CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench

Court – I

Excise Appeal No. 25615 of 2013

(Arising out of OIO No. 20/2012 & 21/2012-CE-HYD-III-ADJN (COMMNR) dt.16.11.2012 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad-III)

Pitti Laminations Ltd
Unit-I, Nandigaon Village, Kothur Mandal,
Mahaboobnagar Dist., AP – 509 223 **......Appellant**

VERSUS

Commissioner of Central Excise & Service Tax, Hyderabad - III
Kendriya Shulk Bhavan, LB Stadium Road,
Basheerbagh, Hyderabad – 500 004 **......Respondent**

and

Excise Appeal No. 25619 of 2013

(Arising out of OIO No. 20/2012 & 21/2012-CE-HYD-III-ADJN (COMMNR) dt.16.11.2012 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad-III)

Pitti Laminations Ltd
Unit-I, Nandigaon Village, Kothur Mandal,
Mahaboobnagar Dist., AP – 509 223 **......Appellant**

VERSUS

Commissioner of Central Excise & Service Tax, Hyderabad - III
Kendriya Shulk Bhavan, LB Stadium Road,
Basheerbagh, Hyderabad – 500 004 **......Respondent**

Appearance
Shri Ch. Sumanth, Advocate for the Appellant.
Shri K. Srinivas Reddy, AR for the Respondent.

Coram:
HON'BLE MR. R. MURALIDHAR (JUDICIAL)
HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30306-30307/2024

Date of Hearing: 09.05.2024
Date of Decision: 11.06.2024

[Order per: A.K. JYOTISHI]

M/s Pitti Laminations Ltd (herein after referred to as the Appellant) has come in Appeal against the Order-in-Original No. 20/2012 & 21/2012-CE-HYD-III-ADJN (COMMNR) dt.16.11.2012, whereby the Original Authority has confirmed the demand and ordered for recovery of irregular Service Tax credit as also imposed penalty under Rule 15(2) of Cenvat Credit Rules, 2004 (CCR) read with Section 11AC of the Central Excise Act and also under Rule 15(1) of CCR, 2004.

2. The issue, in brief, is that the Appellants were engaged in manufacture of Electrical Stampings and Laminations and were availing Cenvat credit of duty paid on inputs/ capital goods as well as input services and utilizing the same for payment of duty on the finished goods. They were also receiving materials from certain customers for manufacture of excisable goods under the procedure laid down under Rule 16A of Central Excise Rules, 2002 and Rule 4(5)(a) of CCR read with Notification No. 17/2003-CE (NT) dt.13.03.2003. Such goods, after processing on the job work basis, were returned back to the principal manufacturer and were admittedly used in the manufacture of final products cleared on payment of duty. The Department felt that since some common input services were used both for manufacture of Appellant's own goods as well as goods processed on job work basis, the proportionate credit attributable to the input services used for processing goods on job work basis, amounting to Rs.54,11,284/-, did not appear to be admissible under CCR. The reliance was placed on Rule 2(1) and Rule 3 of CCR to come to the conclusion that only the manufacture of excisable goods of service provider is eligible to take credit of Service Tax paid on input services and not the job worker. Whereas, in the instant case, the Appellants have taken credit in respect of common input services used both for manufacture of goods as well as for processing goods on job work basis and cleared without payment of duty to the principal manufacturer for eventual use in their final product and clearance on payment of duty. Department relying on the provisions of Rule 2(l) and Rule 3 of CCR, 2004 felt that "job workers" are not eligible for taking credit and only manufacturer can take credit. Further, as they were not maintaining separate account, the Appellants are required to reverse the Cenvat credit

availed on input services attributable to the goods manufactured and/or cleared by them on job work basis.

3. On adjudication, the Original Adjudicating Authority framed the basic question which was required to be decided as to whether goods manufactured and cleared to principal manufacturer without payment of duty are liable to be treated as exempted goods or not. The contention of the Appellant was that they were clearing manufactured goods without payment of duty in terms of Notification No. 214/86-CE dt.25.03.1986. The Adjudicating Authority did not dispute that existing goods at job worker's premises were manufactured goods but examined whether such goods were exempted goods or otherwise. The said notification was examined by the Adjudicating Authority. He felt that the Notification 214/86-CE, which has been issued in terms of power conferred under Section 5A(1) of the Central Excise Act, exempts the goods from payment of duty of excise and therefore, any goods cleared under the said notification are exempted from payment of duty, albeit subject to fulfillment of conditions specified in the said notification. Therefore, he came to the conclusion that the goods cleared by the Appellant to their principals on job work basis are exempted, in terms of Notification 214/86-CE and by virtue of availment of exemption, they are clearing goods without payment of duty even though the goods are otherwise subject to duty. Further, in terms of Rule 6(1) of CCR, there is an obligation on the manufacturer, who is manufacturing both dutiable and exempted goods to follow stipulated conditions and accordingly, Appellants were required to reverse proportionate credit of input services attributable to the clearance of exempted goods.

4. The learned Counsel for the Appellant has mainly contended that as per Rule 6(1) of CCR, the Cenvat credit is not to be allowed on such quantity of input or input services, which are used in the manufacture of exempted goods or for provision of exempted services except in the circumstances mentioned in Sub-Rule (2). The Sub-Rule (2) & (3) provide for various options in the situation where manufacturer is manufacturing both exempted goods and dutiable goods. In this case, they were admittedly availing the provisions under Notification 214/86-CE, which has not been disputed in the Impugned Order and therefore, they were clearing the goods after processing/manufacturingto the principal manufacturer, who in turn

were admittedly using them in the manufacture of their final products cleared on payment of duty. The main thrust of the argument of the learned Counsel is that the goods cleared in terms of Notification 214/86-CE are not to be treated as exempted goods so as to attract provisions of Rule 6 of CCR for the purpose of certain compliance as is applicable to the manufacturer of dutiable as well as exempted goods. He has relied on the following judgments in support of his contention that Notification 214/86-CE is not an exemption notification making the goods, as "exempted goods".

1) Federal Mogul Goetze India vs CCE [2015 (318) ELT 340 (T)]
2) Precision Metals vs CCE [2016 (4) TMI 187 – CESTAT Mumbai]
3) Sterlite Industries (I) Ltd vs CCE, Pune [2005 (183) ELT 353 (Tri-LB)]
4) CCE, Vadodara vs JH Kharawala [2009 (235) ELT 322 (T)]
5) Vishal Pipes vs CCE [2010 (9) TMI 415 – CESTAT New Delhi]
6) JBF Industries vs CCE [2014 (34) STR 345 (Tri-Ahmd)]
7) Jindal Polymers vs CCE [2001 (135) ELT 657 (Tri-Del)]
8) Gopal Iron & Steel Company (Guj) Ltd vs CCE [2015 (10) TMI 129 – CESTAT Ahmedabad]
9) Uflex Ltd vs Commissioner [2017 (52) STR 54 (Tri-Del)]
10) Commissioner vs Uflex Ltd [2017 (7) GSTL J120 (MP)]
11) Polycab Industries vs CCE [2010 (19) STR 585 (Tri-Ahmd)]
12) Bentley & Remington Pvt Ltd vs CCE, Bangalore [2016 (46) STR 671]
13) Supermax Personal Care Pvt Ltd vs CCE [2018 (5) TMI 654 – CESTAT Hyderabad]
14) JSW Steel Ltd vs CCE [2018 (3) TMI 397 – CESTAT Mumbai]
15) Lankoona Reactions vs CCE [2010 (5) TMI 795 – CESTAT Ahmedabad]
16) Tapasya Engineering Works vs CCE [2015 (9) TMI 984 – CESTAT Mumbai]

5. Learned Counsel also argues that Rule 3 of CCR entitles a manufacturer to take credit in terms of Rule 3 by a job worker availing

benefit of exemption specified in the Notification 214/86-CE and received by the manufacturer for use in or in relation to manufacture of final product.

6. On the other hand, learned AR reiterates the Impugned Order and the grounds taken by the Adjudicating Authority to come to the conclusion that Notification 214/86-CE is an exemption notification and therefore, the goods cleared under the said notification would be exempted goods and the provisions of Rule 6 would get attracted, which admittedly the Appellant has not followed.

7. Therefore, the short question to be decided is whether the excisable goods, otherwise liable to duty of excise, when cleared by the Appellant to their principal manufacturer are exempted goods in terms of Notification 214/86-CE or otherwise. While a plain reading of the Notification 214/86-CE would show that the said notification has been issued under Section 5A(1) of the Central Excise & Salt Act, 1944 and therefore, it appears to be an exemption notification, as argued by the learned AR or whether this exemption notification is primarily to regulate the movement of goods from the principal manufacturer to the job worker and its return to the principal manufacturer without payment of duty subject to compliance of the conditions stipulated therein.

8. We have gone through the judgments cited by the Appellants and we find that in the case of Federal Mogul Goetze India (supra), on the issue as to whether Notification 214/86-CE is an exemption notification or not, it was held that the same is not an exemption notification, per se. This Order was later affirmed by Hon'ble Karnataka High Court as reported at 2016 (42) STR 427 (Kar). The relevant Para is as under:

> *"10.2 The Notification 214/86, though has been issued under Section 5A of the Central Excise Act, the same is not an exemption notification per se. A job worker who undertakes the job work which is amounting to manufacture is, legally, the manufacturer. In respect of goods manufactured on job work basis cleared by the job worker, he is required to pay excise duty due at the time of clearance of job-worked goods to the raw material supplier. Notification 214/86 basically provides an option to the job worker not to pay the excise duty if the raw material supplier undertakes*

to pay the excise duty on the said products and undertakes to use them for further manufacture of excisable goods which are ultimately cleared on payment of duty. In other words, it does not exempt the duty on the job-worked items but it merely shifts the liability to a person other than the job worker and also shifts the date of payment of duty that is instead of reckoning from the date of clearance from the premises of the job worker, the same is to be reckoned from the date of clearance by the principal manufacturer (the person who supplied material to the job worker for the purpose of getting job work done). To consider this notification as an unconditional notification and to hold that the job worker-appellant should not have paid the duty may not be appropriate."

9. Similarly, in the case of Precision Metals (supra), wherein the identical issue was before the Tribunal, the Coordinate Bench, after examining the legal provision as also various case laws, including Sterlite Industries (I) Ltd (supra), came to the conclusion that the demand raised for an amount equivalent to 10% of value of the job work goods in terms of Rule 6(3)(b) of CCR is not sustainable. The relevant Para is as follows:

"6. We find that the demand was raised for an amount equivalent to 10% of the value of the goods which was manufactured by the appellant on jobwork basis which was returned without payment of duty to the principal supplier of raw material in terms of Notification No. 214/86. As per the condition of the Notification 214/86 principal supplier of raw material indicates to discharge the excise duty either on the jobwork goods itself or on the final product in which jobwork intermediary goods is used. With this proviso it can be said that the goods manufactured on jobwork basis is exempted from payment of excise duty. It is that the Notification 214/86 only facilitates the principal supplier of raw material to avoid payment of duty at two stages, (1) at jobwork stage and (2) at the stage of final product clearances. However, the amount of duty required to be paid will remain same as if no duty is charged at the jobworker end the same shall be available as CENVAT credit to the principal supplier of raw material. It is only for the convenience of the procedure, Notification 214/86 was

issued and not to exempt any excise duty. Since the goods manufactured on jobwork basis is exempted on the ground that the excise duty is charged on the full value of final product wherein the value of jobwork goods deemed to have been included the jobwork goods is not exempted. Therefore, Rule 6(3)(b) which is applicable only on the clearance of exempted goods shall not apply in the case of the goods manufactured on jobwork basis under Notification 214/86."

10. In the case of Uflex Ltd (supra), the Tribunal was examining identical issue where the Appellants were manufacturing goods on which excise duty was payable as also the goods which were exempt from excise duty under Notification 214/86-CE, relying on the Larger Bench judgment in the case of Sterlite Industries (I) Ltd (supra), the Tribunal held that the said judgment was not only restricted to credit availability on input but will also be applicable to input services and therefore, the denial of credit, whether it be on input or input service, was not be upheld by relying on the ratio declared by the Larger Bench. This decision of Tribunal was further upheld by the Hon'ble Madhya Pradesh High Court as reported supra, where on Appeal from Revenue, the Hon'ble High Court went through the substantial questions of law involved in the said order of the Tribunal and came to the conclusion that the order of the Tribunal was correct to the extent that the Tribunal has rightly held that there is no difference between input and input service as the issue is same in clear terms of Notification 214/86-CE and therefore, denial of credit by the Department cannot be upheld as decided by the Tribunal. The relevant Paras are as under:

"6. After considering the arguments of both the sides I find that as regards the first issue of availment of Cenvat credit in respect of various input services the appellate authority has observed that issue in Larger Bench's decision in the case of Sterlite Industries (I) Ltd. (supra) was relatable to credit availability of inputs and as such the same would not be applicable in respect of credit availability of input services. The said distinction made by the authority for not applying the ratio of Larger Bench's decision of the Tribunal cannot be appreciated. There is no difference between the inputs and input services credit and the issue being the same

i.e. clearance of goods for job work in terms of notification number 214/86-C.E., the denial of credit, whether it be on inputs or on input services, cannot be upheld. It is the ratio of the law declared by the Larger Bench which is required to be made applicable.

7. Otherwise also I find that the Tribunal in the case of JBF Industries v. CCE, Vapi - 2014 (34) S.T.R. 345 (Tri.-Ahmd.) has held that in view of the law declared by the Larger Bench, input services credit taken by the appellant in respect of goods sent for job work in 214/86-C.E. cannot be denied. In fact, I find that the Tribunal in the same assessee's case has set aside the confirmation of demand on the said ground, vide final order number A/56575/2013-EX(DB), dated 20-5-2013. As such I am of the view that the denial of credit on the said ground is not appropriate. The same is accordingly set aside."

11. Therefore, the first issue to be decided is whether the Appellants are job worker and not manufacturer and therefore, on this count itself, as alleged in the SCN, they are not entitled to take credit. It is apparent that Original Authority has already held that goods processed were manufactured goods and hence the Appellants are manufacturers for the purpose of Rule 2(l) and Rule 3 relied upon in the SCN. This has not been disputed by either side but what has been disputed is that such manufactured goods were exempted goods, as they were admittedly cleared in terms of Notification 214/86-CE. It has not been disputed by Revenue that they were not eligible for Notification 214/86-CE or there has been any non-compliance of stipulated conditions. Thus, even though the issue of Notification 214/86-CE, being an exemption notification or otherwise was never alleged in the SCN though relied upon by Appellant and adjudicated upon by the Original Authority.

12. In so far as second issue whether availment of Notification 214/86-CE makes the goods "exempted goods" so as to attract Rule 6 of CCR, 2004, after going through the various judgments cited supra, we find the ratio laid down therein that the clearance of goods without payment of duty under the provisions of Notification 214/86-CE would not make the said goods "exempted goods", so as to attract the provisions of Rule 6 of CCR, is

squarely applicable. Since they are not to be treated as exempted goods, therefore, the Appellants have rightly taken the credit in respect of input services. Therefore, the demand made by the Department is not sustainable and the Impugned Ordersare required to be set aside. Accordingly, we pass the following Order:

"Appeals are allowed with consequential benefits, if any, as per law."

(Pronounced in the Open Court on 11.06.2024)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

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