

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I**

Excise Appeal No. 58180 of 2013 (DB)

[Arising out of the Order-in-Original No. 04/Commr/Ind/Cex/2013 dated 15/03/2013, passed by Commissioner of Customs, Service Tax, Indore, M.P.]

M/s Farseen Rubber Industries Ltd.

Appellant

Vs.

**Commissioner of Central Excise
Indore**

Respondent

Appearance:

**Shri K K Anand, Ms. Surabhi Sinha, Ms Priyanka Goel, Advocates
for the Appellants**

Shri H C Saini, AR for the Respondent

CORAM:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President

Hon'ble Mr. V. Padmanabhan, Member (Technical)

Date of Hearing : 6.09.2017
Date of Decision : 27.09.2017

FINAL ORDER NO. 56776 /2017

Per: V. Padmanabhan:

The appeal is against Order in Original No. 4/2013 dated 15/3/2013. The appellant was engaged in the manufacture of Butyl

Rubber Products falling under Chapter 40 of the first Schedule to the Central Excise Tariff Act, 1985. During the period under dispute from 03/06/2008 to 19/01/2011, the appellant carried out job work for M/s Birla Tyres Ltd, (BTL) Laksar, Distt- Haridwar, in terms of Notification Number 214/86 CE dated 25/03/1986. M/s BTL used to supply raw material to the appellant for conversion into tubes and butyl compound. Revenue issued show cause notice dated 18/01/2012 demanding Central Excise duty on goods cleared to BTL under Notification No. 214/86. The said notification exempts the job worker from payment of duty subject to fulfillment of conditions enumerated therein. One of the conditions of the notification is that the supplier of the raw material shall file the declaration with the jurisdictional Central Excise authorities of the job worker, undertaking to use said manufactured goods in their factory and to pay the duty on the ultimate final product. The said supplier of raw material should undertake the responsibility of discharging the liability in respect of Central Excise duty leviable on the final products

2. Inasmuch as the M/s. Birla Tyres, Haridwar was located in the exempted area of Haridwar and was availing the benefit of area based exemption notification No. 50/2003-CE dated 10.6.03, no duty was being paid by them on their final product in which the said butyl Inner Tubes and butyl rubber compound manufactured by the present

appellant as job worker, was being used. As such, the condition of notification No. 214/86 CE requiring the use of goods manufactured on job work basis in the manufacture of final product of raw material supplied, and clearance of final product on payment of duty did not get satisfied.

3. On the above basis, proceedings were initiated against the appellant, by way of issuance of show cause notice dated 18.1.2012. The said show cause notice culminated into passing of present impugned order by Commissioner, confirming the demand and imposition of penalties.

4. With this background we heard Shri K K Anand, Ms. Surabhi Sinha, Ms. Priyanka Goel and Shri H C Saini, learned Counsels for the parties.

5. Shri K K Anand, learned Counsel submits that in the year 2009 M/s. Birla Tyre Ltd. has sent a letter to the Deputy Commissioner of Central Excise Gwalior where the benefit of notification No. 214/86-CE dated 25.3.1986 was claimed. He submits that for the earlier period 2008, the assessee is not aware whether any letter for the earlier period was sent. When the benefit was available for 2009, it was also available in 2008. Therefore, they were of the view that it was available for the year 2008-2009 also.

6. It is submitted by the learned Counsel for the appellant that the appellant has sent a letter to the Asstt. Commissioner to this effect. He further submits that vide letter dated 26.3.2009 M/s. Birla Tyre Corporation has written to the department at Gwalior where it is stated that they will discharge duty liability in respect of Central Excise duty leviable on the finished product Tyres and tubes falling under Chapter 40 but in the said letter, it was also noticed that M/s. Birla Tyres Ltd. is exempted from excise duty vide Area based exemption notification No. 50/2003 dated 10.6.2003.

7. Learned Counsel further submits that demand is time barred beyond one year since there is no suppression, mis-statement. It is the submission of learned Counsel that material was received through proper challan. The declaration was filed by M/s. Birla Tyres Ltd. so the appellant was under bonafide belief that no duty is liable to be paid. To support his arguments, learned Counsel relied on following judgements:

- (i) ***Moon Chemicals vs. CCE Thiruvananthapuram***
[2007 (215) ELT 434 (Tri-Chennai) (para 3) ;
- (ii) ***OPG Metals Pvt. Ltd. vs. CCE, Tiruchirapalli***
[2016 (343) ELT 230](para 15) ;
- (iii) ***Commissioner of Central Excise Daman vs. Valson Industries*** ***[2009 (245) ELT 190 (Tri-Ahmd)] (para 3);***
- (iv) ***Desh Rolling Mills vs. CCE, Delhi***
[2000 (122) ELT 481 (Tri)] (para 5);

- (v) ***P R Rolling Mills Pvt. Ltd. vs. CCE, Tirupathi***
[2010 (249) ELT 232 (Tri-Bang)] (para 6.5 & 6.6);
- (vi) ***Commissioner vs. PR Rolling Mills Pvt. Ltd.***
[2010 (260) ELT A 84 (SC).

8. On the other hand, Shri H C Saini, learned counsel for the department has relied on the impugned order. He submits that in the instant case, the appellant informed the department that they will claim the exemption under notification No. 214/86 dated 25.3.86 but never disclosed that they were engaged in the actual manufacture of excisable goods in their factory. The ER 1 return is a document in which the assessee informs the department as to what excisable goods are being manufactured by them and also about their clearances and details of duty liability and payment. In the instance case, the appellant have never disclosed to the department that they were manufacturing excisable goods in their factory . The ER-1 returns filed by the appellants show that no excisable goods have been manufactured or cleared by them from their factory premises.

9. Though the department was aware that the appellants were not eligible for the benefit under Notification No. 214/86 no demand could be raised against them earlier since the appellants suppressed from the department that they were manufacturing excisable goods. Though department was aware that they were manufacturing the excisable

goods but not only did they suppress the fact but also mis-declared the fact of their manufacturing activity being carried out in their factory.

10. We have heard the matter at length. It appears that as per the statement of learned Counsel there was an allegation of suppression of the fact but also mis-declaration of the fact. In this connection, learned Commissioner in order-in-original has observed as under:

“I notice that the principal manufacturer had not filed any declaration as stipulated under the exemption Notification No. 214/86 – CE dated 25.3.1986 for the Butyl Inner Tubes manufactured and cleared by the noticee without payment of duty in the year 2008-2009; that the letter dated 05.06.2008 filed by the noticee informing manufacture of tube on job work basis for M/s. Birla Tyres also does not reflect that the Principal manufacturer is not registered under Central Excise; that even the declaration filed by M/s. Birla Tyre dated 26.3.2009 to the Department on 01.04.2009 did not reveal the manner of payments of duty on final goods as they had not taken the registration. Thus the notice has been correctly issued invoking the extended period. ”

11. Hence we are of the view that demand is not barred by time. On merits, it appears that The appellants entered into the contract with M/s BTL for undertaking, on job work basis, manufacture of tubes as well as mixing of compounds, out of the raw materials supplied by BTL. The raw materials were sent by BTL and the finished products were

returned to them through job work challans issued under Notification Number 214/86. No Central Excise duty was paid by the appellant at the time of clearance to BTL. BTL also never paid any duty on the final products manufactured by them, since they were availing the area based exemption under Notification No.50/2003.

12. The appellants entered into the contract with M/s BTL for undertaking, on job work basis, manufacture of tubes as well as mixing of compounds, out of the raw materials supplied by BTL. The raw materials were sent by BTL and the finished products were returned to them through job work challans issued under Notification Number 214/86. No Central Excise duty was paid by the appellant at the time of clearance to BTL. M/s. BTL also never paid any duty on the final products manufactured by them, since they were availing the area based exemption under Notification No. 50/2003.

13. The Notification Number 214/86-CE provides for exemption to the goods manufactured in the factory as a job work subject to conditions specified therein. One of the conditions specified under notification No. 50/2003-CE dated 10.6.2003 is that such goods should be used by the principal manufacturer in the manufacture of goods which are cleared on payment of duty. This condition is not satisfied by BTL inasmuch as they were availing area based exemption.

Consequently, appellant will not be eligible for clearance of goods to BTL without payment of duty under Notification No. 214/86.

14. In view of above, the impugned order is sustained and the appeal dismissed.

[Order Pronounced in the open court on 27.09.2017]

(Justice Dr. Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

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