

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

Appeal No. E/362 /2008 – SM[BR] E/ CO / 169 / 2008 –SM[BR]

Date 08/01/2010

Assistant Registrar
C.E.S.T.A.T, New DelhiTo :
C.C.E. LUDHIANA
CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)
C.C.E. LUDHIANA

Appellant

Vs
Respondent

M/S JAINSONS WOOL COMBERS LTD.

I am directed to transmit herewith a certified copy of Final order No. 24 / 2010 –SM[BR] dated 30.12.2009
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944Assistant Registrar
(SM Appeal Branch)**Copy to :**

1. Respondent

M/S JAINSONS WOOL COMBERS LTD.

266, INDSL. AREA-A, LUDHIANA (PB)

2. Adv. / Consult SHRI K.K. SHARMA ADV.
A-115, GROUND FLOOR, ASHOKA ENCLAVE-II
SECTOR-37, FARIDABAD

3 S.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 Publications 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 Kuni, 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)

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Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

Excise Appeal No.362/08-SM & E/CO/169/08-SM

[Arising out of Order-in-Appeal No.560/CE/CHD/REV/LDH/07
dt.5.11.07 passed by the Commissioner(Appeals),Chandigarh)

For approval and signature

Hon'ble Mr. Rakesh Kumar, 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?

2. Whether it would be released under Rule 27 of :
the CESTAT (Procedure) Rules, 1982 for
publication in any authoritative report or not?

3. Whether their Lordships wish to see the fair :
copy of the order?

4. Whether order is to be circulated to the :
Department Authorities:

CCE, Ludhiana

Appellant

Versus

M/s. Jainsons Wool Chambers Ltd.

Respondent

Appearance

Sh. S.K.Bhaskar, DR for Appellant

Sh. K.K.Sharma, Adv. For Respondent

final

Date of decision: 30.12.09

Order No. 24/2010 SM (BR)

Per Rakesh Kumar:

The facts leading to this appeal by the Revenue are, in
brief, as under:

1.1 The respondent manufacture woolen tops and woolen yarn chargeable to Central Excise Duty under chapter 51 of Central Excise Tariff Act, 1985. They also avail the facility of Cenvat credit on inputs as per the provisions of Cenvat Credit Rules. The respondent, in addition to manufacture of woolen tops and woolen yarn for themselves, also manufacture the same goods for principal manufacturers on job work basis out of the semi processed material received by them under job work challan^s. The period of dispute in this case is from April'01 to Jan'04. The respondent were using dutiable inputs like lubricants, soaps, chemicals etc. for manufacture of woolen tops/woolen yarn in respect of which Cenvat credit was taken. These cenvated inputs were being used for woolen tops/woolen yarn manufactured for themselves as well as for principal manufacturers on job work basis, which were being cleared without payment of duty to principal manufacturers. The Department was of the view that since the respondent, while using common cenvated inputs in or in relation to the manufacture of dutiable as well as fully exempted finished products, were liable to pay, in respect of clearances of woolen tops/woolen yarn to the principal manufacturer without payment of duty, an amount as per the provisions of Rule 6(3) of Cenvat Credit Rules, 2001/2002, as they were not maintaining separate records and separate inventory of the inputs used for dutiable ^{and} ~~as well as~~ exempted goods. B Accordingly, a show cause notice dt. 21.11.05 was issued to the

respondent for - (a) recovery of an amount of Rs.2,41,943/- as per the provisions of Rule 6(3) of Cenvat Credit Rules read with Rule 12 of the Cenvat Credit Rules and Section 11A of Central Excise Act,1944 alongwith interest chargeable on the same as per the provisions of Section 11AB under Central Excise Act and (b) imposition of penalty on the respondent as per the provisions of Rule 13 of Cenvat Credit Rules read with Section 11AC of Central Excise Act,1944. The Asstt. Commissioner vide order-in-original No.18/CE/AC/LDH-1/06 dt.14.2.06 dropped the proceedings initiated by show cause notice dt.21.11.05 on the ground that under proviso to sub-rule (1) of Rule 6 of Cenvat Credit Rules, the Cenvat credit on the inputs shall not be denied to the job workers referred to in Rule 12B of Central Excise Rules,2002 and since the respondent had undertaken job work process within the provisions of Rule 12B, the exemption from the obligation of manufacturer of dutiable and exempted goods provided under sub-rule (1) of Rule 6 would be available to the respondent.

1.2. Against the above order of the Asstt. Commissioner, the Department filed a review appeal before the Commissioner(Appeals). The Commissioner(Appeals) observed that the period of dispute from April'01 to Jan'04 can be divided in two parts - from 1.4.03 to 31.1.04, when Rule 12B was there alongwith proviso to sub-rule (1) of Rule 6 of Cenvat Credit Rules and the period from April'01 to March'03 when the Rule 12B of Cenvat Credit Rules,2001/2002 and the corresponding proviso in

sub-rule(1) of Rule 6 of Cenvat Credit Rules,2001/2002 was not there. For the later period i.e. from the period 1.4.03 to Jan'04, the Commissionr(Appeals) observed that when Rule 12B was there in Central Excise Rules, the benefit of the proviso to sub-rule(1) of Rule 6 cannot be denied. During this period, the first proviso to Rule 6(1) provided that Cenvat credit on inputs shall not be denied to job worker referred to Rule 12B of Central Credit Rules,2002 on the ground that the said inputs had been used in the manufacture of goods cleared without payment of duty under the provisions of that Rule. Accordingly, the Commissioner(Appeals) held that Cenvat credit demand of Rs.1,74,976/- for the period from 1.4.03 to 31.1.04 has been correctly dropped. With regard to the remaining Cenvat credit demand of the prior period from April'01 to March'03, the Commissioner(Appeals) observed that for this period in accordance with the judgment of the Larger Bench of the Tribunal in the case of Sterlite Industries(I) Ltd. reported in 2005(183)ELT.353, the Cenvat credit cannot be denied to the job worker as the finished products were cleared without payment of duty to the principal manufacturer who were clearing the same on payment of duty. The Commissioner(Appeals) accordingly upheld the Asstt. Commissioner's order and dismissed the Deptt.'s review appeal. The Revenue has now come in appeal against the portion of the Commissioner(Appeals)'s order upholding the dropping of the demand for the period from April'01 to March'03.

The Revenue has filed this appeal on the ground that since the provisions of Rule 12B were in force for period from 1.4.03 to 9.7.04, the benefit of the same would not be admissible to the respondent for the period prior to 1.4.03 and in respect of the period prior to 1.4.03, the Commissioner(Appeals)'s reliance on the Tribunal's judgment in the case of Sterlite Industries(I) Ltd.(supra) is not correct as the said judgment is in respect of Rule 57C of the erstwhile Central Excise Rules. The Respondent have filed a cross objection No.E/CO/169/08-SM in respect of this appeal.

3. Heard both the sides.

3.1 Shri S.K.Bhaskar, learned DR assailed the portion of the impugned order upholding the dropping of the demand for the period from April'01 to March'03 and pleaded that the judgment of the Tribunal in the case of Sterlite Industries(I) Ltd. vs CCE(supra) relied upon by the Commissioner(Appeals) is not applicable to the facts of this case; that the Tribunal's judgment in the case of Sterlite Industries(I) Ltd. is with regard to the provisions of Rule 57C which were no longer there during the period of dispute, that the Tribunal had referred a similar issue to the Larger Bench in the case of Modi Sales vide order No.653/06-SM dt.18.12.06; that the Deptt.'s appeal against the Tribunal's judgment in the case of Indore Steel & Iron Mills Ltd. vs CCE, Indore reported in 2002(147)ELT.611 is pending before Hon'ble High Court; that the Tribunal in the case of Tata Motors Ltd. vs

CCE, Pune reported in 2009(243)ELT.353 has taken a contrary view holding that when job worker uses own inputs and takes Cenvat credit for manufacture of goods for himself as well as on job work basis and job work goods are cleared without payment of duty to the principal manufacturer, he would not be entitled to the Cenvat credit in respect of the inputs used for job work goods cleared without payment of duty to the principal manufacturer.

In view of the above, Shri Bhaskar pleaded that the Commissioner(Appeals)'s order upholding the setting aside of Cenvat credit demand for the period from April'01 to March'03 is not correct.

3.2 Shri K.K.Sharma, Advocate, learned Counsel for the respondent, pleaded that the Tribunal in a series of judgments starting from Larger Bench judgment in the case of Sterlite Industries (I) Ltd. vs CCE(supra) has held that the job worker who received goods from his principal manufacturer for manufacture of goods on job work and return is entitled to take Cenvat credit of duty in respect of the other inputs used by him even if the job work goods were cleared without payment of duty; that the Tribunal's judgment in the case of Sterlite Industries(supra) has been upheld by Hon'ble Bombay High Court vide judgment reported in 2009(244)ELT.A.87 and that the Tribunal's judgment in case of Tata Motors Ltd. vs CCE(supra) has been set aside by Hon'ble Bombay High Court vide judgment reported in 2009(244)ELT.377(Bom.) wherein Hon'ble High Court

held that all the Courts and Tribunal within the jurisdictional of High Court are bound to follow the law laid down by the Hon'ble High Courts. Shri Sharma also pleaded that the referring order No.653/06-SM(BR) dt.18.12.06 mentioned to in the grounds of appeal by which the single member bench has referred this issue to a Division Bench in the case of Modi Sales has been decided by the Division Bench of the Tribunal against the Revenue vide judgment reported in 2009(235)ELT.356, following Hon'ble M.P.High Court's judgment in the case of Flex Chemicals reported in 2007(216)ELT.359 wherein it has been held that in the case of manufacture of goods on job work basis by a job worker by using some of his own inputs, the job worker is not required to reverse the Cenvat credit of the job work goods are cleared without payment of duty to the principal manufacturer. In view of the above, Shri Sharma pleaded that the impugned order-in-appeal is correct.

4. I have carefully considered the submissions from both the sides and perused the records. The dispute in this appeal is only for the period prior to 1.4.03 i.e. for the period from April'01 to March'03 when Rule 12B of the Central Excise Rules was not there. During this period, the respondent were receiving raw material from the principal manufacturers and were processing the same into woolen tops/woolen yarn by using their own inputs for which the Cenvat credit was being taken. The principal manufacturers were clearing the finished goods on payment of

duty. The point of dispute is as to whether in such a situation, the respondent as job worker were eligible for Cenvat credit of inputs used in or in relation to the manufacture of goods on job work, which were cleared without payment of duty to the principal manufacturers who, in turn, cleared the same on payment of duty. I find that this issue stands settled against the Revenue by Larger Bench judgment of the Tribunal in the case of Sterlite Industries (I) Ltd. vs CCE, Pune(supra) which has been upheld by Hon'ble Bombay High Court vide judgment reported in 2009(244)ELT.A.89. Hon'ble Bombay Hgh Court while upholding the Larger Bench of the Tribunal has observed that the Tribunal's judgment is in accordance with the law laid down by Hon'ble Supreme Court in the case of Escorts Ltd. vs CCE reported in 2004(171)ELT.145(SC). I also find that Hon'ble Bombay High Court in a recent judgment in the case of Tata Motors Ltd. vs UOI reported in 2009(244)ELT.377(Bom.) has upheld the same principle. As regards the revenue's plea that the Tribunal's judgment in the case of Sterlite Industries(I) Ltd.(supra) was with regard to Rule 57C, this plea is not correct as Rule 57C is pari-materia with Rule 6(1) of Cenvat Credit Rules,2001, which was ⁱⁿ ~~in~~ ^{force} during the period of dispute and therefore, the ratio of the Tribunal's judgment in the case of Sterlite Inds. Ltd. would be applicable to this case also. In view of this, I do not find any infirmity in the impugned order. The Revenue's appeal is

accordingly dismissed. The Cross Objection filed by the respondent also stands disposed of as above.

Order dictated in the open Court.

(Rakesh Kumar)
Member (Technical)

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