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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/724 /2009-729 /2009 - EX[DB] WITH E/S/717-722/2009-EX   Date 30/10/2009

Assistant Registrar
C.E.S.T.A.T. New Delhi

To :
M/S KASHI ENTERPRISES,
B-25/29, INDUSTRIAL ESTATE,
BAZPUR ROAD, KASHIPUR,
DISTT. UDHAM CINGH NAGAR, UTTARAKHAND.
M/S KASHI ENTERPRISES. Appellant

Vs

C.C.E. MEERUT II   STAY ORDER NO.1068-1073/2009-EX   Respondent

I am directed to transmit herewith a certified copy of **Final order No. 848-853/ 2009 EX[DB]** dated 31-8-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   C.C.E. MEERUT II
   OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD, MEERUT (UP)
2. Adv. / Consult
   MR.V.LAKSHMI KUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029
3. C.D.R
4. ~~J.C.D.R.~~
5. Bar association. CESTAT. New Delhi
6. Director Publications. Customs. Excise. I.P. Estate. New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file
18. HON'BLE PRESIDENT.
19. M/S KASHI VISHWANATH STEELS LTD.
    NARAIN NAGAR, BAZPUR ROAD, KASHIPUR,
    DISTT. U.S.NAGAR.

Assistant Registrar
(Excise Appeal Branch)

P. NO. 2.

20.MR. Y.K.JINDAL, PARTNER OF
M/S KASHI ENTERPRISES, B-25/29, INDUSTRIAL ESTATE,
BAZPUR ROAD, KASHIPUR,
DISTT: UDHAM SINGH NAGAR

21.SHRI ARPAN JINDAL, PARTNER OF
M/S KASHI ENTERPRISES, B-25/29, INDUSTRIAL ESTATE,
BAZPUR ROAD, KASHIPUR, DISTT. UDHAM SINGH NAGAR,

22.SHRI ATUL KUMAR AGARWAL, AUTHORISED SIGNATORY OF
M/S KASHI ENTERPRISES, B-25/29, INDUSTRIAL ESTATE,
BAZPUR ROAD, KASHIPUR, DISTT. UDHAM SINGH NAGAR,

23.SHRI DEVENDRA KUMAR AGARWAL, PARTNER OF
M/S KASHI ENTERPRISES, B-25/29, INDUSTRIAL ESTATE,
BAZPUR ROAD, KASHIPUR,DISTT. UDHAM SINGH NAGAR, U

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi
COURT-I

Date of hearing: 31.08.2009
Date of decision: 24.09.2009

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	Yes
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Y-

Sl. No.	Excise Appeal No.	Name of the appellant	Respondent	Arising out of the order in original No. and date	Passed by the
1	724/2009	M/s Kashi Enterprises	CCE, Meerut-II	59/COMM/M-II/2008 dated 31.12.2008	Commissioner of Central Excise, Meerut-II
2	725/2009	M/s Kashi Vishwanath Steels Limited	-do-	-do-	-do-
3	726/2009	Sh. Y.K. Jindal	-do-	-do-	-do-
4	727/2009	Sh.Devendra Kumar Agarwal	-do-	-do-	-do-
5	728/2009	Sh. Arpan Jindal	-do-	-do-	-do-
6	729/2009	Sh. Atul Kumar Agarwal	-do-	-do-	-do-

Appearance:

Appeared for the Appellant – Shri V. Laxmikumaran and Shri Ravi Raghavan, Advocates

Appeared for the Respondent –Shri B.K. Singh, Jt. CDR, Shri K.P. Singh, DR and Shri A.K. Raha, Spl. Advocate

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, Member (Technical)

FINAL Oral Order No. 848-853/09-EX

Per Shri Justice R.M.S. Khandeparkar:

Since common questions of law and facts arise in all these appeals, they were heard together and are being disposed of by this common order.

2. These appeals arise from order dated 31.12.2008 passed by the Commissioner, Central Excise, Meerut-II. The appellants M/s Kashi Enterprises (hereinafter referred to as KE) are engaged in manufacture of products like ingots, moulds and articles of steel like angels, beams etc. classifiable under Chapter 72 of the First Schedule to the Central Excise Tariff Act, 1985, having their manufacturing unit in the State of Uttaranchal. The appellants had submitted their option as required under Notification No. 73/2003-CE dated 10.06.2003 to avail benefit of the exemption available thereunder on clearance of the goods as declared in their declaration and which included the following:-

1.	Other cast Articles of Iron & Steel	Ch. 7325
2.	Converters, Ladies, Ingot Moulds & Casting machines	Ch. 8454
3.	Metal Rolling Mills & Rolls thereof	Ch. 8455
4.	Iron & Non-Alloy Steel in Ingot or other primary from (excluding iron of heading 7203)	Ch.7206
5.	Stainless Steel in Ingots	Ch. 7218
6.	Other Alloy Steel in Ingots	Ch. 7224
7.	Other Bars & Rods	Ch. 7214
8.	Other Bars & Rods of Stainless Steel	Ch. 7222

9.	Other Bars & Rods of other Alloy	Ch. 7228
10.	Flat-Rolled Products of Iron or Non-alloy Steels	Ch. 7208 Ch. 7210 Ch. 7211 Ch. 7212
11.	Flat-Rolled Products of Stainless Steel	Ch. 7219 Ch. 7220
12.	Flat-Rolled Products of Other Alloy Steel	Ch. 7225 Ch. 7226

The option as above was submitted by the appellants under their letter dated 02.11.2996 to the jurisdictional Superintendent, Central Excise, Range-II, Kashipur.

3. The said Superintendent under his letter dated 04.01.2007 sought certain clarification from the appellants with reference to ER-I return for the month of November 2006 submitted by the appellants to the Department, while observing that though they had claimed clearance of bars and rods, on visit to their unit, it was found that the appellants did not have the facility of manufacturing the goods like bars and rods. In response to the letter dated 25.01.2007, the appellants informed that they were not producing bars and rods but they had a contract with M/s Kashi Vishwanath Steels Limited (hereinafter referred to as the KVS) from which they were getting bars and rods prepared on job work basis. Pursuant to the receipt of the said letter and information, the Department started investigation and in the process recorded the statements including that of the authorized signatory of KE.

4. Shri Atrul Kumar Agarwal, authorized signatory of KE in his statement informed that they had no facility to manufacture of bars and rods in their unit and, therefore, they were getting bars and rods manufactured by KVS on job work basis, and that the KVS was availing the exemption in relation thereto under Notification No. 50/2003-CE dated 10.06.2003. Further, investigation disclosed

that during the period from November 2006 to May 2007 the appellants had cleared bars and rods valued to Rs. 5,24,92,576/- without payment of Central Excise duty by availing exemption under Notification No. 50/2003-CE dated 10.06.2003 and the same was revealed on scrutiny of ER-1 return submitted by KE.

5. Pursuant to the investigation, show cause notice dated 3.12.2007 came to be issued to the appellants and after hearing the appellants, the impugned order came to be passed. By impugned order, the appellants KE were held liable to pay the duty to the tune of Rs. 86,11,282/- including the education cess and higher education cess on the goods cleared during the period November 2006 to May 2007 valued at Rs.52492576/-, besides interest thereon. Penalty of the amount equal to that of duty demanded was also imposed on the appellants KE. The proceedings for recovery of duty against KVS was dropped, but in exercise of powers under Rule 26 of the Central Excise Rules, a penalty of Rs. 86,11,282/- was imposed on the appellants KVS on the ground of their conspicuous act of becoming a party to KE in evasion of Central Excise duty. The appellants Sh. Yogesh Kumar Jindal and Sh. Arpan Jindal was also subjected to penalty of Rs. 25 lakhs each whereas Shri Devendra Kumar Agarwal and Shri Atul Kumar Agarwal was subjected to the penalty of Rs. 10 lakhs each. Hence, these appeals.

6. It is the case of the appellants that the goods in question i.e. bars and rods have been manufactured by KVS on job work basis out of ingots supplied by KE and conversion charges have been duly paid by KE to KVS and same is not disputed by the Department. The appellants KE are not the manufacturer of bars and rods and this fact is apparent from the show cause notice itself as it is undisputed fact that the appellants KE do not have facility for manufacture of bars and rods in their factory and in such a situation when there cannot be manufacturing activity undertaken by KE in relation to bars and rods, the question

of claiming duty from them on such product cannot arise. It is further case of the appellants that mere mention of bars and rods as one of their final product in their declaration while claiming area based exemption under the notification cannot be a ground to deny the benefit of the said notification to the appellants. According to the appellants, the case is squarely covered by the decision of the Apex Court in the case of **Ujagar Prints, ETC. ETC. vs. Union of India and Others** reported in 1988 (38) ELT 535. It is their further case that bars and rods received from KVS after job work are not subjected to any further process which may amount to manufacture of the final product but are directly sold in the market and considering the same even assuming that the appellants KE are the manufacture of the bars and rods, for the clearance of such goods they would be entitled for exemption under Notification No. 50/2003-CE and there could be no duty liability in that regard. The duty liability, if any, would be that of the job worker and in the case in hand they are also entitled for exemption under the said notification. In any case, it is also the case of the appellants that if the appellants KE are held to be the manufacturers and any duty is payable by the appellants KE, then cenvat credit in respect of the duty paid on the inputs and capital goods used in the process of manufacture of bars and rods would be available to the appellants. It is also further case of the appellants that even if the duty is payable on bars and rods manufactured by the job worker, the value of the goods would be inclusive of the amount of excise duty and amount received would be taken on cum duty price basis and value would be derived by excluding the duty allegedly payable as required under Section 4(4)(d)(ii) of the Central Excise Act, 1944. It is also the case of the appellants that in the facts and circumstances of the case, there is no penalty warranted.

7. Learned Advocate appearing for the appellants while assailing the impugned order submitted that the appellants are engaged in manufacture of ingots and articles of steel like angles classifiable under Chapter 72 and has entered into a job work agreement with KVS wherein the later has to make and supply bars and rods on job work basis out of the inputs in the form of ingots supplied by KE to the later. He further submitted that for conversion of ingot into bars and rods, the appellants KE pays conversion charges to Rs.2300/- PMT to KVS. He submitted that the goods in question having been manufactured by KVS on job work basis out of the ingots supplied by the appellants KE and conversion charges having been paid by KE to KVS, the activity of manufacture of rods and bars by converting ingots into final product though could be subjected to duty, the same would be payable by the manufacturer thereof and in the case in the hands, it is the job worker who is the manufacturer of the same on job work basis and therefore, it could not be demanded from the supplier of the raw materials i.e. KE. In the case in hand, according to learned Advocate, the appellants KVS is liable to discharge of the duty liability, if any. However, since KVS is also entitled to enjoy the benefit of the Notification No. 50/2003-CE, the said appellants are also not liable to pay duty on manufacture of such product. While assailing the finding by the adjudicating authority that the commercial production had not commenced by the appellants in respect of bars and rods that, therefore, are not entitled to claim the benefit of Notification No. 50/2003-CE, learned Advocate submitted that the same is not in consonance with the provisions of the notification inasmuch as that the appellants are manufacturing other finished products which are entitled to avail the exemption under the said notification and, therefore, merely because two of the products are not manufactured by the appellants that would not be a justification to deny the benefit of the said notification even in respect of products which are procured by the appellants on job work basis.

8. He further submitted that the show cause notice itself disclosed that the appellants have no facility of manufacturing the rods and bars in their unit and, therefore, there could be no occasion to demand the duty from the appellants KE in relation to such products. Merely because the declaration submitted by the appellants refers to the bars and rods as their final products alongwith other products, that would not be a ground to deny the benefit under the said notification as the said declaration was to claim benefit under the area based notification and merely because one or two products which are declared as the final products of the assessee are not manufactured by the assessee, that would not be a justification to deny the benefit of area based notification to the assessee. He further, submitted that once the Department admits KVS as the job work for the manufacture of the product in question, by no stretch of imagination, the duty liability in respect of such product can be fastened upon the appellants KE in respect thereof and for the same reason there is absolutely no ground for imposing penalty either against KE or KVS or any of the directors. He also submitted that there was neither any misdeclaration of facts by the appellants nor any suppression of the facts. Merely because the dutiable goods manufactured by KVS were brought in the factory premises of the appellant KE, that would not be a justifiable ground to fasten the duty liability upon the appellants KE. In that regard, attention is sought to be drawn to trade notice issued by Commissionerate of Pune-II and Pune-III.

9. Learned Advocate for the respondent, on the other hand, submitted that the term manufacturer includes the person who engages others in the production or manufacture on his own account and being so, taking into consideration the nature of agreement between the appellants KE and KVS, it cannot be said that the appellants KE has no obligation to pay the duty in relation to the product in question. He further submitted that since the appellants KE has no facility to manufacture such product in their own unit, they are not entitled to claim the

benefit of exemption under Notification No. 50/2003-CE dated 10.06.2003 in relation to such product.

10. It was also sought to be contended on behalf of the respondent that since the raw materials were supplied by the appellants KE to the appellants KVS and the same, after being subjected to necessary manufacturing process, were returned to the appellants KE by the appellants KVS, the former i.e. appellants KE would be principal manufacture of the product in question, and, therefore, would be liable to pay the duty. It was also submitted that Rule 4 of the Central Excise Rules 2002 is not that exhaustive and the duty liability will have to be fixed by taking into consideration of various other provisions relevant for the same. Referring to the agreement between the parties, it was also sought to be contended that the same does not disclose principal to principal relationship between the parties.

11. Perusal of the impugned order discloses that the adjudicating authority after recording the rival contentions in the matter has summarized the dispute for consideration as under:-

> "27. The issue in brief may be summarized as M/s Kashi Enterprises, B-25-29, Industrial Estate, Bazpur Road, Kashipur, Distt- U.S. Nagar (Uttarakhand) are engaged in the manufacture of various type of ingots and are availing area based exemption under Notification No. 50/03-CE dated 10.06.2003 (as amended) in respect of such goods manufactured by them. As per their own admission they are not having the facility of manufacture bars and rods in their factory premises and they are getting bars and rods manufactured from M/s Kashi Vishwanath Steels Limited, Narain Nagar Industrial Estate, Bazpur Road, Kashipur, Distt. U.S. Nagar (Uttarakhand) on job work basis out of the ingots supplied by them to said M/s Kashi Vishwanath Steels Limited. For this purpose, they have also entered into a job work agreement dated 01.11.2006 with said M/s Kashi Vishwanath Steels Limited. The job work agreement so entered interalia includes a clause that "it is understood that M/s Kashi Vishwanath Steels Limited has been availing area base exemption from payment of duty on manufacturing of bars & rods etc under Notification No. 50/03-CE dated 10.06.2003. However, M/s Kashi Vishwanath Steels Limited being the manufacturer shall discharge duty liability, if any, as manufacturer of bars and rod. Kashi Enterprises shall reimburse said excise duty to M/s Kashi Vishwanath Steel Limited".

12. After referring to the Notification No. 50/2003-CE dated 10.06.2003, the adjudicating authority has purportedly analysed the materials and the rival contention in the following manner :-

> "29. Now in the instant case undoubtedly M/s Kashi Enterprises have not commenced production of bars and rods or done commercial production in their unit, and rather they are getting these goods manufactured from M/s Kashi Vishwanath Steels Ltd, Kashipur on job work basis and clearing the same without payment of Central Excise duty from their factory premises in the garb of Notification No. 50/03-CE dated 10.06.2003. The Notification No. 50/03-CE dated 10.06.2003 (as amended) has the explicit provision of commencement of commercial production, which in the instant case M/s Kashi Enterprises never did as they got impugned goods namely bars and rods manufactured on job work basis. So I am of the considered opinion that in view of explicit provisions contained in the notification ibid the benefit of exemption cannot be extended to M/s Kashi Enterprises in so far as bars and rods are concerned. I fully agree with the Department's averment that M/s Kashi Enterprises have not obtained permission of job work as per Rules and procedures under Central Excise Acts and Rules and therefore they have otherwise violated the provisions of Rules and procedures under Central Excise Acts and Rules made thereunder, besides violating the explicit provisions of the Notification No. 50/03-CE dated 10.06.2003 issued under Section 5A of the Central Excise Act, 1944 in as much as they had cleared bars and rods without payment of duty, even though they were not manufacturing them and had not commenced their commercial production and accordingly contravention of the provisions of Rule 4,6 & 8 of the Central Excise Rules, 2002 i.e. their failure to discharge the duty liability, failure to properly assess and pay the duty on the due date is established against them.
>
> 30. As regards the defence taken by M/s Kashi Enterprises that in their case the duty liability in respect of bars and rods manufactured on job work basis lies on Kashi Vishwanath Steels Ltd., in view of various judicial verdicts cited by them for the reason that the process of conversion of ingots into bars and rods amounts to manufacture, I do not agree with their contention. From the aforesaid narration, it is established that the duty liability in the instant case lies upon M/s Kashi Enterprises, Kashipur. Therefore, the same amount of duty cannot be demanded from M/s Kashi Vishwanath Steels Ltd., Kashipur. In the instant case the contravention of the explicit provisions of Notification No. 50/03-CE dated 10.06.2003 are clearly established on the part of M/s Kashi Enterprises, notwithstanding that M/s Kashi Vishwanath Steels Ltd., played a pivotal role in designing a modus operandi in collusion with M/s Kashi Enterprises to help them in evading Central Excise duty by way of entering into a job work agreement. From the records, I further observe that Shri Yogesh Kumar Jindal is common in M/s Kashi Enterprises and M/s Kashi Vishwanath Steels Ltd., as a Partner and Director respectively. Therefore, it cannot be denied that M/s Kashi Vishwanath Steels Ltd., were aware of the facts that M/s Kashi Enterprises were not eligible for availment of exemption under Notification No. 50/03-CE dated 10.06.2003. In as much as M/s Kashi Enterprises do not have the facility to manufacture bars and rods and so the question of commencement of commercial production by M/s Kashi Enterprises does not arise. Therefore, the mens rea on the part of M/s Kashi Vishwanath Steels Ltd., to help M/s Kashi Enterprises to evade the payment of Central

> Excise duty by way of entering into an agreement gets established in as much as the provisions of payment of duty, if arises, shall be borne by M/s Kashi Vishwanath Steels Ltd., were specifically incorporated in the job work agreement. So I conclude that M/s Kashi Vishwanath Steels Ltd., though can not be fastened with the duty liability, yet for the said act of omission and commission on their part they are liable for penal action under Rule 26 of the Central Excise Rules, 2002.
>
> 31. I further conclude that the persons instrumental in designing this meticulous modus operandi namely Shri Yogesh Kumar Jindal, Shri Devendra Kumar Agarwal, Shri Arpan Jindal and Shri Atul Kumar Agarwal of M/s Kashi Enterprises and Shri Yogesh Kumar Jindal, Director of M/s Kashi Vishwanath Steels Limited, Kashipur deliberately contravened the provisions of the Notification No. 50/03-CE dated 10.06.2003 by designing the modus operandi as elaborated above with intent to evade payment of duty deliberately and intentionally".

13. As noted above, the dispute in the matter in hand essentially relates to the identity of the manufacturer of the product bars and rods. Is it KE or KVS? Perusal of above quoted three paras from the impugned order, whereby the adjudicating authority has sought to dispose of the matter, nowhere discloses the required analysis of the materials on record to find out appropriate answer to the point in issue. Apart from saying that the adjudicating authority fully agrees with the Department's averments that M/s KE have not obtained permission for job work as per the rules and procedure under the Central Excise Act and Rules and, therefore, they have otherwise violated the provisions of rules and procedure including the notification in question while clearing the bars and rods, the adjudicating authority has not analysed any material on record nor has arrived at a clear finding about the identity of the manufacturer of the bars and rods before fixing the duty liability upon the appellants KE. It is pertinent to note that the appellants had specifically pleaded that they have entered into an agreement between the parties in relation to the job work pertaining to the manufacture of product in question, namely bars and rods. There is a specific reference to such agreement in detail in the show cause notice. Yet, one fail to understand, as to what prevented the adjudicating authority from applying its mind to this aspect of the matter and to analyse the agreement to decide the nature of relationship between the two parties with reference to the manufacture of the product in

question. Records clearly disclose that the decisions of the Apex Court in Pawan Biscuits Co. (Pvt.) Ltd., vs. CCE, Patna reported in 2000 (120) ELT 24 (SC) as well as CCE, Baroda vs. M.M. Khambhatwala vs. reported in 1996 (84) ELT 161 were brought to the notice of the adjudicating authority and yet the impugned order nowhere discloses that the adjudicating authority had understood and followed the said decisions while deciding the matter in hand.

14. The Apex Court in Pawan Biscuits case had observed thus-

> "3. On 15.12.1986, an agreement was entered into between the appellant and Britannia which required the appellant to manufacture biscuits for Britannia. The terms of the agreement, broadly speaking, envisaged that the ingredients for the manufacture of biscuits as well as the recipe or method by which the biscuits were to be manufactured were to be supplied by Britannia. The ingredients so supplied were also to be regarded as belonging to Britannia for the manufacture of the biscuits. The appellant was required to make packages as directed by Britannia and then supply the same under Britannia's instructions. For the work done, the appellant was entitled to receive certain amount which was to be fixed from time to time. The agreement also contemplated that if the biscuits were not manufactured upto the required standard, then the same were to be destroyed and in respect of those biscuits no payment was to be made to the appellant and, on the contrary, the appellant would become liable to pay for the cost of the ingredients which had got spoiled.
>
> 4. What is material in this agreement is that there was a clause which specifically provided that "relationship between the parties shall always be that of principal and principal and not principal and agent". The agreement also gave liberty to the appellant to continue to manufacture biscuits under other brands and to sell the same".

15. In M.M. Khambatwala case, the Apex Court had observed that –

> "On the admitted facts which we will set out immediately the respondents cannot be considered as manufacturers of agarbatti, amlapodi and dhup etc. manufactured in the premises of house-hold ladies as described above without the aid of power. The undisputed facts are that the respondents supplied raw materials for rolling incense sticks etc. to outside manufacturers and paid wages to them on the basis of number of pieces manufactured. Such manufacture was without the aid of power. There was no supervision over the manufacture. Incense sticks were put in packets and such packets were sold from the premises of the house-hold ladies and they did not go to the factory premises of the respondents. No doubt the proceeds went to the respondents but that will not change the character of manufacture. If the conclusion is that the house-hold ladies were the real manufacturers then the decision of the Tribunal cannot be faulted. CEGAT after considering the materials before it concluded that the respondents are not the manufacturers of agarbati, amlapodi, dhup etc. manufactured by various cottage type manufacturers on job work basis. On the facts narrated above, we do not think that the assumption of the Collector that the respondents got the goods in question manufactured by 'hired labourers' can be sustained. On the other hand we find, on the facts, the house-hold

> ladies are the manufacturers of the goods in question and the liability to excise duty will be attracted on their manufacture of the goods and therefore, it cannot be clubbed with the goods manufactured in the factory premises of the respondents to deny the exemption claimed".

16. Whether a particular product is manufactured by Mr. X or Mr. Y, is purely a question of fact to be decided on the analysis of the materials placed before the adjudicating authority. It is not a matter of conclusions be drawn merely on the basis of the submissions or averments made by the parties. In fact, this is quite elementary and should be known to every adjudicating authority. We, however, find in the present case a total go by given to the required procedure and a decision having arrived at solely on the basis of submissions and the conclusion drawn on unsustainable assumptions. There is absolutely no analysis of the factual matrix on record. There is absolutely no reference to the very important document in the form of agreement between the parties in relation to the manufacture of the product, in spite of the fact that in such matter the nature of relationship revealed from said document assumes great importance which deciding the issue arising from the determination.

17. In case of job work, the adjudicating authority has certainly to ascertain the nature of relationship between the parties to the agreement. It is necessary to find out whether it is in the nature of principal to principal or otherwise. It is also necessary to analyse the arrangement regarding the monetary transaction between the parties in relation to the manufacture of the product. The importance of both these factors has been clearly highlighted by the Apex Court in Pawan Biscuits. It is also necessary to ascertain the extent of supervision on the process of manufacture or extent of power to interfere therein by the supplier of the raw materials to the so-called job worker in relation to the manufacture of the product. Alongwith this, various other aspects of the process of the manufacture and scope of the agreement in relation thereto between the parties are also required to be ascertained. The adjudicating authority in the case in hand however has totally

forgotten all those aspects while disposing the matter. Being so, the appellants are justified in making grievances in relation to the impugned order fixing liability to pay the duty upon them without analyzing the materials on records and without arriving at an appropriate conclusion based on proper and logical reasoning. On this ground itself without referring to all other grounds sought to be canvassed in the matter, the impugned order is liable to be set aside and matter remanded to the adjudicating authority to decide the same afresh in accordance with the provisions of law.

18. In the result, therefore, the appeals succeed, the impugned order is set aside and matter is remanded for fresh consideration thereof by the adjudicating authority and bearing in mind the observations made herein above. We make it clear that we have not expressed any opinion on the merits of the case. The adjudicating authority to dispose of the matter as expeditiously as possible after hearing both the parties and in any case prior to 31st March 2010.

19. All the appeals are disposed of in the above terms.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member (Technical)

/Pant/