CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.1

Excise Appeal No.524 of 2011

[Arising out of Order-in-Appeal No.SB/147 to 150/MV/10, dt.30.12.2010, passed by the CCE (Appeals), Mumbai-I]

M/s Machine Crafters, **......Appellant**
Khurana Compound, Building No.3,
I.B. Patel Road, Goregaon (East)
Mumbai 400 063

VERSUS

Commissioner of Central Excise, Mumbai-V, **......Respondent**
5th Floor, Uptpad Shulk Bhavan, Plot No.C-24,
Block 'E', Bandra-Kurla Complex, Bandra (East),
Mumbai 400051

WITH

(i) Excise Appeal No.525 of 2011 (M/s Durable Drums),
(ii) Excise Appeal No.526 of 2011 (Satish Kumar Khurana)
(iii) Excise Appeal No.527 of 2011 (Pavan Satishkumar Khurana)

[Arising out of Order-in-Appeal No.SB/147 to 150/MV/10, dt.30.12.2010, passed by the CCE (Appeals), Mumbai-I]

Appearance:
For Appellant : Shri M.P. Baxi, Advocate
For Respondent : Shri N.N. Prabhudesai, Supdtt. (AR)

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.A/86575-86578/2019

Date of Hearing: 06.03.2019
Date of Decision: 05.09.2019

PER: Dr.D.M. MISRA

These four appeals are filed against Order-in-Appeal No.SB/147 to 150/MV/10, dt.30.12.2010, passed by the CCE (Appeals), Mumbai-I.

2. Briefly stated the facts of the case are that M/s Machine Crafters, during the relevant period i.e. 2000-2001 and 2001-2002 engaged in the manufacture of slotted angles and channels falling under CSH 7308.90 of Central Excise Tariff Act, 1985 and availing SSI exemption under relevant notifications issued from time to time. On the basis of investigation carried out by the officers, it is alleged that another company viz. M/s Durable Drums who also manufactured similar goods since did not have the facility to manufacture the said goods i.e. slotted angles/channels etc, in fact, got it manufactured in the premises of M/s Machine Crafters, hence the clearance value of M/s Durable Drums required to be added to the clearance value of M/s Machine Crafters for computing the aggregate value of clearances under the respective SSI exemption notifications. Consequently, adding the value of clearance of M/s Durable Drums with that of M/s Machine Crafters, show cause notice was issued on 11.04.2002 for recovery of duty of Rs.15,84,277/- not paid by M/s Machine Crafters with interest and penalty. Also, the vehicle with goods seized during the course of investigation proposed to be confiscated; personal penalty proposed under Rule 26 of Central Excise Rules, 2001 against other persons. On adjudication, demand was confirmed with equal penalty on M/s Machine Crafters, directed confiscation of the seized goods and vehicle with an option to redeem the same on payment of fine, imposed personal penalty on Shri Satish Kumar Khurana, Director of M/s Machine Crafters and Shri Pawan Satish Kumar Khurana under Rule 209A of erstwhile Central Excise Rules read with Rule 26 of Central Excise Rules, 2001. Aggrieved by the said order, the

Appellant filed appeals before the learned Commissioner (Appeals), who in turn, remanded the matter to the Adjudicating authority. Aggrieved by the said order, Revenue filed appeal before this Tribunal, challenging the jurisdiction of the learned Commissioner (Appeals) to remand the matter. Consequently, this Tribunal, by its order dt.09.06.2010, remanded the matter to the learned Commissioner (Appeals) to decide the case afresh after affording an opportunity of hearing to both sides. In remand proceedings, the learned Commissioner (Appeals), after analyzing the facts and evidence on record, rejected the appeals filed by the Appellants. Hence, the present appeals.

3. At the outset, the learned Advocate Shri M.P. Baxi for the Appellants has submitted that M/s Machine Crafters, during the relevant period, engaged in the manufacture of upright beams, BR angles, Br brackets, slotted angles and shelves. They carried out certain process on the raw material procured by them or supplied by M/s Godrej & Boyce Ltd. The raw materials were required to undergo several processes viz. shearing, punching, bending, welding, and painting. For the process of shearing, the raw material was sent to M/s Daji Kika & Sons, for punching to M/s Bharat Industries, for bending to M/s Hiralal Brothers, the process of welding which was carried out by themselves and in the case of beams, it was by M/s Friya Engineering. The process of bending was also carried out by the Appellants for themselves. In few cases also, certain quantity of the raw material was received by them from M/s Durable Drums for bending. In support, of their contention that the goods were sent to various job workers, the relevant

challans/invoices sending the raw materials to job workers for the required processes have been enclosed with their appeal paper book (Pages 117 to 130). He submits that M/s Durable Drums also used to carry out the above said processes engaging the said job workers. He has further submitted that the processes viz. process of bending, powder coating and process of packing were carried out in the premises of M/s Machine Crafters except where the finished product required to be painted with normal paint instead of powder coating, the same was done at the premises of M/s Durable Drums. He submitted that none of their products was marketable/acceptable to their clients/customers before being fully painted and fully finished.

4. He has submitted that the unit viz. M/s Durable Drums, also a partnership firm having separate legal existence. He has submitted that though M/s Durable Drums was also manufacturing certain identical products, but did not manufacture slotted angles and shelves; they manufactured channels and panels only. It is his contention that adding the value of the clearance of M/s Durable Drums in computing aggregate value of the clearance of the Appellant for ascertaining the admissibility of SSI exemption notification is incorrect and unsustainable in law. He has submitted that M/s Durable Drums is an independent manufacturer having their own existence and procure orders independently and manufacture certain products viz. channels and panels which were not manufactured by the Appellant. It is his contention that most of the processes viz. shearing, punching, and welding were neither carried out in the premises of M/s Machine Crafters nor in the premises of M/s Durable Drums as necessary machinery for carrying

out these processes were not available. These processes were carried out by both the units in the premises of independent job workers. The process of painting (powder coating) is carried out in the premises of M/s Machine Crafters whereas the process of normal painting is carried out in the premises of M/s Durable Drums. It is his contention that in the premises of M/s Machine Crafters, they carried out the process of painting for M/s Durable Drums which comprised approximately 25% of the total production. He has further submitted that as and when required, for the products slotted angles/shelves, M/s Durable Drums carried out painting of such product for the Appellant.

5. The learned Advocate has also submitted that even though the Appellant had certain machineries such as pickling unit, powder coating unit, zinc coating unit, however, these machineries could not be used in the process of shearing, punching or welding and only the process of painting was carried out by the Appellant M/s Machine Crafters. Most of the processes were undertaken through the job workers. It is their contention that even though the majority of processes were carried out on job work basis by M/s Machine Crafters, the Department accepted M/s Machine Crafters as manufacturer whereas the same set of processes which carried out by M/s Durable Drums through job workers, M/s Durable Drums was not acceptable as manufacturer to the Department. It is his contention that in clubbing the clearances of the two units, it is necessary to establish that the second unit is a dummy unit having no existence except on paper. In the present case, the Department has acknowledged the existence of M/s Durable Drums as an

independent unit. The learned Advocate further submitted that interpretation of the learned Commissioner (Appeals) relating to the Notification No.83/94, dt.11.04.1994 is incorrect as the process of painting is incidental and ancillary to complete the process of manufacture, hence covers the scope of said notification. It is their contention that, therefore, the clearance value of the goods of M/s Durable Drums cannot be added to the clearance value of M/s Machine Crafters.

6. Per contra, the learned A.R. for the Revenue reiterates the findings of the learned Commissioner (Appeals). He has submitted that since there were no machinery in the premises of M/s Durable Drums except one painting machine and all machineries were installed in the premises of M/s Machine Crafters, therefore, the Department has rightly construed that all goods were manufactured by M/s Machine Crafters and therefore, the clearance value of M/s Durable Drums had to be added to the clearance value of M/s Machine Crafters while computing the aggregate value of the clearance of M/s Machine Crafters in allowing the SSI exemption of Notification No.8/2003-CE, dt.01.03.2003 and No.8/2001-CE, dt.01.03.2001 as the case may be. It is his contention that before the learned Commissioner (Appeals), the Appellant M/s Machine Crafters claimed that they were doing the job work for M/s Durable Drums, both are being SSI units; the procedure laid down under Notification No.83/94-CE and No.84/94-CE had been followed by filing the necessary declaration with the Department. It is his contention that the learned Commissioner (Appeals), in his order, observed that since M/s Durable Drums did not have the facility

other than painting and accordingly no manufacturing activity was carried out in their premises other than painting, accordingly, the benefit of notification was denied to M/s Durable Drums.

7. Heard both sides and perused the records. The short issue involved in the present appeals for determination is whether the value of the clearances of the Appellant M/s Durable Drums, be added to the value of clearance of M/s Machine Crafters in computing the aggregate value of the clearances for the period 2000-2001 in extending the benefit of SSI exemption. There is no dispute of the fact that during the relevant period, M/s Machine Crafters were the manufacturer of excisable goods viz. slotted angles/brackets etc. The said finished goods emerge after carrying out the processes of shearing, punching, bending, welding and painting. It is the contention of M/s Machine Crafters that except painting and the process of bending, all other processes were carried out on job work basis from various job workers by sending the raw materials to them. Similar is the situation with M/s Durable Drums. In the premises of M/s Durable Drums, only facility for painting was available and all other processes in similar way were carried out on job work basis by them. The above processes were carried out on job work basis by sending the raw materials to various job workers has been fairly established by the Appellant M/s Machine Crafters, enclosing the relevant challans sending raw materials and receipt of the processed goods, in the appeal paper book. The reasoning on which the learned Commissioner (Appeals) confirmed the demand by clubbing the clearances of M/s Machine Crafters and M/s Durable Drums is that the Appellant M/s Durable Drums did not have the

facility to manufacture these goods, whereas M/s Machine Crafters were in possession of various machineries. However, the Appellant M/s Machine Crafters categorically submitted in their reply as well as before the learned Commissioner (Appeals) that the machines which were available in their factory premises were not used for the purpose of processes of shearing, punching and welding etc. Besides, the learned Commissioner (Appeals) has also denied the benefit of the Notification No.83/94-CCE and No.84/94-CE available to SSI unit that the goods manufactured on job work basis on the ground that the Appellant M/s Durable Drums did not have the manufacturing facility other than the process of painting. It cannot be denied that the process of painting is the ultimate and final process which makes the product marketable and hence, it is the process ancillary and incidental to manufacture of the finished goods, hence M/s Durable Drums also is a manufacturer and eligible to the benefit of said Notification.

8. Further, we do not find substance in the observations recorded by the learned Commissioner (Appeals) in upholding the confirmation of demand by clubbing the clearances of M/s Durable Drums to that of M/s Machine Crafters in absence of free-flow of finance, control of the manufacture of the product and clearances of the finished goods, procurement of raw material, procurement of work force etc by M/s Machine Crafters in establishing the fact that M/s Durable Drums also either belongs to M/s Machine Crafters or a dummy unit created on paper only.

9. In the result, the impugned order is set aside and the appeals are allowed with consequential relief, if any, as per law.

(Order pronounced in the open court on 05.09.2019)

(Dr. D.M. Misra)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

Bahalkar