

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

Excise Appeal No: 325 of 2011

[Arising out of Order-in-Appeal No: SR/404/NGP/2010 dated 16th November 2010 passed by the Commissioner of Central Excise & Customs (Appeals), Nagpur.]

SJS Plastiblends Pvt Ltd
Unit No.II, A-26 MIDC Area, Butibori, Dist: Nagpur

... *Appellant*

versus

Commissioner of Central Excise
Nagpur,
Kendra Utpad Shulk Bhavan, Telekhedi Road,
Civil Lines, Nagpur – 440 001

...*Respondent*

With

Excise Appeal No: 326 of 2011

[Arising out of Order-in-Appeal No: SR/404/NGP/2010 dated 16th November 2010 passed by the Commissioner of Central Excise & Customs (Appeals), Nagpur.]

Laxmikant G Joshi
M/s SJS Plastiblends Pvt Ltd
Unit No.II, A-26 MIDC Area, Butibori, Dist: Nagpur

... *Appellant*

versus

Commissioner of Central Excise
Nagpur,
Kendriya Utpad Shulk Bhavan, Telekhedi Road,
Civil Lines, Nagpur – 440 001

...*Respondent*

And

Excise Appeal No: 327 of 2011

[Arising out of Order-in-Appeal No: SR/404/NGP/2010 dated 16th November 2010 passed by the Commissioner of Central Excise & Customs (Appeals), Nagpur.]

Sadanand Shabde
M/s SJS Plastiblends Pvt Ltd
Unit No.II, A-26 MIDC Area, Butibori, Dist: Nagpur

... ***Appellant***

versus

Commissioner of Central Excise
Nagpur,
Kendriya Utpad Shulk Bhavan, Telekhedi Road,
Civil Lines, Nagpur – 440 001

...***Respondent***

And

Excise Appeal No: 328 of 2011

[Arising out of Order-in-Appeal No: SR/404/NGP/2010 dated 16th November 2010 passed by the Commissioner of Central Excise & Customs (Appeals), Nagpur.]

S P Subhedar
M/s SJS Plastiblends Pvt Ltd
Unit No.II, A-26 MIDC Area, Butibori, Dist: Nagpur

... ***Appellant***

versus

Commissioner of Central Excise
Nagpur,
Kendriya Utpad Shulk Bhavan, Telekhedi Road,
Civil Lines, Nagpur – 440 001

...***Respondent***

APPEARANCE:

Shri JH Motwani, Advocate for the appellant

Shri S Hasija, Superintendent (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE DR SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO: A/86555-86558/2019

DATE OF HEARING:

06/05/2019

DATE OF DECISION:

06/09/2019

PER: C J MATHEW

The present dispute, over the demand of ₹ 27,43,688/- to be recovered from M/s SJS Plastiblends Pvt Ltd, along with penalty of like amount under section 11AC of Central Excise Act, 1944, and penalties imposed on Shri Laxmikant G Joshi, Shri Sadanand Shabde and Shri S P Subhedar, pertains to the alleged mis-declaration of value of 'intermediate goods' manufactured by the appellant-assessee, and cleared by availing the benefit of notification no. 214/86-CE dated 25th March 1986, out of the raw materials supplied by customers. Among the various production activities of the appellant-assessee, we are concerned only with the clearances of ABS/PP sheets / HIPS sheets as job-worker of M/s UKAY Metals Industries Pvt Ltd, M/s Merloni Thermosanitary India Ltd and M/s Toshira Auto Industries, Nasik. Admittedly, some part of the production from the same 'input mix' were also cleared to these customers after payment of duty on different assessable value.

2. As far as the disputed clearances are concerned, as well as those with which these were compared, the appellant-assessee claimed to be in receipt of grindings/scrap from customers which were required to be mixed with prime material belonging to the appellant herein and, as per pre-assigned proportion, a portion of the sheets so manufactured was cleared as return after job-work to the supplier while the rest were cleared as normal manufacture of their own. The notification invoked for the former exempts job-workers from duty

liability arising from such job-work subject to the usage of supplied inputs in the manufacture of finished products and on the supplier of the inputs undertaking to discharge duty liability. It is not in dispute that the products emanating from the factories of the appellant are intermediate goods for use in the manufacture of final products by customers or that the appellant is in receipt of gradings/scrap from these manufacturers of the final products. The original authority dropped the proceedings but, in appeal, Commissioner of Customs, Central Excise & Service Tax (Appeals), Nagpur, *vide* order-in-appeal no. SR/404/NGP/2010 dated 16th November 2010, reversed the finding leading to this appeal.

3. We have heard Learned Counsel for the appellant and Learned Authorised Representative.

4. It would appear that the first appellate authority has rendered its finding on the premise that the inputs received from customers and claimed to have been utilized for job-work had not complied with prescription relating to supplies from 'principal manufacturer' and that, to obfuscate the regular manufacturing activity of the assessee, the production records were manipulated to convey the impression that a major portion was cleared in accordance with the orders placed upon the appellant by the principal manufacturer. The alleged failure to utilize the goods claimed to have been so received was, according to the first appellate authority, sufficient for a fresh determination of

duty liability on the entire value.

5. We find nothing on record to contradict the documented claim of the appellant that some ‘downstream’ manufacturers did supply them with grinding/scrap which is one of the sources for manufacture of ABS/PP sheets/HIPS sheets. Admittedly, the appellant is also required to utilize some prime material of their own in the manufacture and, in proportion with the contribution so made, is entitled to claim ownership of some of the products while the rest are required to be returned to the principal-manufacturer as the job-work undertaken by them. It is this artificial segregation that has been characterized by the central excise authorities as falsified production record leading to the detriment fastened on the appellant-assessee by the first appellate authority for having thus evaded duties of central excise.

6. It is apparent from the decisions of the Hon’ble Supreme Court in *International Auto Ltd v. Commissioner of Central Excise, Bihar* [2005 (183) ELT 239 (SC)] and of the Tribunal in *Umesh Rai v. Commissioner of Central Excise & Customs, Vapi* [2009 (244) ELT 138 (Tri.-Ahmd)] and in *Suvikram Plastex (P) Ltd v. Commissioner of Central Excise* [2008 (225) ELT 282 (Tri.Bang.)] that job-worker is not transformed as independent manufacturer merely because of their own material being deployed. Therefore, it is well within the scheme of job-work for the appellant-assessee to be entitled to the benefit of

exemption intended for job-workers subject to fulfilment of the conditions prescribed therein.

7. As the said exemption is available to job-workers, it naturally follows that the consequences should necessarily be available to the appellant-assessee if the conditions therein are complied with. The ordinary scheme of levy of duties of excise does not brook any distinction among manufacturers. However, to accommodate the commercial reality of outsourcing, job-workers are segregated for appropriate exemption from payment of duties and in the rules pertaining to availment of credit of duties/taxes paid on input goods/input service. Various decisions have examined this distinction between manufacturers as job-worker and as producer on own account. The Tribunal in *Commissioner of Central Excise, Jaipur – II v. Ranjan Polyesters Ltd* [2016 (344) ELT 257 (Tri.-Del.)], relying upon circular no. 306/22/97-CX dated 20th March 1997 of Central Board of Excise and Customs, held the duty liability is transferred from the job-worker to the principal-manufacturer. Likewise, in *Commissioner of Customs & Central Excise, Bhopal v. Abhinav Chemicals* [2012 (284) ELT 589 (Tri.Del.)], the Tribunal, examining the coverage of assessee as job-worker, held that

‘12. It is not the case of the appellant that the conditions given in clause 2 of the notification have not been complied with. Thus, only question to be answered in this appeal is whether or not the job done by the respondent-assessee is

covered under the definition of “job work” as defined in the explanation to the notification. Contention of the appellant is that admittedly only one raw material “Alumina Hydrate” was supplied by the principal manufacturer and the other main raw material Sulphuric Acid was procured by the respondent himself as such the job of manufacture of Aluminium Sulphate done by the respondent is not covered within the definition of the job work given in the explanation to the notification. We do not find merit in this contention for the reason that the explanation defining the expression “job work” does not provide that all the raw materials for manufacture of final product must be supplied by the principal manufacturer. Instead as per the explanation the “job work” means, processing or working upon of raw materials supplied to the job work. Admittedly, in this case the main raw material Alumina Hydrate was supplied by the principal manufacturer M/s. HLL which was processed and treated by the respondent with Sulphuric Acid to manufacture Aluminium Sulphate i.e. the final product cleared without payment of duty. Therefore, in our opinion the process of manufacture adopted by the respondent squarely falls within the definition of “job work”. As such we do not find any infirmity in the impugned order extending benefit of Notification No. 214/86-C.E. to the respondent.

13. Otherwise also even if the benefit of Notification No. 214/86-C.E. was denied to the respondent that excise duty would have been passed on to M/s. HLL who would have availed Cenvat credit on entire duty paid on Aluminium Sulphate cleared by the respondent. Therefore, analyzing from this angle also the entire exercise would have been revenue neutral.’

8. In *ITEL Industries Ltd v. Asstt. Commissioner of Central Excise*

[2012 (275) ELT 145 (Ker.)] the Hon'ble High Court of Kerala has held that

'4. After hearing both sides and after going through the orders impugned, we are unable to accept the contention of the appellant that it has no liability to pay duty by virtue of the reversal of credit taken on inputs purchased and transferred to job workers for manufacture and return of MTRs. This is because the appellant by adopting the procedure prescribed under Rule 57F declared itself as the principal manufacturer and took duty credit on inputs and components purchased and transferred to job workers who manufactured MTRs on collection of labour charges and returned the same to the appellant. Admittedly appellant marketed the products manufactured by engaging job workers and by virtue of the procedure prescribed under Rule 57F adopted by the appellant, appellant cannot turn back and say that duty is payable by the actual manufacturer which is the job worker. The appellant admittedly availed duty credit on the inputs and components purchased which are transferred to the job workers for manufacture and return of MTRs. Rule 57A clearly states as follows :

"Rule 57A. Applicability :- (1) The provisions of this section shall apply to such finished excisable goods (hereinafter referred to as the "final products"), as the Central Government may, by notification in the Official Gazette, specify in this behalf, for the purpose of allowing credit of any duty of excise or the additional duty under Section 3 of the Customs Tariff Act, 1975 (51 of 1975), as may be specified in the said notification (hereinafter referred to as the "specified duty") paid on the goods used in or in relation to the manufacture of the said final products (hereinafter referred to as the "inputs") and for utilising the credit so allowed towards payment of duty of excise leviable on the final products, whether under the Act or under any other Act, as may be specified in the said notification, subject to the provisions of this section and the conditions and restrictions that may be specified in the Notification."

What is clear from the above Rule is that the duty credit availed on inputs is only for adjustment against duty payable on the final product manufactured and sold. When the appellant claims credit of duty paid on inputs purchased, it is the duty of the appellant to adjust the duty credit availed on inputs against duty payable on the sale of the final product which in this case is MTR. During hearing of the matter, we queried with the department as to whether the job workers were assessed for the duty payable on MTRs which admittedly were manufactured by them. The department after verifying facts submitted that job workers who manufactured the goods are SSI units which are enjoying duty exemption and further, by virtue of the procedure adopted by the appellant under Rule 57F(2), they had no liability to pay duty because on return of manufactured goods appellant was supposed to pay duty by adjusting duty credit available on inputs. The appellant's contention that after two years they have reversed the duty credit availed on inputs will save them from liability cannot be accepted because appellant's original conduct in availing procedure under Rule 57F(2) is an irreversible procedure whereby the job workers are not liable to account the department for payment of duty on manufacture. We do not find any of the decisions cited by the appellant help them to get out of the liability. The Tribunal rightly held that the MTRs do not constitute an integral part of the telephone, but are accessories on which duty is payable on clearance made by the appellant. Since appellant has availed duty credit on the inputs purchased and transferred to job workers for manufacture, appellant has to necessarily pay duty on the MTRs sold and adjust duty credit availed on the components by following Rule 57A extracted above. However, we make it clear that since the duty liability on the appellant is upheld, appellant is entitled to adjust duty credit availed on components and the reversals made by the appellant could

again be reversed to enable it to set off duty credit availed on components purchased against duty payable on the final product namely, MTR. Appeal challenging the demand of duty is dismissed.'

9. It would, therefore, appear that the provisions of exemption notifications, as interpreted in the decisions, accord the privileges of job-worker to a manufacturer if the supplier of inputs undertakes to discharge the duty liability on the finished goods so manufactured with the job-worker as the default manufacturer even for a contracted manufacturer. The facts of the present case would need to be tested against this meaning of job-worker. We discern a patent lack of such examination in the impugned order.

10. The next issue is concerned with the ascertainment of value to be adopted for the purpose of discharge of duty liability. In the normal course, liability of a job-worker, for the discharge of duty of central excise, is restricted to the labour charges and the nominal profit. In *Vako Seals Pvt Ltd v. Commissioner of Central Excise, Mumbai – V* [2016 (344) ELT 482 (Tri.Mumbai)], it was held that

'6. We find that appellant is manufacturer of rubber product on their own therefore, they are required to discharge excise duty only on the product manufactured by them. The payment of duty on the rubber product is not under dispute. In the present case, the appellant is not paying excise duty on the machine body supplied by the principle manufacturer under job work provision as laid down under Rule 57F(3) of the Central Excise Rules, 1944 and Rule 4(5)(a) of Cenvat Credit

Rules, 2004. In our view the rubber product which is manufactured by the appellant are only dutiable manufacturing activity of the appellant. They are correctly discharging the duty on such rubber product. As regard the dispute raised by the Revenue that the value of machines body supplied by the principle should be added in the assessable value of the job work goods, we are of the view that activity over and above of manufacture of rubber product, i.e., rubber bonding in the machine body is purely job work activity. It is undisputed fact that machine bodies are supplied by the principle under Rule 57F(3) of the Central Excise Rules, 1944 and Rule 4(5)(a) of Cenvat Credit Rules, 2004 read with Notification No. 214/86-C.E. The appellant also filed declaration to this effect to the Jurisdictional Asstt Commissioner in compliance of condition of the Notification No. 214/86-C.E. which clearly provides exemption from payment of excise duty on the job work activity subject to condition the principle supplier of raw material discharging the excise duty on their final product wherein job work goods is used. This fact is also not under dispute, in view of declaration filed by the principle supplier of the machine bodies. In the given fact, we are of the view that the job work activity since clearly covered under job work provisions, no duty is required to be paid on the job work activity in terms of Notification No. 214/86-C.E. Accordingly value of machine bodies supplied by the principle manufacturer need not to be added or same should not be levied with excise duty. The issue in the present case is squarely covered by the judgment in case of International Auto Ltd. (supra), wherein Hon'ble Supreme Court has held as under :

6. We are of the view that the submission of the appellant is correct. The Tribunal appears to have been confused between the manufacture of the final product, namely, excavators and the manufacture of the intermediate product, namely, the floor plate assemblies. The scheme of Modvat permits the person who clears the ultimate final

product to take the benefit of the Modvat scheme at the time of clearance of such final product. The manufacturer of the final product, in this case TELCO, would therefore, be entitled not only to adjust the credit on the inputs supplied by it to the intermediate purchaser such as the appellant but also to the credit for the duty paid by the intermediate purchaser on its products. The reliance on the decision in Burn Standard Company Ltd. (supra), by the Tribunal was misplaced. That case has no doubt held that the value of the free inputs were to be included in the final product. In that case, the final product was wagons and the question was whether the items which were supplied free by the Railway Board to the assessee could be included in the value of the wagons. This Court came to the conclusion that it could. The first distinguishable feature is that this Court in that case was neither concerned with the Modvat scheme, nor with the provisions of Rule 57F(2)(b). Furthermore, the Court was not considering a situation where the question was of the liability of an intermediate product being subjected to excise duty. What was in consideration was the final product, namely, wagons.

7. In this appeal as we have already noted, the final product was the excavator. According to the Modvat scheme, it is the Modvat of such final product which would have to include the cost of the inputs and in respect of which Modvat credit could be taken at the time of clearance of the final product. The Tribunal having misconstrued the provisions of Rule 57F(2)(b), its decision cannot stand. The decision of the Tribunal is accordingly set aside and the appeal is allowed.

In C.A. Nos. 4086-87/2001 :

8. For the reasons elaborated by us in the judgment delivered in C.A. No. 176/2000 (M/s. International Auto Ltd. v. Commissioner of Central Excise, Bihar) [2005 (183) E.L.T. 239 (S.C.)] these appeals must be allowed. The penalty imposed on the appellant is set aside. However, it is recorded that the appellant is not claiming refund of any duty that had been paid by it pursuant to the demand which is set aside by us.

Following the ratio of the above decision and our above detailed discussion, we are of the view that appellant are not required to pay duty on the machine body supplied by the principal manufacturer therefore, the impugned order is not sustainable. Hence the same is set aside and appeals are allowed.'

11. It is common ground that the raw material supplied by the

customer was to be mixed with the material belonging to the appellant-assessee for manufacture of the products to be cleared to the former. A part of the production, claimed to represent the value of the inputs belonging to the appellant and utilized for production, is retained by the appellant for sale on its own account on payment of full duty. The other portion, admittedly containing also material belonging to the appellant-assessee has been cleared as that of job-work. Thus, the entire quantity of raw material received from the customer has not been utilized for job-work and not included in the resultant product cleared to the supplier. However, duty liability has been discharged in full on goods in which supplied raw material was appropriated by the appellant-assessee for production on own account. Therefore, no differential duty arises therefrom. Unutilised raw material, even if liable to duty, that are in compliance with the provisions relating to the utilization for job-work is also not stigmatized as having been cleared without payment of any duty. The sole issue for consideration is whether the appropriate duties have been discharged on the goods cleared by the appellant-assessee as job-worker. It is admitted in the records that the labour charges and the margin of profit have been subject to duties. The customers have utilized the job-work goods as inputs for manufacture of final products and there is no allegation of non-inclusion of the costs in the assessable value on which duty liability has been discharged. In these circumstances, the presumption of the goods remaining unutilized

merely because of artificial segregation based on the input contribution of the supplier and the appellant-assessee may not be sustainable. This is an aspect that has not been examined in the order of the first appellate authority who has preferred to be convinced by the circumstances of entries in the production register, first to conclude non-utilisation of goods supplied as job-worker. In the process, there has been no ascertainment of discharge of duty liability on input received as job-worker that was not returned along with finished products.

12. In the absence of such examination at the appellate stage, we set aside the impugned order and remand the matter back to the first appellate authority to consider the dispute in the light of our findings that the appellant-assessee is a job-worker, that the portion of inputs received from the principal-manufacturer which was not put to use for production as job-worker has discharged duty liability and that, as producer of goods, duty on job-work has also been discharged.

13. The appeal is disposed off in the above terms

(Order pronounced in the open court on 06/09/2019)

(C J Mathew)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)