

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
COURT NO. III**

**Excise Appeal No. 51966 of 2018**

(Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-002-003-18-19 Dated 10.04.2018 passed by Commissioner (Appeal) Customs, CGST & Central Excise, Indore(M.P.)

**M/S Caparo Engineering India Limited**

**Appellant**

Unit-II, 105A & 106, AKVN Industrial Area, Sector-II,  
Pithampur, Distt. Dhar

Versus

**Commissioner of Central Goods and Service  
Tax, Customs and Excise, Ujjain**

**Respondent**

**Appearance**

Present for the Appellant : Shri Manish Saharan, Advocate

Present for the Respondent: Shri H.C. Saini, Authorised Representative

**CORAM:**

**HON'BLE MS. ARCHANA WADHWA, MEMBER (JUDICIAL)**

**HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)**

**Date of Hearing: 19.07.2019**

**Date of Decision: 07.01.2020**

**FINAL ORDER NO. 50030/2020**

**BIJAY KUMAR:**

This appeal seeks to assail the order dated 10.04.2018 passed by the Learned Commissioner (Appeal), Customs, Central Goods and Service Tax and Central Excise, Indore, by which order dated 31.01.2017 of 1<sup>st</sup> Adjudicating Authority has been sustained. Being aggrieved, the appellant is in appeal before this Tribunal.

2. M/s Caparo Engineering Limited Pithampur (hereinafter referred is as the appellant) was an entity at Delhi, Large Taxpayer Unit (LTU) vide membership No. LTU/DEL/035 and Central Excise Registration No. AABCC7862NXM004. The appellant engaged in the manufacture of part and

accessories of motor vehicles. The appellant is also undertaking job work under Central Excise Act, 1944 ('Act' for short) and Rules made there under.

3. It was observed by the department, that the appellant was availing exemption of Notification No. 214/1986-CE dated 25.03.1986 for job work on 'blank' supplied by M/s. VE Commercial Vehicles, (hereinafter referred to M/s VECV) Pithampur. It was also observed by the department that the appellant was also realizing job charges separately for the activities of forming, of blank. The appellant cleared the processed blank to their supplier manufacture without payment of duty. But the appellant availed the Cenvat Credit of duty paid on paints used for job work activities as per the Cenvat Credit Rules, 2004. The department, therefore, alleged that as the appellant was not paying Central Excise duty for the said job work, and thus they have illegally availed the Cenvat Credit of Excise duty paid on paints which were used for job work activities as the cost of the paints have separately mentioned in the invoice. The department issued show cause notice dated 23.12.2015 to the appellant which was adjudicated by the original authority and was also sustained by the impugned order.

4. Learned Advocate on behalf of the appellant would submit that the original adjudicating authority and learned Commissioner (Appeal), in the impugned order, have committed an error in holding that Cenvat Credit availed by the appellant while doing job work is not in accordance with the Cenvat Credit Rules. The appellant has raised invoices for charging Sales Tax/VAT paid on the cost of paint used in the manufacture of job work activities. In such a situation we find that the finding of the Commissioner (Appeal) that the paint was cleared by the appellant as such in terms of Rule 3(5) of the Credit Rules is without any basis and hence unsustainable. Both the Learned Adjudicating Authority and Appellate Authority have committed an error in interpreting the provisions of Rule 3 of the Credit Rules. The

appellant is infact entitled to avail cenvat credit of Central Excise duty paid on the Paint which were used in the job work.

5. The learned Advocate would further submit that the appellant is the manufacturer of manufactured products by undertaking the process of piercing forming, and painting of blanks supplied by M/s VECV on job work basis in terms of manufactures No. 214/86-CE dated 25.03.1986 and returning them to M/s VECV without payment of duty. It is not in dispute that M/s VECV is utilizing these intermediate products in the process of manufacture of their final products, that is motor vehicle, which is being cleared on payment of excise duty. Therefore, the appellant is entitled to avail the cenvat credit of duty paid on paints, which were used in the job work activities. The reliance was places on the decision of Hon'ble CESTAT, Mumbai, in case of **M/s Sterlite Industries India Limited vs. Commissioner of Central Excise, Pune reported in 2015 (183) ELT 353(Tri.-LB)** and also on judgement of Hon'ble Supreme Court in case of **M/s Escort Ltd. Vs. Commissioner (2004) 177 ELT 145 (AC)**. The Hon'ble Larger Branch of this Tribunal in case of Sterlite Industry held that the job worker, who has received the goods from the manufacturer under Rule 57F of erstwhile Central Excise Rules, entitled to Cenvat credit of duty paid in respect of input received directly and used by him in the manufacture of said goods on a job work basis. Similar views were expressed in case of **Vishal Pipes Ltd., Vs. Commissioner of Central Excise Noida 2011 (263) E.L.T. 81 (Tri.) Delhi, Commissioner of Central Excise, Ludhiana Vs. Jainsons Wool Coomers Ltd. 2012 (26) S.T.R. 488 and Hon'ble Cestat, Mumbai**, and Final Order No. A/201/11/SMB/C-IV dated 01.06.2011 in the case of Aurangabad Auto Engineering Pvt. Ltd., Vs. Commissioner of Central Excise, Aurangabad.

6. In light of above submission made by the learned Advocate, it was argued that issue stand settled in favor of the appellant and therefore accordingly appeal is prayed to be allowed.

7. We have also heard Learned Departmental representative, who supported the findings of the Adjudicating Authority.

8. Heard the parties and perused the case records.

9. The issue that is to be decided in this case is as to whether the appellant is entitled to avail the Cenvat Credit on the paints used by the appellant while doing the job work under Notifications No. 214/81, when the cost of paints have been separately shown in the invoices and not recovered from the manufacture. We find that issue is not more res-integra view of the various decisions referred and relied by the learned Advocate. We find that the similar issue has come up for considering before larger bench of this Tribunal in case of M/s Sterlite Industrial, wherein it is held as under:

1. We have heard Shri Vimlesh Kumar, SDR appearing for the revenue and Shri Vipin Kumar Jain, CA appearing for the appellant. It is seen that the Tribunal in the case of *Jindal Polymers* [[2001 \(135\) E.L.T. 657](#) (Tribunal) = 2001 (43) RLT 680 (Tri. - Delhi)], has followed the earlier order of the Tribunal in the case of *Bajaj Tempo* and has held that a job worker, who has received the goods from the manufacturer under Rule 57F, is entitled to take credit of duty in respect of the other inputs received directly and used by him in the manufacture of the said goods on job work basis. The main reason for arriving at this conclusion was of two fold. First that Rule 57F is a self-contained provision and the goods processed under the said rule were being returned to the principal manufacturer who was paying duty on the same. Secondly, it weighed with the bench that the provision of Rule 57C would not get attracted inasmuch as the removal of the goods was neither under the exempted notification nor the goods were chargeable to nil rate of duty. For arriving at the above conclusion reliance was placed upon the earlier decision of the Tribunal of *Bajaj Tempo*. In the case of *Bajaj Tempo*, provision of Rule 57F as also provision of Rule 57C were considered in detail along with the consideration of Notification No. 217/86. It was observed that under Modvat scheme, credit of duty paid on notified inputs is to be given for payment of duty on the notified final products, if such inputs are used in or in relation to the manufacture of the final products and such inputs are not hit by exemption to Rule 57A. Notification No. 217/86 [which laid down the procedure for sending the basic raw material to the job worker's factory and receipt of the same in the manufacturer's factory after processing for further utilisation in the manufacture of the final products on which duty is paid by the manufacturer. The notification is mainly intended to avert payment of duty at each intermediate stage and take credit of such duty at each subsequent stage, starting from the basic material, turning out components and finally ending with ultimate final product. Hence, the scope of Rule 57C in such a situation like this has to be constituted in the context of the Modvat scheme and not to destroy the basic concept.

**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 streamlines 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.

10. We are conscious of the fact that the larger bench decision has been rendered under the MODVAT Rules but the findings arrived would be applicable in the case of Cenvat Credit Rules also, as held by the coordinate bench of this Tribunal in case of MPI Papers Pvt. Ltd., Vs. Commissioner of Central Excise, Mumbai-I.

11. Paragraph 6 of the judgement which is relevant is reproduced below:

6. We also find that learned Commissioner (Appeal) in the impugned order has failed to appreciate that the goods cleared by the appellant under Notification No. 214/86-CE cannot be treated as exempted goods Demand of duty by disallowing Credit attributable to materials used by the job worker not sustainable. Paragraph 7,8,9, of the order is as under:

**7.** At the outset, it is to be noted that Notification No. 214/86 dated 25.3.1986 is a special kind of notification. It does not exempt the goods manufactured by the job worker unconditionally. It merely postpones the time of payment of duty and also shifts the duty liability from the job worker, (who is actually a manufacturer) to the principal manufacturer (who supplied the raw material). Therefore, to treat the goods which have been cleared by job worker working under 214/86 as exempted goods is not justified. It is not in dispute that the supplier of input in this case has taken credit on input like zinc, steel pipes and tubes. If the final products cleared by the job worker are exempted, the question of granting credit to principal manufacturer does not arise.

**8.** The authorities below while holding that the appellants have not fulfilled the conditions of Notification No. 214/86, have not denied the benefit of the said notification as they have not demanded duty on the entire value of final products cleared by job worker including the value of inputs supplied by the principal manufacturer. Apparently, the finding that they have not fulfilled the conditions of Notification 214/86 and the course of action adopted are found to contrary to each other.

**9.** In the given facts of the present case, the goods cleared by the appellants under 214/86 cannot be treated as exempted goods and, therefore, the question of applying Rule 6 of the Cenvat Credit Rules does not arise. Therefore, there is no basis for demanding duty by disallowing credit attributable to materials used by the job worker (the appellant). Therefore the orders of the authorities below are set aside and appeal is allowed with consequential relief as per law.

12. Similarly view has been issue by Hon'ble Punjab and Haryana High Court in case of Commissioner of Central Excise, Ludhiana Vs. Jaisons Wool Coomber Ltd., (supra).

13. Paragraph 6 of the order which is relevant is reproduced as under:

We are unable to accept the submission. The Adjudicating Authority, the Commissioner (Appeals) as well as the Tribunal have rightly held that clearing goods at intermediate stage was not at par with clearing of exempted goods. Under the circular of the Board as well as scheme or the Rules, cenvat credit is permissible to a job worker or even to a manufacturer at intermediate stage in respect of inputs like lubricants, soaps, chemical etc. On final products, duty is admittedly paid. Object of cenvat credit is to avoid cascading effect of duty. We thus do not find any error in the view taken by the Tribunal. No substantial question of law arises.

14. In view of the above categorical judicial pronouncements supporting the case of the appellant, we are of the view that the impugned order is not sustainable and liable to be set aside and we do so.

15. Accordingly, the appeal is allowed.

(Pronounced on 07.01.2020)

**(ARCHANA WADHWA)**  
MEMBER (JUDICIAL)

**(BIJAY KUMAR)**  
MEMBER (TECHNICAL)