IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH - COURT NO.1

Excise Appeal No.372 of 2012

(Arising out of Order-in-Original No.04/Commr./CE/Kol-V/Adjn./2012 dated 20.03.2012 passed by Commissioner of Central Excise, Kolkata-V.)

M/s. Zetadel Technologies Private Limited
(M-2, Behala Industrial Estate, 620, Diamond Harbour Road, Kolkata-700034.)
...Appellant

VERSUS

Commissioner of Central Excise, Kolkata-V
.....Respondent
(180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

APPEARANCE

Shri S.P.Siddhanta, Consultant for the Appellant (s)

Shri S.S.Chattopadhyay, Authorized Representative for the Revenue

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

FINAL ORDER NO. 76623/2023

DATE OF HEARING : 8 September 2023
DATE OF DECISION : 8 September 2023

Per : ASHOK JINDAL :

The appellant is in appeal against the impugned order.

2. The facts of the case are that the appellant manufacturer of M.S. Grating, Control Panel and Fan. By way of show cause notice dated 18.02.2011, the appellant was asked to pay central excise duty which is as follows:-

a. have contravened the provisions of Rules, 4, 6, 8, 10, 11,12 of Central Excise Rules, 2002 (hereinafter referred to as the said rules) read with section 3 of the Central Excise Act, 1944 (hereinafter referred to as the said act) in as much as the said assessee surreptitiously removed control panels and fans valued Rs.71,59,636/- (Rupees seventy one lakh fifty nine thousand six hundred thirty fix only) evading payment of Central Excise duty including Education Cess and S & HE Cess to the tune of Rs.11,19,444/- (Rupees eleven lakh nineteen thousand four hundred and forty four only) [as detailed in Annexure-I] without recording in DSA register by maintaining 'NIL' opening and closing balance there at the beginning and/or the end of the years 2006-07 and 2007-08;

b. have contravened the provisions of clause (i) [Explanation-I] of Rule 6 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 (hereinafter referred to as the said valuation rules) read with clause (b) of sub-section (1) of section 4 of the said act and rules 4, 6, 8 of the said rules read with section 3 of the said act in as much as the said assessee did not take into consideration the money value of free issue materials supplied by their customer in the assessable of control panels manufactured and cleared in the year 2006-07 and thereby evaded payment of Central Excise duty including Education Cess to the tune of Rs.70,48,249/- (Rupees seven lakh forty eight thousand two hundred forty nine only) against such value of free issue materials of Rs.4,31,87,799/- by way of undervaluation of the goods (detailed in Annexure-IV);

c. have contravened the provisions of clause (ii) & clause (iv) [Explanation-I] of Rule 6 of the said valuation rules read with clause (b) of sub-section (1) of section 4 of the said act and rules 4, 6, 8 of the said rules read with section 3 of the said act in as much as the said assessee did not take into consideration the money value of drawings, artwork, design work in the assessable value of "control panels and fans" manufactured as per their customer's specification and cleared in the year 2006-07 and 2007-08 and thereby evaded payment of Central Excise duty including Education Cess and S & HE Cess to the tune of Rs.36,818/- (Rupees thirty six thousand eight hundred eighteen only) (as detailed in Annexure-II);

d. have contravened the provisions of sub-rule (1) of rule 4 of Cenvat Credit Rules, 2004 (hereinafter referred to as the said credit rules) in as much as the said assessee irregularly taken credit of

Central Excise duty including Education Cess and S & HE Cess of Rs.35,81,349/- (Rupees thirty five thousand eighty one thousand three hundred forty nine only) without receipt of input materials in their factory and utilized the same towards payment of duty on clearance of their manufactured finished products in the year 2006-07 and 2007-08 (as detailed in Annexure-III).

3. In reply to the show cause notice, the appellants stated that the appellant was filing their ER-1 returns regularly and showing their activity, therefore, show cause notice issued on 19.02.2011, is barred by limitation in terms of CBEC Circular No.887/7/2009-CE dated 11.05.2009.

4. It is also submitted that audit took place on 22.09.2009 and demand notice was served on 19.02.2011, which is barred by limitation as held by various judicial pronouncements.

5. With regard to discrepancy in opening and closing stock of panel of fans and between daily stock account and balance sheet, the appellant maintained that the said goods reached finished stage pending final clearance/inspection as per requirement/specification of the customers and also modification/rectification in certain cases. For that reason the said goods had not been entered in the DSA. The DSA register is filled up by them only at the time of actual dispatch and the system was being followed since long. They intimated the Superintendent of the Audit Group regarding this by means of their letter dated 24.11.2009. Regarding the allegation of non-inclusion of cost of free-supplied materials by their buyers in the assessable value, it is contended that they had been entrusted for the manufacture of the inter-mediate goods using cenvatable inputs which were supplied to them by M/s. Areva T & D Ltd. through Annexure-III Challan required to be used in the manufacture of intermediate goods i.e. 'Panel' and hence on clearing the said goods value of such cenvatable inputs had not been taken into consideration in determining the assessable value of the final product since the appellant had not availed the credit on such inputs and their activity falls under job-work provision. Therefore, they were not required to pay duty, but since the appellant used their

own cenvatable inputs so they paid duty on the job charges including the value of their own inputs.

6. With regard to the allegation that appellant has not included the money value of drawings and design received from their customers in the assessable value of their finished goods for discharging central excise duty, it is his contention that the goods received by their customers from their end, as per specification of their customers, are used in manufacture of finished goods at the end of their customers and cleared on payment of central excise duty and so any expenditure incurred by the customers is included when they sell the said goods. On the issue of taking cenvat credit without receiving inputs in their factory, it is the contention of the appellant that they have cleared those goods on payment of duty, therefore, payment of duty shall amount reversal of cenvat credit. Thereafter, the matter was adjudicated and demand as proposed in the show cause notice was confirmed. Aggrieved from the said order, the appellant is before us.

7. The appellant reiterated that all the allegation they have explained in the reply to the show cause notice, but the adjudicating authority has not considered the same. He further submitted that the main demand is for input supplied by the manufacturer to the appellant under job-work challan on which the principal manufacturer has paid duty, in that circumstances, the appellant is not required to pay duty as held by the Tribunal in the case of Automative Stamping & Assemblies Ltd. v. Commr. of C.Ex., Vadodara [2009 (247) E.L.T. 712 (Tri.-Ahmd.)] and the said issue has been affirmed by the Hon'ble Apex Court in the case of International Auto Ltd. Vs. Commissionerof Central Excise, Bihar [2005 (183) E.L.T. 239 (S.C.)]. Therefore, the appellant is not liable to pay duty on that.

8. With regard to issue of clearance of the inputs as such without receiving in their factory, it is fact on record that the appellant has paid duty on the said goods, therefore, the said payment of duty be termed as reversal of cenvat credit as held by the Hon'ble Bombay High Court

in the case of CCE, Pune-III Vs. Ajinkya Enterprises [2013 (294) ELT 294 (Bom.)], therefore, no reversal is required by the appellant.

9. With regard to inclusion of the drawings and design supplied by the principal manufacturer to the appellant, it is the contention of the appellant that no value of such design and drawings were paid by the appellant and whatever cost of the design and drawings were borne by the principal manufacturer, who has discharged duty on the final product. The value of drawings and design has been calculated on the basis of imaginary figures adopted by the adjudicating authority, therefore, the demand is not sustainable on that ground.

10. On the other hand the Ld.AR for the department submits that cost of the design and drawings is to be included in the cost of the goods cleared by the appellant on job-work basis.

11. Heard the parties, considered the submissions.

12. On consideration of the submissions made by both the sides, the first issue which arises with regard to whether the appellant is liable to pay on the goods cleared by them to their principal manufacture.

13. we find that in this case the principal manufacturer is sending inputs to the appellant on job work challans on which the appellant has not taken the cenvat credit and after job-work, the appellant is clearing the same to the principal manufacturer without charging any duty and the appellant is charging only the job-work charges and the principal manufacturer is discharging duty on final product. In that circumstances, relying on the decision of this Tribunal in the case of Automative Stamping & Assemblies Ltd. (supra), wherein this Tribunal has observed as under:-

> ***"4.*** *It stand explained before us that appellant is primarily a manufacturer of clutch covers which are being cleared by them without welding lugs to the same. Their buyer GSCL, who are engaged in the manufacture of clutch assembly, placed orders with them for clutch covers at the sale price of Rs. 417.50 per piece. By another order, the appellants were entrusted job work for welding 3 lugs on each clutch cover. We agree with the learned advocate that instead of first clearing*

the clutch cover to GSCL and then bringing it back to the factory for welding 3 lugs on the same would invite extra financial burden. As such, instead of actually clearing the clutch covers, the appellants did the job work on the same and returned the goods to GSCL. The job work was done under the cover of challan under Rule 4(5)(a) of Cenvat Credit Rules, 2002. It is not a case where the lugs were supplied free of cost by GSCL so as to be attached and welded to the clutch cover, in which case, their value was required to be added in the value of the final product. Welding of the lugs to the clutch cover was on job work basis in terms of Rule 4(5)(a) and under the cover of challans. GSCL had availed the credit on the lugs provided by them and the value of the same would be added in the final assembly manufactured by GSCL. As such, the duty on the lugs' price would be discharged by GSCL. We find no reasons to add the value of such lugs in the value of the clutch covers manufactured by the appellant, especially when such job has been done by the appellant in terms of Rule 4(5)(a) of the Cenvat Credit Rules, 2002.

***5.** Reliance in support of the above our findings can be placed on Hon'ble Supreme Court decision in case of M/s. International Auto Ltd. v. CCE, Bihar - 2005 (183) E.L.T. 239 (S.C.), wherein taking note of the provisions of Rule 57F of the erstwhile CER, 1994, value of the input supplied by the manufacturer of the final product to intermediate product producer, was held as not includible in the value of the final product."*

We hold that the appellant is not liable to pay duty on job-worked goods.

14. We find that cenvat credit sought to be reversed from the appellant on the allegation that the inputs were not received in their factory and cleared directly to their customers.

15. we find that although the goods were not received in their factory and cleared directly to their customers, but on payment of duty. When the inputs have been cleared to their customers directly on payment of duty, the payment of duty shall be treated as reversal of cenvat credit as held by the Hon'ble Bombay High Court in the case of CCE, Pune-III

Vs. Ajinkya Enterprises (supra), wherein Hon'ble the Hon'ble High Court has observed as under:-

> ***"10.*** *Apart from the above, in the present case, the assessment on decoiled HR/CR coils cleared from the factory of the assessee on payment of duty has neither been reversed nor it is held that the assessee is entitled to refund of duty paid at the time of clearing the decoiled HR/CR coils. In these circumstances, the CESTAT following its decision in the case of Ashok Enterprises - 2008 (221) E.L.T. 586 (T), Super Forgings - 2007 (217) E.L.T. 559 (T), S.A.I.L. - 2007 (220) E.L.T. 520 (T) = 2009 (15) S.T.R. 640 (Tribunal), M.P. Telelinks Limited - 2004 (178) E.L.T. 167 (T) and a decision of the Gujarat High Court in the case of CCE v. Creative Enterprises reported in 2009 (235) E.L.T. 785 (Guj.) has held that once the duty on final products has been accepted by the department, CENVAT credit availed need not be reversed even if the activity docs not amount to manufacture. Admittedly, similar view taken by the Gujarat High Court in the case of Creative Enterprises has been upheld by the Apex Court [see 2009 (243) E.L.T. A121] by dismissing the SLP filed by the Revenue."*

Therefore, we hold that the appellant is not required to reverse the cenvat credit on the input cleared without receiving in the factory on payment of duty

16. With regard to inclusion of drawings and design supplied by the principal manufacturer to the appellant, we find that the inclusion sought to be made in the assessable value on the basis of imaginary figures, which is not sustainable. It is a fact on record that the appellant has not borne any cost of drawings and design supplied by the principal manufacturer and the principal manufacturer has borne the cost of design and drawings and paid duty on their final product.

17. In that circumstances we hold that the cost of design and drawings cannot be included in the job-charges of the appellant, therefore, no duty is payable by the appellant.

18. In that circumstances, all the issues raised in the show cause notice fail. Accordingly, the impugned order is set aside and in the result, the appeal is allowed.

(Operative part of the order was pronounced in the open Court.)

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

sm