether they have received the goods and transferred them to the principal manufacturers and whether the principal manufacturer has given an undertaking as required and whether the principal manufacturer has discharged duty thereof. If these and other conditions are fulfilled and the appellant had indeed operated under Notification No. 214/1986-CE, dated 25.03.1986, then the appellant is not required to discharge any excise duty at all. There is no scope for discharging excise duty on the "value addition" component of the goods only under this notification. It is not open for the appellant to pick and chose parts of the notification or modify it to suit their business model. It has been held by the Constitutional Bench of Hon'ble Apex Court in the case of Dilip Kumar (in Civil Appeal no. 3327/2007) that an exemption notification must be strictly interpreted and the benefit of doubt will go against the assessee. So, there is no scope for the Notification to be read as "exempted from duty except the value addition", when the notification "exempts from the whole of duty".

8. From the facts recorded in the impugned orders, we are unable to come to a conclusion whether the assessee appellant has operated under the Notification No. 214/1986-CE, dated 25.03.1986 or otherwise. The assessee appellant also claimed that they have operated under Rule 4(5) of CCR 2004. It is not clear as to whether this rule was used for some other consignments. If the assessee's claim is that they have operated both under Notification No. 214/1986-CE, dated 25.03.1986 and also under Rule 4(5) of CCR 2004, it is not clear the provision under which they could have done so.

9. The power of taxation of the State or Central Government flows from Article 265 of the Constitution of India which mandates that "no tax shall be levied or collected except by the authority of law". The power of the Union Government to legislate is prescribed in the list I of seventh Schedule of the Constitution. This list includes "duties of excise on manufacture of goods other than alcoholic liquor for human consumption". We do not find any entry which empowers the Parliament to levy a tax on "value addition". Thus, there is neither any constitutional provision to levy tax on "value addition" only nor does the Charging Section (Section 3 of the Central Excise Act, 1944) levy tax on the value addition.

10. The taxable event is the critical factor while determining whether a tax is leviable or otherwise. The taxable event in the case of excise duty is the manufacture, in case of sales tax, it is the act of selling, in case of Customs it is the act of import or export, in case of Income Tax, it is the act of earning income, etc. There is no tax with "value addition" as the taxable event. There is indeed value addition in the economy at various stages but no excise duty is leviable on it and excise duty is leviable only on the manufacture. The measure of tax is the next question to be considered. The measure of tax in case of excise duty is determined by Section 4 of the Central Excise Act, Central Excise Valuation Rules, 2000 and the Central Excise Tariff. We find that neither Section 4 nor the Central Excise Valuation Rules have any provision under which excise duty can be levied on the manufacturer only to the extent of his "value addition". We, prima-facie, do not find any basis for such a scheme of operation by the assessee appellant.

11. However, in order to avoid cascading effect of the taxes, certain relief by way of set off has been provided in the form of CENVAT Credit whereby the manufacturer is allowed to take credit of the duty paid on the inputs or input services and use it to pay duty which they are required to pay on the final products. This, of course, does not give the manufacturer an option to say that he will not take credit of the inputs or input services and will calculate the amount of value addition and pay excise duty only on such value addition. Nothing in the Central Excise Act or Valuation Rules provide for such an option either for the job worker or for a manufacturer who manufactures on his own account.

12. In view of the above, we find these are fit cases to be remanded to the original authority to verify from records whether the appellant has operated under Notification No. 214/1986-CE, dated 25.03.1986 or under Rule 4(5)(a) of CCR 2004 or otherwise. If they claimed the benefit of Notification No. 214/1986-CE, dated 25.03.1986 and fulfilled all the conditions required therein, there is no question of any excise duty being leviable upon the appellant. Therefore, any amount paid by them claiming to be excise duty is definitely not so. Similarly, if they are operated under Rule 4(5)(a) of CCR 2004, appropriate provisions would apply. If the appellant has not operated under Notification No. 214/1986-CE, dated 25.03.1986, they are required to pay excise duty as applicable to any job worker. It also needs to be ascertained whether the recipient of the goods was merely inspecting and despatching the goods or he was further processing them as asserted by the Ld. Counsel for the appellant during hearing.

13. In view of the above, all the three appeals are remanded to the original authority to examine the factual position and decide whether the appellant had operated under Notification No. 214/1986-CE, dated 25.03.1986 and hence not liable to pay any excise duty at all or has cleared the goods on payment of excise duty in which case the duty has to be paid on the value determined as applicable to any job worker.

14. The appeals are disposed by way of remand to the original authority.

(Pronounced in open court on **08.06.2020**)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICALAL)

Vrg