

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA
EASTERN ZONAL BENCH: KOLKATA**

Excise Appeal No. 391 of 2012

(Arising out of Order-in-Original No. 41/COMMR/CE/KOL-III/2011-12 dated 28.03.2012 passed by Commissioner of Central Excise, Kolkata-III.)

Shri Biswajit Saha,

Proprietor of M/s. Bidisha Enterprises, 10/1B, Asgar Mistry Lane,
Gobra, Kolkata-700046.

....Appellant (s)

VERSUS

Commissioner of Central Excise, Kolkata-III.

180, shantipally, Rajdanga Main Road, Kolkata-700107.

....Respondent(s)

With

Excise Appeal No. 576 of 2012

(Arising out of Order-in-Original No. 41/COMMR/CE/KOL-III/2011-12 dated 28.03.2012 passed by Commissioner of Central Excise, Kolkata-III.)

M/s Jamuna Enterprise,

90, P.K. Saha, Lane, Kolkata-700036.

....Appellant (s)

VERSUS

Commissioner of Central Excise, Kolkata-III.

180, shantipally, Rajdanga Main Road, Kolkata-700107.

....Respondent(s)

APPEARANCE :

None for Sl. No. 1 and Shri Ankit Kanodia & Ms. Megha Agarwal, both
Advocates for Sl. No. 2. for the Appellant

Shri K. Chowdhury, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. ASHOK JINDAL MEMBER (JUDICIAL)

HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)

FINAL ORDER NO. 76487-76488/2023

DATE OF HEARING : 22.08.2023

DATE OF PRONOUNCEMENT: 29.08.2023

PER K. Anpazhakan:

M/s. Jamuna Enterprise (The Appellant) was engaged by M/s. Bidisha Enterprise for conversion of raw materials such as MS Round, Bright bars etc. for job work, as per the specification provided by them. For the processing work carried out by the Appellant, they were paid labour charges by M/s. Bidisha Enterprise.

2. An investigation was carried out at the business premises of M/s. Bidisha Enterprise on 15.06.2010 by the Anti Evasion wing of the Central Excise department and it was seen that they were not registered under the Central Excise Act, 1944 until November 2007. M/s. Bidisha Enterprises took the Central Excise registration only in December 2007.

3. On the basis of the investigation carried out at the premises of M/s. Bidisha Enterprise, the Appellant was issued a show cause notice dated 25.03.2011, demanding central excise duty Rs.64,50,631/-on the goods, namely 'parts of motor vehicles', manufactured and cleared to M/s. Bidisha Enterprise during the period 2006-07 and April 2007 to November 2007 by invoking extended period of limitation. The duty was demanded from the Appellant on the ground that since M/s. Bidisha Enterprise was not registered with Central Excise department, it was the duty of the Appellant to pay excise duty on the goods manufactured and cleared by them. The show cause notice was adjudicated by the Ld. Commissioner of Central Excise, Kolkata III Commissionerate, vide OIO dated 28.03.2012 and the demand of duty proposed in the Notice was confirmed along with interest. A penalty of Rs 20,00,000/- was also imposed on Shri. Biswajit Saha (Appellant), Proprietor of M/s.Bidisha Enterprise, under Rule 26(1) of the Central Excise Rules,2002. Aggrieved against the impugned order, the Appellants filed the present appeals.

4. In their grounds of appeal, the Appellant M/s Jamuna Enterprise stated that the entire demand has been confirmed by the department on them by alleging that they were engaged in the manufacture of goods on behalf of M/s. Bidisha Enterprise and since M/s. Bidisha Enterprise was unregistered under Central Excise regime, it was the responsibility of the job worker i.e. the Appellant to pay excise duty on the goods cleared.

4.1 The Appellant states that the entire investigation was done by the department on M/s. Bidisha Enterprise, however no demand of duty was raised on them. No reason was recorded by the department for not raising any demand of duty on M/s. Bidisha Enterprise. It has been very well accepted and acknowledged in the SCN that the Appellant was working as a job worker of M/s. Bidisha Enterprise and only collecting labour charges for the job work carried out by them.

4.2 They have not availed any Cenvat credit on the goods sent for job work by M/s. Bidisha Enterprise. There was no allegation in the SCN that the Appellant has supplied raw materials on its own account to manufacture a new product.

4.3 The demand of excise duty, if any, should have been raised on M/s. Bidisha Enterprise since they were the principal manufactures and the Appellant was only acting as job worker to get the conversion done. The demand has been raised on them only on the ground that the conditions of Notification No. 214/86 CE has not been fulfilled by them and thus duty is payable by the job worker.

4.4 In this regard, they relied on the decision of CESTAT, Chennai in the case of OPG METALS PVT. LTD. Versus COMMISSIONER OF C. EX., TIRUCHIRAPALLI 2016 (343) E.L.T. 230 (Tri. - Chennai) wherein under similarly placed situations as of the Appellant, the CESTAT held as under:

“18. Further the Board’s Circular dated 20-3-1997 categorically clarified that as per provisions of Rule 4(5)(a), the manufacturer can get the job work done on the inputs in terms of provisions of Rule 57F(4) of CCR. In this context, the duty liability is required to be discharged by the principal manufacturer and not by the job worker. In the present case, no input credit has been availed by the job worker. Revenue contended that Rule 4(5)(a) of CCR is not applicable on the ground that principal supplier has not availed credit. In the present case, the scrap was directly sent from the port of import to the job worker and the principal supplier has availed credit immediately on receipt of MS ingots and billets from the job worker. There is no restriction on the manufacturer to send raw material directly from the place of import to the job work premises. Therefore, we hold that there is no dispute on the receipt of scrap and clearance of MS ingots/billets to the principal supplier, the question of demanding duty on the job

work does not arise. In view of the foregoing discussions, we are of the considered view that demand of excise duty on the job worker i.e. appellant is not sustainable both on limitation and on merits.”

4.5 The Appellant also relied on the decision of the CESTAT, Chennai in the case of MOON CHEMICALS Versus COMMISSIONER OF C. EX., THIRUVANANTHAPURAM 2007 (215) E.L.T. 434 (Tri. - Chennai), wherein it was held by the CESTAT as under :-

“3. After giving careful consideration to the submissions, we find that the lower appellate authority sustained the demand of duty on the ground that the condition laid down in para (2) of Notification No. 214/86 was not complied with by the appellants. The goods specified under the Notification were exempted from payment of duty of excise, where such goods were manufactured in a factory as a job work and utilized in relation to the manufacture of final products on which duty of excise was leviable. The exempted goods and the final products were specified respectively in Col. 1 & Col. 2 of the Table annexed to the Notification. It is not in dispute that the raw material received by the appellants from M/s. Vijay Detergent Products (P) Ltd. and the goods returned to the latter after job work were specified in the Table annexed to the Notification. Again, it is not in dispute that the goods after job work were supplied to M/s. Vijay Detergent Products (P) Ltd. under cover of commercial invoices and that only the labour charges mentioned in such invoices were collected from them by the appellants. The Revenue has no case that the work undertaken by the appellants did not fall within the scope of the expression “job work” under Explanation-I to the Notification. Their only case is that the condition laid down in para (2) of the Notification was not complied with by the appellants. The appellants have claimed that the Sodium Silicate Solution returned after job work to their customer was removed by the latter on payment of duty for home consumption from their factory. This claim has not been contested by the Revenue. In the circumstances, the appellants were eligible for the benefit of the Notification subject to the surviving condition that the raw material-supplier gave an undertaking to the Asst. Commissioner or Deputy Commissioner of Central Excise having jurisdiction over the appellants’ factory to the effect that the

goods would be removed (by the raw material-supplier) on payment of duty for home consumption. The demand of duty is consequential to non-fulfilment of this condition. The appellants have resisted the demand of duty on the ground that it was for the raw material-supplier to comply with the said condition. It is their further case that the department could have recovered duty on the subject goods from M/s. Vijay Detergent Products (P) Ltd. on the ground of non-fulfilment of the said condition. We find that the Tribunal's decision in Aggarwal Rolling Mills (supra) supports this case of the appellants. No binding decision to the contrary was cited by the DR. In the result, the impugned order is set aside and this appeal is allowed."

4.6 The Appellant also relied on the decision of the CESTAT, Mumbai, in the case of VANDANA DYEING PVT. LTD. Versus COMMISSIONER OF C. EX., MUMBAI-III 2014 (307) E.L.T. 528 (Tri. - Mumbai) wherein it was held as under:-

"5. We have carefully considered the submissions made by both the sides. As held by us in appellant's own case and also in Trico Process Pvt. Ltd. and Akash Fashion Prints (P) Ltd. cases (supra), the liability to pay duty in respect of goods moved under Rule 4(5)(a) is on the supplier of the goods and not on the job-worker. Therefore, notwithstanding the fact that the process fabrics are not included in Notification 214/86, the job-worker is not liable to discharge excise duty liability and any liability thereon is required to be discharged by the supplier of the raw materials. Rule 4(6) of the Cenvat Credit Rules makes it abundantly clear that, if the goods are required to be cleared from the job-worker's premises instead of being returned to the supplier, then the Commissioner can direct clearance of the goods on payment of duty from job-worker's premises. This would also indicate that the liability to discharge duty under the provisions of Rule 4(5)(a) is on the supplier of the goods and not on the processor of the goods. In this view of the matter, we find that the impugned order is not sustainable in law and merits to be set aside. Accordingly we allow the appeal."

4.7 The Appellant further states that the entire demand of excise duty has been confirmed on the assumption that the process adopted by the Appellant tantamount to 'manufacture' under the provisions of Section 2(f) of the Central Excise Act, 1944.

4.8. No investigation was undertaken at the end of the Appellant to know the process being carried on by them on the goods supplied by M/s. Bidisha Enterprise and only based on the statement of Shri Biswajit Saha, Proprietor of M/s. Bidisha Enterprise, demand has been confirmed on them.

4.9. The Appellant states that they were providing conversion services of MS Rounds, bars etc. to sockets, bends etc. The Ld. Adjudicating authority has classified the product under CETH 87089900 which deals with "OTHERS" under PARTS AND ACCESSORIES OF THE MOTOR VEHICLES OF HEADINGS 8701 TO 8705. The Ld. Adjudicating authority has not at all described on what basis such classification has been adopted for and thus the demand is based on surmise which cannot be sustained at all.

4.10. The department has invoked extended period of limitation of 5 years from the relevant date to issue the demand notice. The SCN was issued on 25.03.2011 for the period 2006-07 and April 2007 to November 2007 and the normal period of limitation of six months would have expired much earlier than the date of issue of show cause notice. The Ld. Adjudicating authority has held that extended period of limitation is invocable in the present case as the appellant had violated the provisions of law by clearing goods to M/s. Bidisha Enterprises without payment of excise duty. They were engaged in provision of job work and had collected labour charges from M/s. Bidisha Enterprise who had send the raw material to them for job work. There was no element of 'manufacture' being done by them to invoke provisions of section 2(f) of the Central Excise Act, 1944. Extended period of **limitation** under section 11A(1) of the Act can be invoked if suppression, wilful misstatement occurs due to deliberate evasion of duty on part of the Appellant. It is clear that such act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to avoid payment of duty.

4.11. The concept of suppression has been dealt with at length in the case of *Lakshmi Engg. Works Vs. CCE reported in 1989 (44) ELT 353* by the Apex Court as reported in *1991 (55) ELT A33* wherein it has been held that the concept of suppression amounts to that which one is legally to state but one

intentionally or deliberately or consciously does not state. In other words, the term 'suppression' includes a mental element to deliberately omit to state certain things. Therefore, it was held that the extended period of limitation is inapplicable in absence of suppression of facts and hence, absence of an intent to evade payment of duty. The same principle was also upheld by Supreme Court in the case of *Pushpam Pharmaceuticals Company vs. CCE reported in 1995 (75) ELT 721 S.C.*, wherein the Apex Court held:

"It is not correct to say that there can be a suppression or mis-statement of fact, which is not wilful. Misstatement or suppression of fact must be wilfulso far as misstatement or suppression of facts are concerned, they are clearly qualified by the word "wilful" preceding the words "misstatement or suppression of facts" which means with intent to evade duty". It is therefore, not correct to say that there can be a suppression or misstatement of fact, which is not wilful and yet constitutes a permissible ground for the purpose of the proviso to section 11A. Misstatement or suppression of fact must be wilful".

4.12. They further stated that their claim stand vindicated and finds unqualified support in a recent judgment in the case of *Uniworth Textiles Ltd. Versus Commissioner of Central Excise, Raipur 2013 (288) E.L.T. 161 (S.C.)*, wherein the Hon'ble Apex Court has held that extended period cannot be invoked without bringing in any positive evidence of suppression of fact.

4.13 In view of the aforesaid submissions, they requested to set aside the impugned order.

5. The Ld.A.R. submitted that the Appellant is the actual manufacturer of the impugned goods. They received the raw materials from M/s Bidisha Enterprise and undertook the processing, which amounts to 'manufacture' as defined under section 2(f) of the Central Excise Act, 1994. Since the supplier of raw materials was not registered under Central Excise and they have not followed the procedure as set out in

Notification 214/86, the liability of payment of duty was on the job worker. In support of his contention, he cited the decision of the Tribunal, Mumbai in the case of AFL PVT LTD. Vs Commissioner of Central Excise, Mumbai-II, wherein it has been held that supplier of raw material is not the manufacturer. Accordingly, he prayed for upholding the demands confirmed in the impugned order.

6. Heard both sides and perused the appeal records.

7. The facts of the case are that the Appellant received raw materials such as MS Round, Bright bars etc. from M/s Bidisha Enterprise and carried out processing on the raw materials, as per the specification provided by the supplier of the raw materials, which resulted in products such as sockets, bends etc. For the processing work carried out by the Appellant, they were paid labour charges by M/s. Bidisha Enterprise. The contention of the Appellant is that they were only 'job workers' and the actual manufacturers of the goods were M/s Bidisha Enterprise, who supplied the raw materials. Thus, we observe that the issue to be decided in the present appeals is whether the supplier of raw materials is the manufacturer (or) the 'job worker' who carried out the processes as per the specifications and brought in the finished goods, are the manufacturers as per Section 2(f) of the Central Excise Act, 1944.

8. It is a fact on record that M/s Bidisha Enterprise has not registered with Central Excise department till December 2007. The present issue pertains to the period prior to December 2007, when they have not taken registration and got their goods manufactured through the 'job worker'. Notification 214/86-CE dated 25.03.1986, provides a mechanism for supplier of raw materials to get their goods manufactured on job work basis without payment of duty. The said exemption is applicable only to goods in respect of which the supplier of the raw material or semi-finished goods had given an undertaking that the said goods would inter alia, be used in or in relation to the manufacture of final products in his factory. In other words, job worker is not liable to pay duty when the supplier of raw material

undertakes themselves to discharge duty on the said goods after receiving it from the job worker. For that, the procedure set out in Notification 214/86-CE dated 25.03.86 has to be followed. In the present case, the supplier of raw material was not registered with the department during the relevant period and not followed the procedure set out in Notification 214/86. Under such circumstances, the liability to pay duty will be on the job worker themselves, since they carry out the actual manufacturing process and the finished goods which are liable to duty emerge in their premises as a result of the processes carried out by them.

9. In their submissions, the Appellant stated that the department has not conducted any investigation at their end and presumed that the processes undertaken by them amounts to manufacture. It is their submission that the demand of excise duty, if any, should have been raised only on M/s. Bidisha Enterprise, since they were the principal manufactures and the Appellant was only acting as job worker and received job charges. The demand has been raised on them only on the ground that the conditions specified in the Notification No. 214/86 CE has not been fulfilled by the raw material supplier and hence the duty liability has been thrust on the job worker.

10. We have perused the documents under which the raw materials were sent by M/s Bidish Enterprise for the job work to the Appellant and the challans under which the finished goods were returned back to M/s Bidisha Enterprise by the Appellant. For the sake of ready reference, the sample copies of the Challans are scanned and reproduced below:

RAW MATERIAL CHALLAN

Manufacturer & General order suppliers of Commission Agent
of Iron Steel, Bright Bar, Forging Casting Components.
10/1B, ASCAR, MISTRY, LANE, KOLKATA-700002

10/1B, ASGAR MISTRY LANE, KOLKATA-700 046

Mobile : 09339303007

To,
Messrs.

Parulash Dablu
Koe -

CHALLAN NO.

Date...16/06/07...

Please received the following goods in good order & condition

C.S.T. No. : 19395103247

VAT No. : 19395103053

Please sign & Return / Retain

For Bidisha Enterprise

Signature

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CHALLAN

JAMUNA ENTERPRISE

Manufacturers of : Engineers

Specialist in Capstan Job

90, P. K. SAHA LANE, BARANAGAR

KOLKATA-700 036

Phone No. : 9433223181

No. 175

Dt. 30/09/07

To Messrs Bidisha Enterprises

10/13 A.M.I. Kcl - A.B.

Order No. Date

Received the following goods in good order & condition.

RATE	DESCRIPTION	QUANTITY
26 Bogs	To Cost of Labour charges only	
1 Bog	22MM Clamping Net	30215 RS
1 Bog	240 Socket	884 RS
5 Bogs	200' O' Long Band NIPPLE	1490 RS
1 Bog	200' O' Set Band NIPPLE	446 RS
7 Bogs	30MM Band NIPPLE O'	1390 RS
4 Bogs	380 Socket	1490 RS
1 Bog	240 Socket	626 RS
1 Bog	T-123 220 Band NIPPLE	192 RS

Please retain

Signature Palash Mr. Dolui

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CHALLAN
JAMUNA ENTERPRISE
Manufacturers of : **Engineers**
Specialist in Capstan Job
90, P. K. SAHA LANE, BARANAGAR
KOLKATA-700 036

Phone No. : 9433223184 No. **154**
~~9433223184~~ Dt. **31/07/08**

To
Messrs **Bidisha Enterprise**
10/10 A.M.L. Col - 46

Order No Date.....

Received the following goods in good order & condition.

RATE	DESCRIPTION	QUANTITY
	To Cost of Labour charges only	
13 Bags	3/8-24° Sot Bend for (20φ)	5200 P8
8 Bags	10/10 Braze NIPPLE	24000 P8
14 Bags	22H/F 'O' Adapter	8400 P8
1 Bag	1/2/15 Braze NIPPLE	1236 P8
21 Bags	24φ Sotet	21000 P8
10 Bags	3/8-24° Bend for (30H/F)	2000 P8

Please retain


Signature
Palash Mr Dolui

53

CHALLAN
JAMUNA ENTERPRISE
Manufacturers of : **Engineers**
Specialist in Capstan Job
90, P. K. SAHA LANE, BARANAGAR
KOLKATA-700 036

Phone No. : 9433223184 No. **154**
~~9433223184~~ Dt. **31/07/08**

To
Messrs **Bidisha Enterprise**
10/10 A.M.L. Col - 46

Order No Date.....

Received the following goods in good order & condition.

RATE	DESCRIPTION	QUANTITY
	To Cost of Labour charges only	
13 Bags	3/8-24° Sot Bend for (20φ)	5200 P8
8 Bags	10/10 Braze NIPPLE	24000 P8
14 Bags	22H/F 'O' Adapter	8400 P8
1 Bag	1/2/15 Braze NIPPLE	1236 P8
21 Bags	24φ Sotet	21000 P8
10 Bags	3/8-24° Bend for (30H/F)	2000 P8

Please retain


Signature
Palash Mr Dolui

55

CHALLAN

JAMUNA ENTERPRISE

Manufacturers of : **Engineers**

Specialist in Capstan Job

90, P. K. SAHA LANE, BARANAGAR
KOLKATA-700 036

Phone No. : 9433223181 No. **193**

Dt. **30/11/07**

To **Bridisha Enterprise**

Messrs **1071B H.M.L. Kal - 46**

Order No. Date

Received the following goods in good order & condition.

RATE	DESCRIPTION	QUANTITY
	To Cost of Labour charges only	
4 Bag	38 φ Dempar Soket	1705 RS
5 Bag	38 φ Golden Soket	1752 RS
1 Bag	30 φ Bronze NIPPLE	226 RS
2 Bag	32 BHP Sot Clamping Net	1075 RS
8 Bag	1/2" Mal NIPPLE	15080 RS
1 Bag	26 BHP 1-3/16 Cop Net	486 RS
3 Bag	32 BHP Clamping Net	1880 RS
4 Bag	24 φ Soket	1055 RS

Please Retain



Signature

Palash K. Dolui

From the Challans scanned and produced above, we observe that M/s Bidisha Enterprise has sent M.S.Rounds in Kgs and Number of pieces. After the job work was under taken as per the specifications of M/s Bidisha Enterprise, the Appellant has returned back finished goods such as sockets, bends etc. which are claimed to be parts of motor vehicles, by the department. Thus, we observe that documentary evidences available on record indicate that the processes undertaken by the Appellant has converted the M.S Rounds, Brights Bars sent by M/s Bidisha Enterprise into some dutiable final products. Accordingly, we hold that the processes undertaken by the Appellant amounts to 'manufacture' as defined under Section 2(f) of the Central Excise Act, 1944.

14. The next question to be answered is whether the duty liability on the finished goods manufactured and cleared by the Appellant is on them or on M/s Bidisha Enterprise, the supplier of the raw materials. In support of their contention that the raw material supplier is the actual manufacturer, the Appellant relied upon the following decisions:

- (i) OPG Metals Pvt. Ltd. Vs Commissioner of Central Excise, Trichirapally, reported in 2016 (343) ELT 230 (tri-Chennai)
- (ii) Moon Chemicals Vs Commissioner of Central Excise, Thiruvananthapuram, 2007 (215) ELT 434 (Tri-Chennai)
- (iii) Vandana Dyeing Pvt. Ltd. Vs Commissioner of Central Excise, Mumbai-II 2014 (307) ELT 528 (tri-Mumbai)

15. We have gone through the decisions cited by the Appellants listed above. On perusal, we observe that the facts and circumstances in the decisions cited above are distinguishable from the present case and hence they are not applicable for the present case on hand. In the case OPG Metals Pvt Lt and Moon Chemicals, the suppliers of raw materials were registered with Central Excise department and they were following Notification 214/86 and Rule 4(5)(a) of the Central Excise Rules, 2002 to send the raw materials to the job worker. Hence, it was held that the liability of duty , if any, would arise only on the raw material supplier, when the conditions of Notification 214/86 are followed. However, in the present case on hand the supplier of raw material M/s Bidisha

Enterprise was not registered with the department and hence the question of them complying with the conditions of Notification 214/86 would not arise at all. In the case of Vandana Dyeing Pvt. Ltd also, the goods were moved by following the procedure prescribed under Rule 4(5)(a) of the Central Excise Rules, 2002 to the job worker. Accordingly, it was held that the duty liability was on the supplier of the raw materials. Thus, we observe that the decisions cited by the Appellant does not support their case.

15. On other hand the Departmental Representative cited the decision of the Tribunal, Mumbai in the case of AFL PVT LTD. Vs Commissioner of Central Excise, Mumbai-II, wherein it has been held that supplier of raw material is not the manufacturer and 'job worker' is the actual manufacturer. The relevant portion of the decision is reproduced below:

“14. On the contrary in the case of *Diamond Cements Ltd. v. CCE, Bhopal* - [2012 \(283\) E.L.T. 226](#) (Tri.-Del.) the Tribunal held that merely because the appellants were supplying the raw material and was exercising supervisory quality control over the goods, it cannot be held that the contractors were actually hired labourers especially when the contractors have admitted having fabricated the goods for and on behalf of the appellants. Similarly, merely because the said fabrication was being done by the contractors as per the design and drawings of the appellants cannot be made a ground for holding that it is the appellants who had fabricated the goods. Therefore, it was held that the appellant cannot be held as a manufacturer. Same view was taken by the Tribunal in the case of *Kerala State Electricity Board* (supra) which has been upheld by the Hon'ble Apex Court and in the case of *M.M. Khambatwala* (supra) the Hon'ble Supreme Court held that the assessee having paid wages to the house-hold ladies for manufacturing agarbatti, amlapodi and dhup etc. It was the contention of the assessee that the goods manufactured by such house-hold ladies though in their own premises must be taken as manufactured in the factory of the assessee. It is not in dispute that levy of excise duty is attracted on the incident of manufacture. Wherein in that case the Hon'ble Apex Court held that the assessee cannot be considered as manufacturers of agarbatti, amiapodi and dhup etc. manufactured in the premises of house-hold ladies as described above without the aid of power. The undisputed facts are that the respondents supplied raw materials for rolling incense sticks etc. to outside manufacturers and paid wages to them on the basis of number of pieces manufactured. Such manufacture was without the aid of power. There was no supervision over the manufacture. Incense sticks were put in packets and such packets were sold from the premises of the house-hold ladies and they did not go to the factory premises of the assessee. No doubt the sale proceeds went to the respondents but that will not change the character of manufacture. If the conclusion is that the house-hold ladies were the real manufacturers then the decision of the Tribunal cannot be faulted. In

the case before us, although the said goods were manufactured by M/s. Raigad at the premises hired by the appellant from BPT that the machineries of M/s. Raigad under the supervision of supervisors appointed by the appellant. On the basis of above discussion, it cannot be held that the appellants are the manufacturers. Only M/s. Raigad are the manufacturers. Therefore, on this ground alone the appellants succeed.

16. We observe that the facts and circumstances of the present case are similar to the case cited above. Thus, by following the decision, of the Tribunal Mumbai cited above, we hold that the job worker M/s Jamuna enterprise are the actual 'manufacturers'.

17. The Appellant contended that they were providing conversion services of MS Rounds, bars etc. and converting the same to sockets, bends etc. The Ld. Adjudicating authority has classified the product under CETH 87089900 which deals with "OTHERS" under PARTS AND ACCESSORIES OF THE MOTOR VEHICLES OF HEADINGS 8701 TO 8705. The Ld. Adjudicating authority has not at all described on what basis such classification has been adopted for and thus the demand is based on surmise which cannot be sustained at all. We observe that there was no investigation carried out by the department with the Appellant to ascertain the nature of processes carried out by them. Even though the Challans issued by them indicate that the job worker has converted the MS Rounds and Bright Bars into sockets and bends, no evidence has been brought on record to classify the goods as 'Parts of Motor Vehicles' under the Chapter Heading 87089900. The classification has been arrived at without ascertaining the actual processes under taken by the Appellant. It was only presumed that the finished goods are 'Motor Vehicle Parts'. There is no findings in the impugned order on what basis this classification was arrived at by the Adjudicating Authority. Accordingly, we hold that the evidence available on record does not support the classification arrived at in the impugned order. Hence, the duty demanded from the Appellant under the Chapter heading 87089900, as 'parts of motor vehicles' are not sustainable.

18. The Appellant contended that the department has invoked extended period of limitation of 5 years from the relevant date to issue the demand notice. The SCN was issued on 25.03.2011 for the period 2006-07 and April 2007 to November 2007 and the normal period of limitation of six months would have expired much earlier than the date of issue of show cause notice. The Ld. Adjudicating authority has held that extended period of limitation is invocable in the present case as the appellant had violated the provisions of law by clearing goods to M/s. Bidisha Enterprises without payment of excise duty. The Appellant contended that they were engaged in providing job work and had collected labour charges from M/s. Bidisha Enterprise who had send goods to them for job work. Extended period of **limitation** under section 11A(1) of the Act can be invoked only if suppression, wilful misstatement occurs due to deliberate evasion of duty on part of the assessee. It is clear that such act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to avoid payment of duty.

19. We find merit in the argument of the Appellant. The Appellant has been providing job work and collecting job charges. As stated above, there were contrary decision available during the material period whether the job worker is the actual manufacturer or the suppliers of the raw material are the manufacturers. The Appellant has not considered themselves as the manufacturers and accordingly not charged any central excise duty from whom they sent the goods after conversion. There is no dispute on this. It is not a case where the Appellant has collected central excise duty from the customers and not paid the same to the government. They were under the bonafide belief that the processes undertaken by them did not amount to manufacture and accordingly cleared the goods to the raw material supplier on collection of 'job charges' only. Thus we find that there is no evidence available on record to establish that the Appellant has suppressed the

information of manufacture of dutiable goods with an intention to evade payment of duty.

20. In the case of *Uniworth Textiles Ltd. Versus Commissioner of Central Excise, Raipur 2013 (288) E.L.T. 161 (S.C.)*, the Hon'ble Supreme Court has made some significant observations to allege suppression of fact and to invoke extended period. The observations are summarized as under:

- Every non-payment/non-levy of duty does not attract extended period, there must be deliberate default. The conclusion that mere non-payment of duties is not equivalent to collusion or willful mis-statement or suppression of facts is untenable. Otherwise, there would be no situation for which ordinary limitation of six months would apply.
- The Act contemplates a positive action which betrays a negative intention of wilful default.
- The section contemplated two situations, viz inadvertent non-payment and deliberate default. The former is canvassed in the main body of the section and is met with a normal limitation period, whereas the latter, finds abode in the proviso to the section and faces a limitation period of five years. For the operation of the proviso, the intention to deliberately default is a mandatory prerequisite.
- The use of word 'wilful' introduces a mental element and hence, requires looking into the mind of the assessee by gauging its actions which is an indication of one's state of mind.
- The show cause notice must clearly bring out act of omission of the assessee leading to invocation of extended period of limitation. The proviso regarding 'extended period of limitation' finds application only when specific and explicit averments challenging *bona fides* of the conduct of the assessee are made in the show cause notice.
- The burden to justify invocation of extended period clearly lies with the Department and the assessee cannot be asked to bring evidence to provide his *bona fide* when *prima facie* the assessee acted in *bona fide* manner.

21. From the facts on record, we observe that the department has not brought in any evidence to establish that the Appellant has suppressed the facts with an intention to evade payment of duty. Thus, by following the above decision

of the Hon'ble Apex Court, we hold that the demand of duty by invoking extended period is not sustainable in this case. Accordingly, we hold that the demand is liable to be set aside on the ground of limitation.

22. Regarding the penalty imposed on the other Appellant Shri Biswajit Saha under Rule 26(1) of the Central Excise Rules, 2002, we observe that he has sent the raw materials for job work and received the finished goods under Challans. There is no evidence available on record to conclude that he has in any way abetted the job worker to clear the goods without payment of duty. In the absence of any such evidence, penalty is not imposable on him under Rule 26(1) of the Central Excise Rules, 2002. Accordingly, we hold that the penalty imposed on the Appellant Shri. Biswajit Saha under Rule 26(1) of the Central Excise Rules, is not sustainable..

18. In view of the above discussion, we set aside the impugned order and allow the appeals filed by the Appellants.

(Pronounced in the open court on...29.08.2023...)

Sd/-
(Ashok Jindal)
Member (Judicial)

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

Tushar Kr.