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

REGIONAL BENCH – COURT NO.2

Excise Appeal No.149 of 2012

(Arising out of Order-in-Appeal No.83/Kol.V/2011 dated 13.12.2011 passed by Commissioner (Appeals) of Central Excise, Kolkata)

M/s Tarasafe International Private Limited
Dutta Properties, BBT Road, Govindapur,Maheshtala, Dist.-24 Parganas (South), W.B.

Appellant

VERSUS

Commissioner of Central Excise, Kolkata V
180, Shantipally, Rajdanga Main Road, Kolkata-700107

Respondent

APPERANCE :

Ms.Bhawana Singh, C.A. for the Appellant
Shri A.Roy, Authorized Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO…75631/2023

DATE OF HEARING : 02 .06.2023
DATE OF DECISION : 02 .06.2023

Per Ashok Jindal :

The appellant is in appeal against the impugned order.

2. The facts of the case are that the appellant is a 100% Export Oriented Unit and engaged in the manufacture of Fire Retardant Industrial Safety Garment. For the manufacture of these goods , they make use of Fire Retardant Fabric which is made by Coating the fabrics with certain specialised imported chemicals for providing fire retardant property. The appellant imported goods duty free under Notification No. 52/2003-CUS dated-March 31, 2003. The goods imported included the fire retardant chemicals. Since the appellants did not have the facility of weaving fabrics within their factory they applied for permission to the

Jurisdictional Development Commissioner for job work by certain associated manufacturers including M/s. JCT Phagwara. The permission in terms of para 4 (iii) of the Notification No.52/2003-CUS was granted by the Development Commissioner. The appellant sent certain chemicals imported by availing benefit of Notification No. 52/03 to the job workers who coated the chemicals on fabrics manufactured by them. The coated fabric was returned to the appellant. The movements of chemicals as well as return of the coated fire retardant fabrics were duly accompanied by appropriate documentation.

2.1 For the period 17.04.2009 to 31.03.2010, the Department took the view that the appellant's act of clearing chemicals imported by them under Notification No. 52/2003 did not satisfy conditions stipulated in para 4 of the Notification. Further, the Department's charge was that the activity did not also specify the conditions of the CBEC circular No. 65/2002- CUS dated 7/10/2002 which dealt with the permission to be granted for job work . Accordingly, show cause notice dated 12.04.2010 was issued t the appellant proposing to demand the duty on imported chemicals for violation of the conditions under which goods were allowed for clearance duty free. The adjudicating Authority passed the impugned order, finalising the show cause notice, in which he confirmed the demand of customs Duty as proposed in the show cause notice alongwith interest under Section 28AB of the Act. In addition, he imposed also penalty of an amount equivalent of Customs duty, under Section 114A of the Act.

2.2. Against the said order, the appellant is before us.

3. The ld.Counsel appearing on behalf of the appellant, submits that in their own case, this Tribunal has dropped the demand against the appellant. Therefore, following the same, the appeal is to be allowed.

4. Heard the ld.A.R. for the Revenue, who reiterated the findings of the lower authorities.

5. Heard the parties and considered the submissions.

6. We find that the appellant's own case, this Tribunal has observed as under :

> *"8. The Notification No. 52/03 provides for import of various goods for use in the manufacture of goods in 100% Export Oriented Unit for the purpose of Excise Appeal No. 272/2010 6 export. As per terms of this notification, the appellant imported various goods for use in the manufacture of Fire Retardant garments. Para No. 4 (3 iii) of the said Notification permits the imported goods, to be taken outside the EOU for certain permissible processes including job work. After carrying out such processing goods are required to be returned to the unit for carrying out the remaining processes to ready the goods for export. The appellant sought permission under the above paragraph of the Notification for sending out certain goods for job workers. The activity to be carried out at the premises of the job workers was coating of the fire retardant chemicals (imported duty free by the appellant) which will be supplied by the appellant, on the fabrics also supplied by the appellant but were manufactured by the job workers themselves. Finally, after the process of coating the resultant coated fabrics was returned to the appellant. The movement of the chemicals as well as the return of coated fabrics is accounted properly and there is no allegation of any diversion.*
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> *9. Revenue has taken the view that the activity carried out at the job workers' premises did not qualify to be considered within the expression 'job work' in as much as the basic fabrics were not*

sent by the appellant but only the chemicals to be coated on such fabrics was sent by the appellant. It is the view taken by the lower authority that this will not be covered within the process of "job work" permitted by the Notification.

10. On the other hand, the claim of the appellant is that the activity of 'job work' will cover any activity carried out on what have been supplied by the appellant, even if other required materials are not supplied. Even if the basic raw materials such as fabric is not supplied by the appellant, the appellant's claim is that term 'job work' would cover it. Excise Appeal No. 272/2010 7

11. `The purchase of fabrics by applicant from job worker on which coating is done is evident from the invoices issued by the job workers to the appellant. The fact remains that if the fabrics had been sent to the appellant by job worker in terms of the invoices issued, the same will have to be returned back to the same job worker for the activity of coating of fire retardant chemicals. It is submitted that such movement of fabrics would be wasteful of the transportation cost.

12. The appellant has cited several case laws to support the argument that the expression 'job work' does not require that each and every material required to carry out the job work should be supplied only by the principal manufacturer. In the case of Abhinav Chemicals (supra) the assessee has manufactured Aluminium Sulphate on job work basis but only the raw material Alluminium Hydrate was supplied by the principal manufacturer. The job worker procured all other raw materials by himself. The Delhi Bench of the Tribunal considered it as job work under the Notification No 214/86. It is pertinent to note the 'Explanation' in the said Notification giving a meaning to the term 'Job work' which is identical to the definition of job worker finding place in Rule 2 (n) of the CENVAT Credit Rules. It is further seen that the Notification No.52/03 (Para 4), outlining various activities including job work also adopts a similar wording.. In the case of Whirlpool of India Ltd, the job worker received only the mould and *dies from the Principal manufacturer but using the said moulds and dies they manufactured various components completely sourcing the raw materials on their own. This activity was also held to be job work by the Hon'ble Madras High court.*

13. After considering the various case laws, we are of the view that the expression of 'job work' has been interpreted in liberal terms by the Tribunl and Hon'ble High Courts. In the present case, the fire retardant chemicals imported duty free has been supplied to the job workers. Such chemicals Excise Appeal No. 272/2010 8 were coated on the fabrics manufactured by the job workers. But it is seen that the Fabrics are shown to have been purchased by the appellant as evidenced by the invoices issued for such fabrics. In respect of the main job worker, M/s. JCT Faguara, it is further seen that the procurement of Fabrics from JCT is also supported by issue of CT-3 certificates issued by the Jurisdictional Superintendent for the appellant. This clearly evidences the fact that fabrics have been manufactured by JCT for supply to the appellant.

14. In view of the above, we are of the view that the activity carried out at the premises of job workers will be squarely covered within the para 4 (iii) of the Notification under which due permission has been granted by the Development Commissioner. There is no dispute that the processed fabrics on which the imported chemicals coated has been duly received in the premises of appellant. Hence, we find no justification for raising the demand for Customs duty, not paid at the time of import on the chemicals.

15. In the result, the impugned order is set aside and the appeal is allowed."

7. In view of this, we hold that the issue is no more res integra. Therefore, we do not find any merit in the impugned order and the same is set aside.

8. In the result, the appeal is allowed with consequential relief to the appellant, if any.

(Dictated and pronounced in the open court)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K.Anpazhakan)
Member (Technical)

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