

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH AT MUMBAI**

Excise Appeal No. 89034 of 2018

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-0148/18-19 dated 09.07.2018 passed by Commissioner of Central Tax (Appeals-I), Pune)

M/s. Mechasoft

.....Appellant

Plot No. 81 to 84, Sector C,
Phase-II, Parvati Co-op. Indl. Estate,
Yadrav, Ichalkaranji,
Dist. Kolhapur

VERSUS

**Commissioner of C.G.ST.,
Kolhapur**

.....Respondent

Vasant Plaza, Commercial Complex,
Pjaram Road, Bagal Chowk,
Kolhapur-416001

Appearance:

Shri V.B. Gaikwad, Advocate for the Appellant

Shri Sanjay Hasija, Authorized Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86992 / 2021

Date of Hearing: 26.08.2021

Date of Decision: 14.10.2021

PER : DR. SUVENDU KUMAR PATI

Demand of an amount equal to 6% of the value of exempted service by holding job work as a service under Notification No. 22/2012-ST by the respondent department with a confirmed order in Appeal No. PUN-EXCUS-001-APP-0148/18-19 dated 09.07.2018 passed by Commissioner of Central Tax (Appeals-I), Pune, along with interest and penalty is assailed in the appeal.

2. Facts of the case in brief is that Appellant M/s. Mechasoft is a manufacturer of excisable goods and also a job worker. During the course of audit of the records of the appellant it was noticed that

from July 2012 to December 2016 appellant had availed Cenvat credit against job work activity, which is an exempted service, and not maintained separate record for which as per Rule 6(3) of the Cenvat Credit Rules, 2004 an amount of Rs. 29,44,907/-, @ 6 per cent / 7 per cent on the amount of Rs. 4,79,60,807/- received by it for its job work charges, was demanded through a show cause notice that was confirmed in the adjudication process and appeal before the Commissioner (Appeals) resulted in a direction for re-quantification on proportionate basis to the tune of exempted service along with interest and equivalent penalty. Appellant questioned the legality of such order before this Tribunal.

3. In a memo of appeal and during course of hearing of the appeal as well as in the written note, learned Counsel Mr. V.B. Gaikwad submitted that the primary basis of confirmation of such order by Commissioner (Appeals) was that he placed reliance on Hema Engineering Industries Ltd. Vs. CCE reported in 2017 (5)GSTL-43 (Tri. Del.) that has been distinguished in Shree Organo Chemicals Ahmedabad P. Ltd. Vs. CCE, reported in 2019 (2) TMI-852 wherein it has been clearly held that exemption availed by Hema Engineering Industries Ltd. was under Notification No. 8/2005-ST whereas appellant's case is covered under Notification No. 214/86-CE (NT) in which case the ultimate manufacturer was discharging the duty liability for which the process of partial manufacturing by the appellant cannot be treated as a service to put the activity under the category of exempted service so as to make Rule 6(3) applicable. In placing reliance on the judgments passed by this Tribunal in the case of Shree Organo Chemicals Ahmedabad P. Ltd. Vs. CCE, 2019 (2) TMI-852, CCE Vs. DM Brass Extrusion & Ors., 2018 (6) TMI-1420, Industrial Heat Treaters & Ors. Vs. CCE, 2017 (12) TMI-1210, Western India Forging Pvt. Ltd. Vs. CCE, 2014 (36) STR-637, JBF Industries Vs. CCE, 2014 (34) STR-345, Order-in-Original No. KLH-EXCUS-000-COM-007-19-20, dated 11.09.2019 passed in the case of M/s. Indus Ferro Tech Ltd., Order-in-Original

No.29/CEX/JC/KOP/2018-19 dated 07.01.2019 passed in the case of M/s. Baramati Specialty Steels Ltd., Order-in-Original No.PII/ADC/VNT/CEX/50/2015, dated 29.10.2015 passed in the case of M/s. JBM MA Automotive Pvt. Ltd., Order-in Original No. PII/CEX/VSP/DIVN-III (CKN-1)/21/2015, dated 08.09.2015 passed in the case of M/s. JBM MA Automotive Pvt. Ltd, he further argued that it has been consistently held by the Tribunal that job work activity carried out in terms of Notification o. 214/86-CE (NT) cannot be treated as exempted service for which the order passed by Commissioner (Appeals) confirming the duty demand etc. is liable to be set aside.

4. For contra learned AR for the respondent department submitted that the ratio of Hema Engineering Industries Ltd. case law is squarely applicable to the appellant and not the above referred decisions on which appellant's Counsel has placed reliance for the reason that those judgments were based on inputs only and not on input services. Placing reliance of the judgments of Union of India Vs. J.G. Glass Industries Ltd., reported in 1998 (97) E.L.T. 5 (S.C.) and Blue Precision Ltd. Vs. Commissioner of Central Excise, Delhi-IV, reported in 2011 (274) E.L.T. 460 (Tri.-Del.), he argued that the process undertaken by the appellant cannot be taken as manufacturing since no different commercial commodity came into existence seizing identity of original commodity which will have no commercial use for which the entire exercise undertaken by the appellant is to be treated as a service offered to the manufacturer i.e. exempted from the duty liability and therefore, the order of the Commissioner (Appeals) holding recalculation for the purpose of reversal of credit or payment of amount due with interest and penalty needs no interference by the Tribunal.

5. I have heard both the parties at length and perused the case record, written notes and submissions along with Relevant Rules and relied upon case laws. As can be noticed, Notification No. 214/86-CE

(NT) though was effective from April 1996 has been amended extensively vide Notification No. 49/2002 dated 16.09.2002 so as to make the manufacturer accountable for discharging his obligation in respect of goods under Rule 6 of the Cenvat Credit Rules, 2002. As such when the notification was made service was not treated as an taxable incident in India and the said notification has clearly excluded job workers from the purview of payment of excise duty if ultimate manufacturer was to pay the duty at the time of clearance. Therefore, this amendment of 2005 since has only fixed manufacturer liable to comply with Rule 6 of Cenvat Credit Rules, 2004, to my considered view, job worker cannot be asked to comply the same again on the ground that he is also a part of the manufacturing process. Further, Rule 6 of Cenvat Credit Rules, 2004 introduced a proviso vide Notification No. 13/2005 dated 01.03.2005 in respect of job workers, as per definition of job worker contained in Rule 12 AA of the Central Excise Rules, so as to extend the benefits of Cenvat credit on inputs to the job workers provided those inputs were used in manufacture of goods cleared without payment of duty by the job worker. This being fact on record and position of law and there being a clear finding of the adjudicating authority at Para 16 of Order-in-Original dated 22.12.2017 that the processes undertaken by the job worker were incidental and ancillary to manufacturing or production and hence, amounts to manufacture or production of goods that is specifically excluded from the purview of taxable service, which is also found reflected in the written note filed on behalf of the appellant, there is no need to further dwell into the issue with reference to S.No. 30 of the Notification No. 22/2012-ST to interpret the nature of work undertaken by the appellant job worker. When such a finding of the adjudication authority is not appealed against by the respondent department, I am of the considered view that the work undertaken by the appellant was part of the process of manufacturing and not a services rendered by it to the ultimate manufacturer and in due regard to the judicial precedent set by this

Tribunal including that of Shree Organo Chemicals Ahmedabad P. Ltd. (supra), the following order is passed:-

The Order

The appeal is allowed and the order passed by the Commissioner (Appeals) in Order No. PUN-EXCUS-001-APP-0148/18-19 dated 09.07.2018 is hereby set aside exempting the appellant from the liability to pay the amount or interest and penalty confirmed in the adjudication process.

(Dr. Suwendu Kumar Pati)
Member (Judicial)

(Order pronounced in the open court on 14.10.2021)

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