CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.
PRINCIPAL BENCH - COURT NO.III

Excise Appeal No. 50078 of 2019

[Arising out of Order-in-Appeal No.365-366 (SM)CE/JPR/2018 dated 30.08.2018 passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur]

M/s. Tamra Dhatu Udyog Pvt. Ltd., **Appellant**
SP-2-873, RICO Industrial Area, Pathredi,
Bhiwadi,
Rajasthan-301 707.

VERSUS

Commissioner of Central Goods & Service Tax and Central Excise, **Respondent**
A-Block Surya Nagar,
Alwar, Rajasthan.

APPEARANCE:

None for the appellant.
Shri Unmesh Kumar, Authorised Representative for the respondent.

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 59409 /2024

DATE OF HEARING:22.10.2024
DATE OF DECISION:04.11.2024

BINU TAMTA:

1. Challenge in the present appeal is to the Order-in-Appeal No. 365-36(SM)CE/JPR/2018 dated 30.08.2018, whereby the appellant was denied the benefit of the exemption notification for job work.

2. M/s. Tamra Dhatu Ydyog Pvt. Ltd., the assessee were engaged in the manufacture of 'Copper Wires' on job work basis for M/s. Neelgiri Electricals, who had supplied the raw materials i.e. copper rods to the assessee for manufacture of such 'Copper Wires'. The assessee was not paying Central Excise duty availing exemption under job work notification no.214/86-CE dated 25.03.1986 applicable to goods manufactured in a factory as a job work. M/s. Neelgiri Electricals were also availing area based exemption under Notification Nos.49 & 50/2003-CE both dated 10.06.2003. Since the exemption under said job work notification no.214/86-CE dated 25.03.1986 is available only to the goods manufactured as a job work and used further in the manufacture of final products on which duty of excise is leviable or cleared as such from the factory of supplier of raw materials on payment of duty, the benefit under said job work notification did not appear available to the assessee. Accordingly, show cause notice dated 09.05.2017 was issued which was adjudicated vide Order-in-Original dated 24.11.2017 confirming demand of Rs.28,63,510/- along with interest and penalty of Rs.28,63,510/- imposed on the assessee and penalty of Rs.1,00,000/- imposed on Shri Raghu Nandan Chhimpa, Manager of the assessee. Being aggrieved, the appellant filed appeals before Commissioner (Appeals) which stands rejected by the impugned order, however, the penalty

imposed upon Shri Raghu Nandan Chhimpa was reduced from Rs.1,00,000/- to Rs.50,000/-. Hence, these appeals.

3. The appeal had been listed on several occasions but the appellant had chosen not to appear despite service of fresh notice on 22.12.2022. Heard Shri Unmesh Kumar, learned Authorised Representative for the Department and perused the appeal records.

4. The basic issue in the appeal is whether the appellant is liable to pay central excise duty on the goods manufactured by them on job work basis under Notification No.214/86-CE dated 25.03.1986 for M/s. Neelgiri Electricals, who were availing the area based exemption under Notification No.49 & 50/2003-CE and were clearing the goods at 'Nil' rate of duty.

5. The submission of the learned counsel for the appellant is that the purchase order of M/s. Neelgiri Electricals was showing 'Nil' rate of duty and, therefore, they were under the impression that no duty is payable on the goods manufactured by them on job work basis for M/s. Neelgiri Electricals and also, they were not aware whether the goods manufactured by them on job work

basis for M/s. Neelgiri Electricals were further used in the manufacture of export goods and hence, they contested the levy of excise duty along with interest and penalty.

6. Learned Authorised Representative submitted that Notification No.214/86 grants exemption only to the goods manufactured on job work basis, if used in the manufacture of the final products, on which duty of excise is payable in whole or part. In other words, exemption is available only when the duty is paid on final products and, therefore, does not include the goods, which are exempt from payment of central excise duty, thus, the benefit of the notification is not available. As the appellant have never disclosed the facts and figures related to the manufacture and clearances of the goods without payment of duty under job work basis under notification for M/s. Neelgiri Electricals, they have suppressed the materials facts and, therefore, were liable to penalty. Learned Authorised Representative also placed reliance on the recent decision of this Tribunal in the case of **M/s.R.N. Alloys Vs. Commissioner of Central Goods & Service Tax, Dehradun[1].**

[1] Final Order No.51509/2023 dated 06.11.2023

7. Having perused the decision in **M/s.R.N. Alloys (supra)**, we find that identical facts were involved in the said case, where the principal manufacturer, who supplied the raw materials/inputs to the job worker, was availing the benefit of area based exemption under Notification No.50/2003-CE dated 10.06.2003 and, therefore, were not paying the central excise duty on their final products. Considering the provisions of the notification and the conditions specified therein, it was noticed that the principal manufacturer had not submitted the undertaking that the goods shall be removed on payment of duty for home consumption from his factory. The relevant para of the decision is as under:-

> "The Notification No 214/86 has been the subject matter of interpretation in various decisions of the Tribunal as well as of the Supreme Court. The condition of submitting an undertaking by the principal manufacturer or the supplier of the raw material as provided in the notification has been held to be a substantive condition and not merely a procedural one for the reason that it shifts the burden of the tax liability from the job worker to the supplier of raw materials or semi-finished goods. It has also been held that the above procedure set out in the notification is a pre-requisite and it being the mandate of law that unless such an undertaking is given, the benefit of exemption notification shall not be attracted and the job worker only is liable to discharge the duty liability at the time of clearance of the said goods from the premises of the job worker, Kartar Rolling Mills Vs. CCE 2006 (197) ELT 151 (SC). We are not multiplying the decisions taking such a view, which is settled over the period and has been consistently followed, however, we would like to refer the decisions of the Larger Bench in the case of Thermax Babcock & Wilcox Ltd V Commissioner of C.EX., Pune, 2018 (364) ELT 945, which has not been challenged by the party and has been followed by the Tribunal in a latest decision in Commissioner, Central Excise & CGST, Jodhpur-1 V Khemani Metal Industries Pvt. Ltd, Excise Appeal No. 51328 of 2019 dated 30.06.2013 observing that the Larger Bench decision has set the controversy at rest. The non-

compliance of the said condition of the Notification No 214/86 by the principal manufacturer has resulted into duty liability upon the job worker. Relevant paragraph of the decision of the Larger Bench is quoted hereunder :

"7.6 The job worker being the manufacturer of goods is liable to pay duty on goods manufactured by him albeit on job work. The ownership of the goods is immaterial for the purpose of levy of duty and thus any person who has undertaken the activity of manufacture is liable to pay duty. In order to save the job worker from payment of duty the principal manufacturer has to own the liability to pay such duty. It is only by virtue of the Notification No. 214/86-C.E., dated 25-3-1986 that the liability of the job worker to pay duty is transferred to the principal manufacturer who undertakes to pay duty.

7.7 **The intention of enactment of Notification (supra) was to shift the liability of payment of duty from job worker to the principal manufacturer under certain conditions as provided in the said notification. There is no blanket machinery provisions in the Central Excise law under which the liability to pay duty is transferred from the job work manufacturer to another person i.e. principal manufacturer. However when the principal manufacturer does not own up the liability to pay duty on finished goods, the provision of Notification No. 214/86-C.E., dated 25-3-1986 does not apply. In that case, it is the ultimate manufacturer i.e. the job worker who has to pay the duty. Following the procedure and conditions of the Notification (supra) only by the principal manufacturer, the job worker would be saved from payment of duty on goods manufactured by him.**"

8. Relying on the decision of the Larger Bench, the issue involved in the present appeal is no longer *res integra.* Following the same, we conclude that in the present case, M/s. Neelgiri Electricals, being the principal manufacturer was availing the benefit of the area based exemption notification and, was, therefore, clearing the goods at 'Nil' rate of duty and in that view,

they have not furnished the undertaking as required under the notification that the supplier of the raw material or semi-finished goods gives an undertaking that the said goods shall be removed on payment of duty for home consumption from his factory. As a result, neither the appellant, who is the job worker has paid the duty nor the principal manufacturer, who was availing the area based exemption, paid the central excise duty, which is not the intention of the notification and the interpretation thereof placed by the various decisions. If the principal manufacturer has not discharged the tax liability, the burden would fall on the job worker and in that view, the appellant is liable to discharge the duty liability.

9. The Authorities below have rightly imposed the penalty on the appellant as well as on the Director. It was within the knowledge of the appellant that M/s. Neelgiri Electricals was availing the exemption of central excise duty under the area based exemption notification as mentioned on the job work challan and also as admitted by Shri Raghu Nandan Chhimpa, Manager and Authorised Signatory of the appellant in his statement recorded under Section 14 of the Act on 17.05.2023.

10. As the appellant had failed to pay the central excise duty, they are liable to pay interest thereon under Section 11AA of the Act.

11. We do not find any merits in this appeal and, therefore, the impugned order is upheld. The appeal, accordingly stands dismissed.

[Order pronounced on 4th November, 2024]

(Binu Tamta)
Member (Judicial)

(P.V. Subba Rao)
Member (Technical)

Ckp.