CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. 1

SERVICE TAX Appeal No. 52026 of 2016

(Arising out of Order–in-Appeal No. 02-ST/LTU/DLH/2016 dated 04.03.2016 passed by COMMISSIONER OF CENTRAL EXCISE-New Delhi)

M/s. AVTEC Ltd. **...Appellant**
Power Product Division,
Poonapalli Village,
Madhagondapalli,
Krishna Giri, Tamil Nadu

Versus

Commissioner of Customs,
Central Excise, New Delhi **....Respondent**
MG Marg, IP Estate,
17-B, IAEA House, IP Estate
New Delhi

APPEARANCE:
Mr. Manish Saharan, Advocate for the Appellant
Mr.Sanjay Jain, Authorised Representative for the Respondent

CORAM : HON'BLE MR.JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)

Date of Hearing/ Decision: **09.05.2019**

FINAL ORDER No. 50737/2019

JUSTICE DILIP GUPTA

1. The order dated 4 March 2016 passed by the Commissioner (Appeals) dismissing the appeal that had been filed by the appellant to assail the order dated 14 November 2013 passed by the Additional Commissioner (Central Excise) and Service Tax has led to the filing of this appeal.

2. The issue that arises for consideration in this appeal is regarding the exemption of service tax on job workers granted by

notification no. 8/2005 dated 1 March 2005. The said notification is reproduced below:

> "**G.S.R. (E).-** In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service of production of goods on behalf of the client referred in sub-clause (v) of clause (19) of section 65 of the said Finance Act, from the whole of service tax leviable thereon under section 66 of the said Finance Act:
>
> Provided that the said exemption shall apply only in cases where such goods are produced using raw materials or semi-finished goods supplied by the client and goods so produced are returned back to the said client for use in or in relation to manufacture of any other goods falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), as amended by the Central Excise Tariff (Amendment) Act, 2004 (5 of 2005), on which appropriate duty of excise is payable.
>
> **Expalantion.-** For the purposes of this notification,-
>
> (i) the expression "production of goods" means working upon raw materials or semi-finished goods so as to complete part or whole of production, subject to the condition that such production does not amount to "manufacture" within the meaning of clause (f) of section 2 of the Central Excise Act, 1944 (1 of 1944);
> (ii) "appropriate duty of excise" shall not include 'Nil' rate of duty or duty of excise wholly exempt."

3. The Appellate Authority has denied the benefit of this notification to the appellant for the sole reason that the appellant has not been able to substantiate that the manufacturer namely M/s. H V Axles Ltd., a group company of M/s. Tata Motors, had paid appropriate duty of excise.

4. It is the contention of the learned counsel for the appellant that the proviso to the aforesaid notification dated 1 March 2005 mainly requires that the duty of excise is payable by the manufacturer and does not require that it has actually been paid and, therefore, the Adjudicating Authority was not justified in holding that benefit of exemption would not be available to the

appellant for the reason that the appellant had not be able to substantiate that the manufacturer had paid the duty of excise.

5. It is not in dispute that the goods are produced using raw materials or semi finished goods supplied by the appellant and the goods so produced are returned back to the manufacturer for use or in relation to manufacturer of the goods falling under the First Schedule to the Central Excise Tariff Act 1985. What is contended by the Department is that the appellant has not been able to substantiate that appropriate duty of excise has been paid by the manufacturer. A perusal of the aforesaid notification and the proviso leaves no manner of doubt that the exemption shall apply in a case whether goods so produced by the job workers are returned for use in or in relation to manufacture of any other goods falling under First Schedule to the Central Excise Tariff Act, 1985, on which appropriate duty of excise is **payable**. A certificate has also been given by the manufacturer that mentions:

> "This is to say that the raw materials / components sent to AVTEC Ltd., Power Products Division, Hosur, against various Purchase Orders placed by us on them for job work, under Rule 4 of the CENVAT Credit Rules 2004, from the financial year 2006-07 onwards and upto now, after their conversion into components or by AVTEC Ltd. are meant for use in our final excisable products viz. Axels and Axle parts and parts there of falling under Central Excise Tariff Code 87085000. We have discharged shall be discharging the excise duty liability of the final products / parts upon the clearance the same from our factory."

6. This certificate clearly indicates that they have discharged or shall be discharging liability of excise duty for the final products upon the clearance from the factory. This, in our opinion, would satisfy the requirements of the Notification dated 1 March 2005. The Appellate Authority was, therefore, not justified in holding that

it was for the appellant to substantiate whether appropriate duty of excise has been paid by the manufacturer or not.

7. It is therefore, not possible to sustain the order dated 4 March 2016. It is accordingly set aside. The appeal is allowed.

(Dictated and pronounced in the open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(BIJAY KUMAR)
MEMBER (TECHNICAL)

Bhanu