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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/1054/2005 - EX[DB] Date **19/06/2012**

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

To :
C.C.E BHOPAL
HOSHANGABAD ROAD, 48, ADMINISTRATIVE
AREA, AREA HILLS, BHOPAL (M.P.) 462011

C.C.E BHOPAL Appellant

Vs

M/S ABHINAV CHEMICALS Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/686 2012 EX|DB|** dated 12-6-12 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
M/S ABHINAV CHEMICALS
NAGPUR ROAD, DEVARDHA,
P.O.LINGA, DISTT. CHINDWARA.

2. Adv. / Consult

NONE

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-3
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 (Haryana)
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)

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

COURT-I

Date of hearing/ decision:12.06.2012

Hon'ble Sh. Justice Ajit Bharihoke, President
Hon'ble Sh. 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 should 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 Departmental authorities?	

Excise Appeal No. 1054 of 2005

(Arising out of order-in-Appeal No. 761-CE/BPL/2004 dated 29.10.2004 passed by the Commissioner of Central Excise, Bhopal).

CC&CE, Bhopal — Appellants

Vs.

M/s Abhinav Chemicals — Respondent

Present Shri R.K. Verma, AR for the appellant.
None for the respondent.

CORAM : **Hon'ble Shri Justice Ajit Bharihoke, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

FINAL Order No. A/686/2012-EX(BR)

Per. Justice Ajit Bharihoke (Oral):

This appeal is directed against the order of Commissioner (Appeals) dated 03.11.2004 whereby he accepted the appeal against the order-in-original passed by the jurisdictional Assistant Commissioner and set aside the duty demand of Rs.32,875/- as also the penalty of Rs. 10,000/- imposed on the respondent.

2. Briefly stated facts relevant for the disposal of this appeal are that the respondent M/s Abhinav Chemicals, Chindwara was acting as job worker to M/s Hindustan Lever Ltd. Chindwara and taking benefit of Notification No. 214/85-CE dated 25.03.86. During the period w.e.f. 01.03.2003 to 31.03.2003 M/s HLL supplied "Aluminina Hydrate" to the respondent as input for manufacture of "Aluminium Sulphate" on job work basis. The respondent purchased "Sulphuric Acid" from the market on payment of duty and used the same alongwith the inputs supplied by M/s HLL for manufacture of "Aluminium Sulphate" which was cleared to M/s HLL without payment of duty under Notification No. 214/86.

3. The department was of the view that since the respondent used Sulphuric Acid purchased by him as one of the inputs of manufacture and Aluminium Sulphate benefit of Notification No. 214/86 was not available to him as such he was required to pay excise duty on the final product cleared by him to M/s HLL. Thus, a show cause notice raising demand of Rs. 54,792/- was issued to the respondent and he was also asked to explain as to

why penalty may not be imposed upon him. Respondent contested the show cause notice and claimed that since he was a job worker of M/s HLL and he has processed the input "Alumina Hydrate" supplied by the principal manufacturer M/s HLL he was entitled to the benefit of the Notification No. 214/86-CE. After hearing the parties the jurisdictional Assistant Commissioner, Central Excise Division Chindwara confirmed duty demand of Rs. 32875/- against the respondent alongwith interest and also imposed penalty of Rs. 10,000/- upon him.

4. Feeling aggrieved by the order-in-original the respondent preferred an appeal before the Commissioner (Appeals) who vide impugned order accepted the appeal and set aside the duty demand as well as penalty imposed vide order-in-original.

5. Feeling aggrieved of the impugned order the department preferred this appeal.

6. Respondent was served with the notice of appeal on various occasions through registered A.D. post. Despite that respondent has failed to put an appearance either personally or through his representative. Therefore, we are constraint to hear the appeal ex-parte against the respondent.

7. Learned Shri R.K. Verma, AR for the department has contended that impugned order is based on incorrect reading of Notification No. 214/86-CE dated 25.03.86. Ld. AR submitted that Commissioner (Appeals) have

failed to appreciate that benefit of this notification is available to the assessee only if the work done by him falls within the definition of "job work" given in the explanation contained in the notification. Ld. AR submitted that bare reading of the explanation contained in the Notification No.214/86 defining the expression job work would show that benefit of notification would be available to the job worker only if the main raw materials required for manufacture of the final product are supplied by the principal manufacturer. In the instant case admittedly the respondent have purchased the other main raw material i.e. Sulphuric Acid from the market, therefore, the case of the respondent is not covered under the expression "job work" defined in the explanation as such the impugned order cannot be sustained. In support of his contention Sh. R.K. Verma, ld. AR relied upon the judgement of the Supreme court in the matter of Prestige Engineering (India) Ltd. vs. CCE, Meerut reported in 1994 (73) ELT 497.

8. We have considered the submissions made by ld. AR and perused the record. At the outset, we may note that the judgement of the Supreme Court in the matter of Prestige Engineering (India) Ltd. (supra) is not applicable to the facts of this case for the reason that in the said case the Supreme Court was concerned with the meaning and scope of the expression "job work" as defined in the Notification No. 119/75-CE, in which notification the explanation defines expression "job work" as follows:-

> "The expression 'job work' shall mean such items of work where an article intended to undergo manufacturing process is supplied to the job worker and that article is returned by the job worker to the

supplier, after the article has undergone the intended manufacturing process, on charging only for the job work done by him".

9. In the instant case, we are concerned with the meaning of job work and scope in relation to the notification No. 214/86-CE dated 25.3.86 wherein the job work has been defined in the explanation in a different manner as under:-

> "Explanation- For the purposes of this notification, the expression "job work" means processing or working upon of raw materials or semi-finished goods supplied to the job worker, so as to complete a part of whole of the process resulting in the manufacture of finishing of an article of any operation which is essential for the aforesaid process".

10. On comparison of the respective explanations defining "job work" in the notification No. 119/75-CE and Notification No. 214/86-CE dt. 25.3.86 we find that the explanations are differently worded. Therefore, the meaning of job work in respect of Notification No. 119/75-CE which was subject matter of the judgement in the case of Prestige Engineering (India) Ltd. (supra) cannot be extended to the meaning of job work in respect of Notification No. 214/86 dt. 25.03.86. Therefore, in order to resolve the controversy one will have to revert to Notification No. 214/86 and explanation contained therein.

11. In order to avail benefit of Notification No. 214/86-CE dt. 25.3.86 the assessee is required to show that the job work done by him falls within the expression "job work" as defined under explanation to the Notification No. 214/86-CE which reads thus:-

"In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts goods specified in column (2) of the Table hereto annexed (hereinafter referred to as the said goods) manufactured in a factory as a job work and used in or in relation to the manufacture of final products (on which duty of excise is leviable whether in whole or in part) specified in column (3) of the said Table, from the whole of the duty of excise leviable thereon, which is specified in the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986).

Explanation- For the purposes of this notification, the expression "job work" means processing or working upon of raw materials or semi-finished goods supplied to the job worker, so as to complete a part of whole of the process resulting in the manufacture of finishing of an article of any operation which is essential for the aforesaid process.

2. The exemption contained in this notification shall be applicable only to the said goods in respect of which,-

(i) the supplier of the raw materials or semi-finished goods avails of the credit of duty paid on inputs under rule 57A of the said Rules, and gives an undertaking to the Assistant Collector of Central Excise having jurisdiction over the factory of the job worker that the said goods will be used in or in relation to the manufacture of the final products;

(ii) the said supplier produces evidence that the said goods have been so used; and

(iii) the said supplier undertakes the responsibilities of discharging the liabilities in respect of Central Excise duty leviable on the finished products".

Besides this, the assessee is also required to establish that all the conditions detailed in clause 2 of the notification have been complied with.

12. It is not the case of the appellant that the conditions given in clause 2 of the notification have not been complied with. Thus, only question to be answered in this appeal is whether or not the job done by the respondent assessee is covered under the definition of "job work" as defined in the

explanation to the notification. Contention of the appellant is that admittedly only one raw material “Alumina Hydrate” was supplied by the principal manufacturer and the other main raw material Sulphuric Acid was procured by the respondent himself as such the job of manufacture of Aluminium Sulphate done by the respondent is not covered within the definition of the job work given in the explanation to the notification. We do not find merit in this contention for the reason that the explanation defining the expression “job work” does not provide that all the raw materials for manufacture of final product must be supplied by the principal manufacturer. Instead as per the explanation the “job work” means processing or working upon of raw materials supplied to the job work. Admittedly, in this case the main raw material Alumina Hydrate was supplied by the principal manufacturer M/s HLL which was processed and treated by the respondent with Sulphuric Acid to manufacture Aluminium Sulphate i.e. the final product cleared without payment of duty. Therefore, in our opinion the process of manufacture adopted by the respondent squarely falls within the definition of “job work”. As such we do not find any infirmity in the impugned order extending benefit of Notification No. 214/86-CE to the respondent.

13. Otherwise also even if the benefit of Notification No. 214/86-CE was denied to the respondent that excise duty would have been passed on to M/s HLL who would have availed cenvat credit on entire duty paid on

Aluminium Sulphate cleared by the respondent. Therefore, analyzing from this angle also the entire exercise would have been revenue neutral.

14. In view of the above discussion, we do not find any infirmity in the impugned order extending benefit of Notification No. 214/86-CE to the respondent, which may call for interference by the Tribunal Appeal is therefore dismissed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Pant