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. II

DATE OF HEARING : 20/12/2017.
DATE OF DECISION: 20/12/2017.

Excise Appeal No. 3893 of 2012 (SM)

[Arising out of the Order-in-Appeal No. IND/CEX/000/APP/283/2012 dated 05/09/2012 passed by The Commissioner (Appeals), Customs & Central Excise, Indore.]

M/s Uflex Limited — Appellant

Versus

CCE & ST, Indore — Respondent

Appearance

Shri Arvind Arora, Advocate – for the Appellant.

Shri G.R. Singh, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri Ashok Jindal, Member (Judicial)**

Final Order No. 58530/2017 Dated : 20/12/2017

Per. Ashok Jindal :-

Cenvat credit on service availed by the appellant has been denied on the premise that the appellant is a job worker and working under Notification No. 214/86-CE dated 25/03/1986 as they are not required to pay duty on the goods manufactured by them on job work basis, therefore, in terms of Rule 6 (1) of

Cenvat Credit Rules, 2004 they are not entitled to avail Cenvat credit.

2. Heard the parties considered the submission.

3. I find that the said issue came up before the Hon'ble High Court Punjab & Haryana in the case of **CCE vs. Happy Forging Ltd. – 2011 (265) E.L.T. 197 (P&H)**, wherein the facts of the case are as under :-

> "2. The assessee availed Cenvat credit as per Cenvat Credit Rules, 2004 (for short, "the Rules") in respect of inputs in manufacture on job work basis. The department raised an objection that the Cenvat credit was not permissible on inputs used in the manufacture of exempted goods in view of Rule 6(1) of the Rules. Accordingly, proceedings were initiated under Section 11A of the Act. Stand of the assessee was that under Notification No. 214/86-C.E. dated 25-3-1986, exemption was available subject to the condition that supplier of raw material will either use the goods in manufacture of final product or clear the goods on payment of appropriate excise duty. Reliance was, inter alia, placed on a Larger Bench judgment of the Tribunal in Sterlite Industries Ltd. v. CCE, Pune - 2005 (68) RLT 25 = 2005 (183) E.L.T. 353 (Tri.-LB.) and judgment of the Hon'ble Supreme Court in Escorts v. CCE - 2004 (171) E.L.T. 145 (S.C.) = (2004) 7 SCC 214 and also decision of Commissioner (Appeals) in another case. The adjudicating authority upheld the objections of the assessee with the following observations :-
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> > "6.5 Thus, the Noticees have rightly availed the CENVAT credit on furl used in the manufacture of forged products and normalization undertaken on

job-work basis as duty is to be paid on these goods by the supplier of raw-material and show cause notice issued ignoring this position merits to be set aside.

6.6 The Commissioner (Appeals), Central Excise Commissionerate, Ludhiana has already in an another case of the Noticees relating to earlier periods allowed their appeals vide Order in Appeal No. 350-351/CE/Appl/Ldh/04 dated 19-4-2004 (copy enclosed) and set aside the orders-in-original demanding reversal of credit. The same view is also taken in the case of Modi Sales, Ludhiana vide Order-in-appeal No. 139/CE/CHD/06 dated 27-2-06. In the case of Modi Sales, their earlier order-in-original on the same issue has already been accepted by the department as mentioned in this order-in- appeal. In addition to this, the Ld. Assistant Commissioner, Central Excise Division-I, Ludhiana has already in case of M/s Ludhiana Steel Rolling Mills, Ludhiana dropped the demand under similar set of circumstances vide order-in-original No. 75/CE/AC/LDH-1/05, dated 30-12-2005. In view of these judgments, the show cause notice does not stand and the same merits to be dropped."

and the Hon'ble High Court observed as under :-

"6. We are unable to accept the submissions. While there is no dispute that under Rule 6(1) of the Rules, Cenvat credit cannot be availed in respect of inputs used in manufacture of exempted goods, the same has to be read with the notification referred to above. Learned counsel for the appellant is not able to assail the finding that under the notification, availing of Cenvat credit is permissible by job worker, subject to the final manufacturer paying the duty. In such a situation, matter is covered against the revenue by Escorts, wherein it was observed :-

> "8. It is to be seen that the whole purpose of the notification and the Rules is to streamline the process of payment of duty and to prevent the cascading effect if duty is levied both on the inputs and the finished goods. Rule 57-D(2), which has been extracted hereinabove, shows that in the manufacture of a final product an intermediate product may also come into existence. Thus in cases where an intermediate product comes into existence, even though no duty has been paid on the intermediate product as it is exempted from whole of the duty or is chargeable to nil rate of duty, credit would still be allowed so long as duty is paid on the final product.
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> 9. In cases of manufacturers like the appellants, the final product is the tractor. The intermediate product would be parts which are manufactured for being used in the tractor. In such a case the parts would not be the final product. Thus Rule 57-C would have no application. The mere fact that the parts are cleared from one factory of the appellants to another factory of the appellants would not disentitle the appellants from claiming benefit of Notification No. 217/86-C.E., dated 2-4-1986. As stated above, the notification itself clarifies that the inputs can be used within the factory of production or in any other factory of the same manufacturer.
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> 10. Mr. Lakshmikumaran relied upon the decision of this Court in the case of CCE v. Hindustan Sanitaryware & Industries, (2002) 7 SCC 515,

wherein in respect of this very notification, this Court has held that so long as duty is paid on the final product, the mere fact that duty was not paid on the intermediate product would not disentitle the manufacturer from the benefit of Notification No. 217/86-C.E., dated 2-4-1986. In that case, the input was plaster of Paris, the intermediate product was moulds made out of the plaster of Paris, the final product was sanitaryware. In our view, the facts of that case are identical to the facts of the present case. The ratio laid down therein fully applies to this case.

11. In this view of the matter, we set aside the impugned judgment and the order of the Commissioner of Central Excise. It is held that the appellants will be entitled to MODVAT credit on duties paid for the inputs used for manufacture of parts, so long as the parts are used in the manufacture of tractors on which duty is paid. We clarify that in respect of parts which are sold in the open market and/or used for manufacture of tractors on which no duty is paid, the benefit of Notification No. 217/86-C.E. dated 2-4-1986 may not be available."

As regards the judgment of the Hon'ble Supreme Court in Ballarpur Industries Ltd. therein the issue was not of effect of the notification dated 25-3-1986, which has been invoked in the present case. The said judgment is, thus, distinguishable".

4. As the Hon'ble High Court has already held that the goods which are manufactured by the appellant are not exempted goods, therefore, appellant is entitled to avail Cenvat credit. It is admitted fact that the goods manufactured by the appellant are

not exempted goods, but being a job worker, the appellant is not required to pay duty therefore it cannot be said the goods manufactured by the appellant are exempted goods. Accordingly, Cenvat credit cannot be denied to the appellant in terms of Rule 6 (1) of Cenvat Credit Rules, 2004.

5. In these terms and above analysis, I hold appellant has correctly availed the Cenvat credit, therefore, the impugned order deserves no merits, hence, set aside. In result, appeal is allowed with consequential relief, if any.

(Order dictated and pronounced in the open court.)

(Ashok Jindal)
Member (Judicial)

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