IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT – IV

**Excise Appeal No. E/52099 & 52583/2014 [DB]**

[Arising out of a common Order-in-Original No. JAI-EXCUS-001-COM-119-13-14 dated 21/01/2014 passed by the Commissioner (Appeals), Central Excise, Jaipur-I ]

**Magadh Plas Pvt Ltd**
**Shri Bianay Prasad Director Of ...Appellant**
**Vs.**
**C.C.E. & S.T., Jaipur-I ... Respondent**

Present for the Appellant : Mr. Anjali Manish, Advocate
Present for the Respondent: Mr. V.B. Jain, AR

**Coram: HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)**
**HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)**

**Date of Hearing : 08.01.2019**
**Pronounced on : 18.02.2019**

**FINAL ORDER No. 50255-50256/2019**

**PER: RACHNA GUPTA**

The appellants were engaged in manufacture of plastic containers. They manufactured the said containers also on job work basis and cleared the same accordingly to M/s Divya Pharmacy Industrial Area, Haridwar, Uttarakhand. The Department on an intelligence received, visited the factory premises of appellant on 19.01.2013 and after the scrutiny of the records they observed that the appellant apart from manufacturing goods on their own account were also engaged in production of plastic container on job work basis for said M/s Divya Pharmacy who was availing area based exemption under Notification No. 52/2003-CE dated 10.06.2013 and had supplied raw materials i.e. plastic granules to the appellant for the said job work under the cover of miscellaneous invoices as different from the regular invoices under Central Excise Rules for clearance of appellant's own manufactured goods qua the said job work expenses. The Department issued a SCN No. 01/04 dated 01.04.2013 proposing the recovery of central excise duty of Rs. 77,82,267/- alongwith the interest at the proportionate penalties. While adjudicating the said SCN, Commissioner vide the Order under challenge has confirmed the demand. Being aggrieved the appellant is before this Tribunal.

2. We have heard Ms. Anjali Manish, Ld. Advocate for the appellant and Mr. V.B. Jain, Ld. DR for the Department.

3. It is submitted by the appellant that the appellant is regularly discharging its excise liability qua the goods manufactured by him however with respect to manufacture of plastic containers on job work basis out of the raw materials received from M/s Divya Pharmacy. There is no duty liability of the appellant for the reason that they are merely the job worker. In addition, they have not taken the cenvat credit on the inputs. Above all only job work expenses have been charged by the appellant from M/s Divya Pharmacy that too against proper declarations and intimations to the Departmental authorities. In addition, an undertaking to Bhiwadi Division officer/ Jurisdictional officer was given by M/s Divya Pharmacy about the job work got done from the appellant and that the goods are exempted under Notification No. 214/86. The same is mentioned to be a bonafide reason that the appellant to not to discharge any liability as is noticed by the Department. Finally, it is submitted that the penalty is not imposable upon the appellant as

there is no fraud, collusion or any wilful mis-statement or suppression of fact with an intent to evade payment of duty has been alleged against the appellant. SCN is otherwise beyond the period of limitation. The Order under challenge is therefore prayed to be set aside and Appeal is prayed to be dismissed.

4. Ld. AR, per contra, has justified the order by impressing upon that the exemption of Notification No. 214/86 dated 25.03.1986 is not available to the appellant, as M/s Divya Pharmacy for whom job work is done by appellant is having the benefit of area based exemption. Appeal is accordingly prayed to be dismissed.

5. After hearing both the parties and perusing the records, we observe and hold as follows:

The original adjudicating authority vide the order under challenge has held that the appellant has manufactured plastic containers under job work challans and cleared them under miscellaneous challans only with an intent to evade the payment of duty as it was very much in the knowledge of the appellant that the unit of M/s Divya Pharmacy was in access free zone and is available an area based exemption. The question of exemption of Notification 214/86-CE is therefore not available to them.

Thus, the only adjudication in the present Appeal is as to whether the benefit of Notification No. 214 is available to the appellant in the given facts and circumstances.

5.1 Foremost, it is necessary to look into the said Notification which reads as follows:

> *"In exercise of the powers conferred by sub-section (1) of section 5A of Central Excise Act, 1944 (1 of 1944), read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957),*

> *(herein after referred to as Special Importance Act), and sub-section (3) of section 136 of the Finance Act, 2001 (14 of 2001), the Central Government being satisfied that it is necessary in the public interest so to do, hereby exempts goods specified in column (1) of the Table hereto annexed (hereinafter referred to as the said goods) "manufactured in a factory as a job work and:- (a) used in relation to the manufacture of final products specified in column (1) of the said Table, (i) on which duty of excise is leviable in whole or in part; or (ii) for removal to a unit in a Special Economic Zone or to a hundred per cent export-oriented undertaking or to a unit in an Electronic Hardware Technology Park or Software Technology Parks or for supply to the United Nations or an international organisation for their official use or for supply to projects funded by them, on which exemption of duty is available under notification of the Government of India in the Ministry of Finance (Department of Revenue) No.108/95-Central Excises, dated the 28th August, 1995, or (iii) for removal under bond for export, or (iv) by a manufacturer of dutiable and exempted final products, after discharging his obligation in respect of said goods under rule 6 of the CENVAT Credit Rules, 2002; or"*

The bare perusal of provision makes it clear that exemption to the goods manufactured in the factory as a job work are subject to conditions as specified in the Notification as above i.e. the Notification exempts the job worker from payment of duty subject to fulfilment of the conditions enumerated therein. In the Notification as above, one of the conditions is that such goods should be used by the principal manufacturer in the manufacture of goods which are cleared on payment of duty. IN the present case, principal manufacturer i.e. M/s Divya Pharmacy though was getting the plastic containers manufactured on job work basis from the appellant but they were not clearing their final product with those plastic containers on payment of duty as they were availing the area based exemption as per Notification o. 50/2003-CE dated 10.06.2003. Once, there was no duty on the final goods cleared no question of any exemption available qua the goods manufactured in factory as a job work arises. Therefore, appellant is also not qualifying the remaining two conditions of the said notification. We are of the opinion that benefit of Notification 214/86 is not available to the appellant.

Coming to the plea of bonafide on part of the appellant, it is observed that admittedly it was in the notice of the appellant that M/s Divya Pharmacy, the principle manufacturer is availing the area based exemption Notification was also in the notice of the appellant who was availing the benefit thereof. No bonafide can be attributed to the appellant submission that he was not aware of the condition of the said Notification that the goods are to be cleared after payment of duty to availing the benefit. In the given circumstances, the only possibility for the non payment is the intent to evade the duty. There is no other cogent evidence to support the bonafide. We therefore are of the opinion that Commissioner has committed no error while imposing penalty. SCN also cannot be held to be barred by time for the said reason. As a result, Order under challenge is hereby upheld and Appeal accordingly stands dismissed.

[Pronounced in the open Court on 18.02.2019 ]

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| **(C.L. MAHAR)** | **(RACHNA GUPTA)** |
| **MEMBER (TECHNICAL)** | **MEMBER (JUDICIAL)** |

D.J.