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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/937 /2011 - EX[DB] WITH E/S/1144/2011-EX   Date **20/12/2011**

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

To :
M/S ADARSH UDYOG,
244, HMT ANCILIARY INDUSTRIAL ESTATE, PHASE-I, PANCHKULA (HARYANA)

M/S ADARSH UDYOG, Appellant

Vs

C.C.E. PANCHKULA **STAY ORDER NO. 1493/2011-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1044** **2011** **EX|DB|** dated 08-12-11 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. PANCHKULA
SCO NO. 407 AND 408, SECTOR 8,
PANCHKULA (HARYANA) 134119.

2. Adv. / Consult SH. SANDEEP SINGH, C/O
MR.VIKRANT KACKRIA
509, SEC-7.PANCHKULA, HARYANA

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III

DATE OF HEARING : 01/12/2011.
DATE OF DECISION : 01/12/2011.

Excise Stay Application No. 1144 of 2011 in Appeal No. 937 of 2011

M/s Adarsh Udyog — Appellants

Versus

CCE, Panchkula — Respondent

[Arising out of the Order-in-Appeal No. 45/CE/D-II/2011 dated 01/02/2011 passed by The Commissioner (Appeals), Central Excise, Delhi – II.]

For Approval and signature :
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri 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?	:	No
2.	Whether it would 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 Department Authorities?	:	Yes

Appearance

Shri Sandeep Singh, Advocate – for the Appellants.

Shri N. Pathak, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Shri Rakesh Kumar, Member (Technical)

STAY Order No 1493/2011-EX
FINAL Order No. 1044/2011-EX Dated : ____________

Per. Archana Wadhwa :-

After dispensing with the condition of pre-deposit of duty of Rs. 1,17,452/- and penalty of identical amount, we proceed to decide the appeal as the issue lies in narrow campass.

2. The appellant is an ancillary unit of M/s HMT (tractor division) engaged in the manufacture of various components and tractor on job work basis. The said job work was being done by the appellant in terms of Notification No. 214 of 1986 - CE after following the proper procedure. The raw material was being send by M/s HMT on challans issued in terms of the said notification and the goods were being returned to HMT on the basis of very same challans. Proper declaration was filed by M/s HMT with the job worker Jurisdictional Central Excise Authorities to the effect that the said parts and accessories of tractors would be used by them in the manufacture of the tractors, which would be cleared on payment of duty.

3. Tractors became exempt from payment of duty w.e.f. 9/7/04, with the result that the goods manufactured by the appellant on job work basis were required to discharge duty liability. However, HMT continued to keep sending the raw material to the appellant. On job work challans during the period 9/7/04 to 31/3/05 and the appellant continued to avail the benefit of the said notification and kept clearing their goods to M/s HMT without payment of duty.

4. Subsequently proceedings were initiated against the appellant by way of issuance of a show cause notice dated 24/9/09 raising demand of duty for the said period on the ground that in as much as the goods manufactured by job worker that is the appellant were to be used by HMT in exempted tractors, the appellants were required to clear the same on payment of duty. The appellants challenged the said allegations on the point of limitation. The lower authorities did not find favour with the same and confirmed the demand alongwith imposition of penalties.

5. After hearing both sides duly represented by Shri Sandeep Singh, Advocate for the appellant and Shri N. Pathak, DR for the respondent, we find that admittedly the appellants continued to work on the basis of challans issued by their principles i.e. M/s HMT. The goods were being returned by them to M/s HMT on the job work challans issued in terms of Notification No. 214 of 1986. The declaration filed by HMT with their Jurisdictional Central Excise Authorities continued to remain and was not withdrawn. In such a scenario, no suppression or misstatement of facts with intent to evade duty can be attributed to the appellant so as to invoke the longer limitation period.

6. We find that there are number of ancillary units of M/s HMT in or around that area. With the tractors becoming exempt w.e.f. 9/7/04, M/s HMT, continued to send the raw materials under job work challans to the appellant. The declaration filed by them were not withdrawn. We also note that there were no efforts on the part of the Jurisdictional Central Excise Authorities of M/s

HMT to either direct them not to send the materials to their job workers in terms of the said Notification No. 214 of 1986 or to take any action either against M/s HMT or the ancillary units. The fact of tractors becoming exempt w.e.f. 9/7/04 is supposed to be equally in the knowledge of the Central Excise officers, who could have guided both the parties accordingly. In any case, the job worker cannot be expected to ascertain the fact of nature of final product being dutiable or exempted. The fact that the principal filed declaration with their Jurisdictional Central Excise Authorities and kept on clearing the raw material under job work challan, is sufficient for the job worker to entertain a reasonable belief that the goods being manufactured on job work basis are being used by the principle in the manufacture of dutiable products. Failure on the part of M/s HMT cannot be taken as a ground to reflect on the malafide on the part of job worker i.e. the appellant. Accordingly, we hold that the impugned demand raised after a period of 4-5 years is barred by limitation. The same is accordingly set aside and appeal allowed with consequential relief to the party. Stay petition also get disposed.

(Dictated and pronounced in open court.)

(Archana Wadhwa)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

PK