

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 78714 of 2018

(Arising out of Order-in-Appeal No. 32/SLG-CGST/2018 dated 06.06.2018 passed by Commissioner of CGST & Central Excise, Siliguri.)

M/s Macneil Engineering Ltd.,
(Konchowki, Bhasa, Diamond Harbour Road,
P.O.- Bishnupur, Dist.-24 Parganas (s)-743503.

..Appellant

VERSUS

Commissioner of CGST & Central Excise, Kolkata (South)
180, Rajdanga, Main Road, Shantipally, Kolkata-700107.

...Respondent

..
APPEARANCE :

Shri Aditya Dutta, Advocate for the Appellant
Shri K. Chowdhury Authorized Representative for the Respondent

CORAM:
HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER No...75207/2023

DATE OF HEARING : 06.03.2023

DATE OF PRONOUNCEMENT: 03.04.2023

PER RAJEEV TANDON :

The present appeal has been filed against Order-in-Appeal No. 32/SLG-CGST/2018 dated 06.06.2018 passed by Ld. Commissioner of CGST & Central Excise, Siliguri.

2. Briefly stated, the appellant is a manufacturer of Battery & Diesel operated Fork Lift Trucks, Platform Trucks, Hand-pallet stackers, & spare parts thereof falling under Chapter 84,85 & 87 of Central Excise Tariff Act, 1995. Pig Iron is one of the essential ingredients for the manufacture of ingredients & components of the aforesaid products. The appellants however, have no foundry/furnace for melting of the said pig iron & it is their case that they get their products casted through job work procedure. The Pig Iron is therefore said to be

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received by the appellants under cover of Central excise invoice, on which CENVAT Credit is availed by them & the said goods sent to M/s Asit Iron Foundry Pvt. Ltd., Battikiri, Howrah for job work & casting them into desired shapes and sizes, in accordance with the drawings supplied by them which form part/components of the final product manufactured by them.

2.1. That in the course of audit, certain irregularities/inadequacies were noticed by the department, which resulted in issuance of a Show Cause Notice demanding reversal/recovery of CENVAT Credit availed on the said goods besides consequent legal action.

2.2. The Show Cause Notice dated July, 26, 2011, alleges contravention of Rules 3 & 4 of the CENVAT Credit Rules, 2004 read with Rule 2(k) thereof, seeking recovery of irregular CENVAT Credit of Rs. 6,85,620/- (Six Lakhs Eighty Five Thousand Six Hundred Twenty Rupees Only) and Education Cess & Secondary Higher Education Cess amounting to Rs.13,711/- (thirteen thousand seven hundred eleven rupees only) & Rs.536/- (Five Hundred Thirty Six Rupees Only.) respectively.

3. It is the case of the department that in response to the said Show Cause Notice, the assessee was not able to produce the required evidence in support of their job work claim, in as much as the appellants failed to produce a copy of the requisite intimation/undertaking required to be made to the jurisdictional Assistant/Deputy Commissioner as regards their adherence thereto as set out in job work notification 214/86-CE dated 25.03.1986. Besides they also failed to produce job work challans and other

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records/registers evidencing the possession of inputs, as prescribed in terms of notification No. 214/86-CE.

4. In his findings the Ld. Adjudicating authority while analyzing the response of the appellants to the Show Cause Notice, has however, held as under;

" The noticee, in the instant case could neither submit the said undertaking, nor, maintained other job work related records and also failed to fulfill the mandatory requirements prescribed under the Notification No. 214/86-CE, as alleged in the demand notice. However, at the time of personal hearing, held on 02.02.2012, the noticee sought 07 (seven) days time to submit all account of the Pig Iron, claimed to have been subjected to job work alongwith challans etc. But, even at the time of personal hearing, they failed to produce the copy of undertaking, as required under Notification No.214/86-CE to be submitted to the Deputy/ Assistant Commissioner of Central Excise, having jurisdiction over the factory of job worker. However, on 27.02.2012, they submitted a statement of Pig Iron dispatched to Asit Iron Foundry Pvt. Ltd., alongwith few job work challans. On verification of the records, it is noticed that the statement and challans are not correlative with each other. The challans, so submitted, do not contain the quantity of Pig Iron returned from the job worker. In few instances, the quantities are mentioned in the return challans, but, those are incorporated later on, which are evidently after-thought. Besides, in many challans, the serial numbers, dates etc. of the challans are deleted/obliterated. In some cases, the carbon-copies of the challans, so submitted, contain the R.R. No., date, I.C. No. etc., written in ink. The endorsements on the body of the challans, in few instances, are written and subsequently obliterated in ink. For example, the carbon copy of the challan of M/s Asit Iron Foundry Pvt. Ltd. bearing No. AIF/L/35/08-09 dated 10.03.09 contains R.R. No. incorporated subsequently in ink and an endorsement dated 12.03.09, made thereon, are subsequently obliterated. It is evident from the carbon copies of challans No. AIF/L/33/08-09

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dated 09.01.09, AIF/L/32/08-09 dated 09.01.09, AIF/L/31/08-09 dated 02.01.09, AIF/L/30/08-09 dated 19.12.08 etc that the I.C. Nos. & quantities are written subsequently in ink. Moreover, two challans are prepared under the same challan No. AIF/L/31/08-09, one of which contains the number 31 amended subsequently. The noticee's claim that the job challans sent by the job worker contain the challan numbers under which the goods were sent to them for processing, is not true, as evident from the fact that all carbon copies of challans of M/s Asit Iron Foundry Pvt. Ltd., contain the job work challan No. differently hand-written in ink later on. Similarly, all job work challan No. of the noticee contain the serial numbers deleted/ amended/ obliterated and hand-written subsequently. Therefore, it is quite evident that both challan numbers are mutually adjusted to draw a relation with each other. In view of the above, it is crystal clear that those records do not authentically relate to the movement of Pig Iron to and from the so-called job workers, rather, those are prepared at a later date, in a bid to relate the inputs i.e., Pig Iron to the process of job work, which is nothing but concocted only. Moreover, the noticee could not submit the job-work related documents exhaustively for the entire period. It is admitted by the noticee in their further written submissions that he copies of the job challans under which the processed materials were returned to them by the job-worker pertaining to the year 2006-07 are not traceable. All these observations go to show that their plea of job work is nothing but concocted fabricated and after-thought. Besides, it is an accepted fact that the noticee do not have any infrastructure to work upon the said inputs viz., Pig Iron. Thus, it can be inferred that the Pig Iron, on which the CENVAT Credit has been availed of, are not used in or in relation to the manufacture of final products."

4.1. In terms of sub rule (I) of Rule (3) of the CENVAT Credit Rules, 2004, a manufacturer of finished goods is allowed the benefit of availment of CENVAT Credit on any inputs used in the manufacture of intermediate goods, processed by way of job work, availing the benefit of exemption as contained in MF, DR Notification No. 214/86-CE dated 25.03.1986, and received by them for use in or in relation to, the

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manufacture of final product. The said notification in para 2 thereof states as under;-

"2. The exemption contained in this notification shall be applicable only to the goods in respect of which – (1) the supplier of the raw materials or semi-finished goods gives an undertaking to the Deputy Assistant Commissioner of Central Excise having jurisdiction over the factory of job worker that the said goods will be (a) used in or in relation to the manufacture of the final products in his factory: or (b) removed without payment of duty from his factory: (i) under bond for export, or (ii) to a unit in a free trade zone or to a hundred percent export oriented undertaking or to unit, an on electronic hardware technology park or software technology parks or supplied to the United Nations or an international organization for their official use or supplied to the projects funded by them, on which exemption of duty is available under the notification No. 108/95-CE dated 28.08.1995, or (iii) 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 (c) removed on payment of duty for home consumption from his factory or (d) used in the manufacture of goods by another job worker for further use in any of the manner provided in clause (a), (b) and (c) as above (2) the said supplier produces evidence that the said goods have been used or removed in the manner prescribed above; and (3) the said supplier undertakes the responsibilities of discharging the liabilities in respect of the Central Excise duty leviable on the final products."

5. For failure to demonstrate adherence to legal prescriptions, the authorities below did not find sufficient merit in the appellants claim. They held the entire issue to be violative of the provisions of law, thereby denying the appellants the benefits sought & upholding the Show Cause Notice.

6. A careful reading of the aforesaid provision of law would reveal that the process set out therein cannot be merely washed off as a hollow formality or a procedural lapse, rather its adherence is essential to the claim of substantive legal benefit as envisaged in the notification.

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The prescription entitling for availment of the exemption is in effect a mandatory requirement, in the absence of which consequential benefits do not flow, the onus to establish their entitlement to availment & utilization of the said credit calls for adherence, to the norms specified. These are as stated mandatory requirements and non-adherence thereto is liable to denial & disallowing of the said credit. The conditions stipulated can certainly not be considered merely procedural but is a sine qua non to the availment of the exemption contained in the notification *ibid*. Having failed to demonstrate cogently the utilization of the said Pig Iron (input) in the manufacture of finished goods by way of a job work process and for the utilization of which admittedly they do not have the necessary infrastructure within their factory, the appellants shall not be able to utilize the credit availed thereon and the same is recoverable from them.

6.1. On the plea of the appellant that the demand was barred by limitation, I find that the period for which the impugned credit has been availed, spans across August, 2006 to January, 2009, whereas the assessee were raised the notice on July, 26, 2011. The relevant date therefore shall be construed with reference to the due date on which the said return is required to be filed / or actually filed. As the period involved in the Show Cause Notice stems from 08.08.06 onwards and the demand was raised on July, 26, 2011, the same is well covered within extended timeframe of five years & hence not barred by limitation. Obviously the limitation shall be reckoned with reference to the obligation of the assessee & would have no bearing with reference to the specific date of detection of the anomaly. Also this Tribunal in the case of Yee Kay Technocrat (P) Ltd., CCE, Delhi-IV [2011 (267) E.L.T. 92 (Tri. Del.)], had categorically held that when an irregularity had come to the knowledge of the department during the course of audit it is not the date of audit that is relevant for purpose of limitation but the specified date as contained in Section 11A of the Central Excise Act, 1944.

7. In the light of the aforesaid discussions & the clear findings of the lower authorities, the non-repudiation of the claims of the department

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doubting the authenticity and manipulation of the evidence tendered by the appellant as concocted, fabricated and after thought pointed out inter-alia by way of specific examples, the invocation of the willful mis-statement/suppression clause in the show cause notice in terms of the proviso to Section 11A is upheld. Besides, it is an admitted position that the appellant could produce no document whatsoever, in support of their contention for credit availment for the year 2006-07. Moreover, they were shorn of any facility to process the pig iron within their factory premises. The impugned order in appeal records a clear finding that no effort was made by the appellant to counter the specific examples cited by the adjudicating authority in support of his finding that the evidence/documents tendered in support were concocted, fabricated and an afterthought. The Hon'ble Supreme Court in the case of Eagle Flask Industries Ltd, -2004(171) ELT 296 (S.C.) has held that filing of a declaration as envisaged in an exemption notification/conditions are not merely procedural or an empty formality. It may be pointed out that the same is the foundation for availing the benefits under the notification. Such stipulations are therefore, with attached consequences which in the present case are in the nature of denial of benefits under the said notification.

8. As regards the appellants plea of having been registered under BIFR vide case number 322/2003, it is noteworthy that when specifically quizzed of the current status of the matter, the Ld. Advocate was unaware thereof.

8.1. Subsequently, on Mar, 15, 2023, the appellants submitted a copy of the Summary Record of the proceedings held on 2.5.06 before the Board declaring the appellant organization as a sick company in terms of Section 3(I)(o) of the SICA (SP), 1985 and appointing an Operative Agency to prepare a viability study report and a revival scheme for the company. This however is in consequential to the disposal of the present case.

9. The Hon'ble Apex Court in the case of Indian Aluminum Company Ltd., Vs. Thane Municipal Corporation 199 (55) ELT 454 (S.C.) while relying on the ratio of the law propounded in Kedarnath Jute

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Manufacturing Co. Vs. Commercial Tax Officer- 1965 (3) SC, R-626, had categorically denied the admissibility of a concession or an exemption when the non-observance of the said condition even if it were to be procedural were likely to facilitate the commission of fraud and introduce administrative inconvenience. In the said case, in the absence of a declaration required to be filed for availment of the incentive, it was pointed out by the Hon'ble Apex Court that though the said requirement, even though procedural, defeated the objective of verification as could have been undertaken by the octroi authorities, and therefore, disallowed the accrual of the desired concession. It held the failure to file the requisite declaration as fatal to the issue. The ratio of this decision is squarely applicable to the facts & circumstances herein, in as much even in the impugned appeal, the appellants have not been able to demonstrate the filing of the undertaking as envisaged under notification No. 214/86-CE dated 25.3.86 and their plea of submission of job-work challans later for a part period at the time of hearing before the adjudicating authority, has also been demonstrated as manipulated, deficient/ over written bearing duplicate numbers with deleted/obliterated serial numbers, dates etc. and bearing challan numbers differently hand written in ink. This finding that the Sr. Number of the challans were deleted/amended/obliterated and hand written subsequently has not been repudiated and it clearly evidences that the impugned challan numbers were mutually adjusted to draw a relation with one another.

10. In view of the discussions above, I find no merit in the appeal filed by the assessee. The appeal filed is thus dismissed.

(Operative part of the order pronounced in the open court on...03.04.2023.)

Sd/-
(Rajeev Tandon)
Member (Technical)

T.K.