

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

WEST ZONAL BENCH

EXCISE APPEAL NO: 66 OF 2012

[Arising out of Order-in-Appeal No: US/36/RGD/2011 dated 14th October 2011 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone – II.]

Jaguar International Ltd

NH 17 BKG Road, Pipe Nagar, Vill: Sukeli
Tal: Roha, Raigad – 402126

... Appellant

versus

Commissioner of Central Excise

Raigad
Central Excise Building, Plot No. 1, Sector 17
Khandeshwar, Navi Mumbai – 410 206

...Respondent

WITH

EXCISE APPEAL NO: 976 OF 2012

[Arising out of Order-in-Original No: 55/KLG(55)COMMR/RGD/11-12 dated 26th March 2012 passed by the Commissioner of Central Excise, Customs & Service Tax, Raigad II.]

Jaguar International Ltd

NH 17 BKG Road, Pipe Nagar, Vill: Sukheli
Tal: Roha, Raigad – 402126

... Appellant

versus

Commissioner of Central Excise

Raigad
Utpad Shulk Bhavan, Plot No. 1, Sector 17
Khandeshwar, Navi Mumbai – 410 206

...Respondent

APPEARANCE:

Shri M H Patil, Advocate with Mr Viraj Reshamwala, for the appellant

Shri Dharendra Kumar, Joint Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A / 85252-85253 /2023

DATE OF HEARING: 23/08/2022
DATE OF DECISION: 23/02/2023

PER: C J MATHEW

The core controversy in the proceedings leading to orders impugned in these two appeals of M/s Jaguar International Ltd – that of Commissioner of Central Excise (Appeals)¹, Mumbai Zone – II upholding the revocation of registration under Central Excise Rules, 2002 and of Commissioner of Central Excise, Customs & Service Tax², Raigad II for recovery of ₹ 2,78,77,385 availed as credit under CENVAT Credit Rules, 2004 between February 2008 and February 2009 – is the eligibility of a non-existent manufacturing facility to operate as a central excise assessee and claim benefits arising therefrom. The appellant, allegedly, imported two consignments³ of ‘billets/rounds’, procured on ‘high seas’ from M/s Maharashtra Seamless Ltd, in January 2008, that were cleared by claiming benefit

¹ [order-in-appeal no. US/36/RGD/2011 dated 14th October 2011]

² [order-in-original no. 55/KLG(55)COMMR/RGD/11-12 dated 26th March 2012]

³ [bill of entry no. 819914/25.01.2008 and bill of entry no. 820749/30.01.2008]

of notification no. 53/2003-Cus dated 1st March 2003 against 'duty free entitlement credit certificate (DFECC)' licence issued to them on 20th January 2006 as 'manufacturer-exporter', and one consignment⁴ of similarly procured 'seamless pipes' cleared in March 2008 on payment of duty that were sent to the same M/s Maharashtra Seamless Ltd for further processing as 'supporting manufacturer' before ostensible transfer back to appellant for export. In essence, the case of central excise authorities is that M/s Maharashtra Seamless Ltd is the exporter and that M/s Jaguar International Ltd illicitly transferred goods permitted for import under the relevant notification only to 'actual user' holding the appropriate authorization under the Foreign Trade Policy (FTP). The post-import registration under Central Excise Rules, 2002, amended inclusion of 'supporting manufacturer' in the licence, the absence of factory address in the bills of entry, the belated allotment of space without any machinery to the appellant by M/s Maharashtra Seamless Ltd and lack of records of employees or energy consumption were evidence led for revocation of registration and recovery of wrongfully availed credit.

2. Learned Counsel for the appellant contends that they had, on 8th February 2008, obtained registration of factory premises, admeasuring 1164 sq yards leased from M/s Maharashtra Seamless Ltd *vide* agreement of 1st February 2008, upon completion of all procedural

⁴ [bill of entry no. 827382/05.03.08]

requirements to the satisfaction of the competent authority. It is further submitted by him that it was with the intent of installing 'end-facing machine' that they had applied for central excise registration on 4th February 2008 but decided to get the entire manufacture carried out by 'job-worker' as provided for in rule 4 of CENVAT Credit Rules, 2004 and 'end-facing' of the the resultant 'seamless steel pipes' as well as repairs were carried out at the premises of the appellant or, occasionally, by them at premises of the 'job-worker' before being exported on payment of duty of central excise under claim for rebate as provided for in rule 18 of Central Excise Rules, 2002 read with notification no. 19/04-CE (NT) dated 6th September 2004 under cover of ARE-1 and corresponding invoice.

3. According to Learned Counsel, the activities carried out by the appellant at their premises, viz., testing/inspection for conformity with standards specified by overseas customers, falls within

*'(f) "manufacture" includes any process,-
i) incidental or ancillary to the completion of a manufactured product;
...'*

in section 2 of Central Excise Act, 1944 and that rule 4(5)(a) of CENVAT Credit Rules, 2004, as well as notification no. 214/86-CE dated 25th March 1986, does permit such 'job work' for the purpose of clearance on payment of duty. He contends that, with discharge of duty of ₹ 84,30,050 in addition to ₹ 2,78,77,385 debited in CENVAT

credit account, it was not open to central excise authorities to deny the credit for which reliance is placed on the decision of the Hon'ble High Court of Gujarat in *Commissioner of Central Excise & Customs, Surat-III v. Creative Enterprises [2009 (235) ELT 785 (Guj)]*, that was upheld by the Hon'ble Supreme Court, on the decision of the Tribunal in *Ajinkya Enterprises v. Commissioner of Central Excise, Pune-III [2011-TIOL-1333-CESTAT-MUM]*, that was upheld by the Hon'ble High Court of Bombay, on the decision of the Hon'ble High Court of Madras in *Commissioner of Central Excise, Chennai-III v. Brakes India Ltd [2016-TIOL-1054-HC-MAD-CX]* and of the Tribunal in *PCM Strescon Ventures Ltd v. Central Goods and Service Tax and Central Excise, Alwar [2018-TIOL-2130-CESTAT-DEL]*.

4. From the submissions of Learned Authorised Representative, it would appear that the appellant had crafted a scheme to monetise the credit availed on imported goods by recourse to rule 18 of Central Excise Rules, 2002 providing for rebate of duties which, in the normal course, a merchant-importer would not be entitled to. He submitted that the sole claim of the appellant to dispute the disallowance of unintended benefit is the return of manufactured goods from M/s Maharashtra Seamless Ltd was evidenced by copies of challans that were, in any case, not tenable in the absence of endorsement of receipt. It was also contended that their claim of having cleared product on payment of duties of central excise is not correct as non-

liability to such levy rendered the said payments to be nothing other than deposit. He relied upon the statements of Mr SK Sharma and of Mr RS Gupta as evidence of non-installation of machinery in the premises of the appellant as well as letter of 12th February 2009 of the appellant admitting to the same. He submitted that there is no provision in law for 'merchant-exporter' to avail CENVAT credit and that the decisions cited by Learned Counsel does not comes to the assistance of the appellant.

5. There is no doubt that the connecting of the dots by Learned Authorized Representative does present a tale that could, in a seminar on moral science, elicit outrage stemming from bare acquaintance with taxing statute. That two separate proceedings – for de-registration of premises and for recovery of credit alleged to have been wrongly availed - with, possibly, a third for recovery/denial of rebate claimed by the appellant had been contemplated, and in sequence, for setting the stage for denial of rebate, however, implies an entirely different scenario of distinct, and unconnected, elements of law – coverage under Central Excise Act, 1944, entitlement to avail credit of additional duties of customs discharged at the time of import, option of relying upon 'supporting manufacturer' under the scheme of Foreign Trade Policy which, by no stretch, is of concern to central excise authorities and eligibility for rebate of duties paid on clearance upon fulfilment of export that, if evaluated separately and as these

should be, presents a different picture. It would appear that, by denial of eligibility to register and, consequently, ineligibility for credit as well as entitlement for rebate would enable the exchequer to retain the duties of central excise paid through account current; in other words, an extraction lacking sanction of law. The submissions of Learned Authorized Representative appear to posit that the interests of the State has been compromised by the presence of these disparate procedures – voluntary registration as assessee, clearance on payment of duty that is reimbursable as rebate upon completion of export, opportunity to engage ‘job-worker’ for undertaking manufacture subject to discharge of appropriate duty liability and scheme of offsetting duty liability discharged at the previous stage – enabling ‘zero’ contribution to the tax kitty. Learned Counsel took it upon himself to discredit the argument of holistic perception by pointing out the lack of illegality in any of the several aspects of law relating to central excise as far as the deployment of imported goods was concerned.

6. We may, at the outset, decline to have anything to do with propriety of import, or adherence to obligations devolving, under ‘duty free entitlement credit certificate (DFECC)’ scheme in the Foreign Trade Policy (FTP), operationalized through notification no. 53/2003-Cus dated 1st April 2003, as the lack of jurisdiction with the lower authorities precludes our jurisdictional competence too. There is

no evidence of proceedings having been initiated under Customs Act, 1962, notwithstanding the optics of apparent preference for complex, over simple, transaction, for transgressions in import, and subsequent disposition, of the impugned goods by the appellant. There is no dispute that resultant goods for export are excisable and have been cleared on payment of appropriate duties of central excise. There is also no dispute that the goods so manufactured are entitled to rebate upon export or that, even if non-excisable for any reason whatsoever, may be removed by reversing of CENVAT credit availed on receipt of inputs. There is also no dispute that ‘job-work’ procedure, in relation to CENVAT credit, has been duly complied with.

7. The sole issue that remains is fitment of the appellant within Central Excise Act, 1944 as a registered manufacturer. A plain reading of

‘6. Assessment of duty. - The assessee shall himself assess the duty payable on any excisable goods:...’

along with

‘(c) “assessee” means any person who is liable for payment of duty assessed or a producer or manufacturer of excisable goods or a registered person of a private warehouse in which excisable goods are stored and includes an authorised agent of such person;’

in Rule 2 therein and

‘9. Registration. - (1) Every person, who produces, manufactures, carries on trade, holds private store-room or warehouse or otherwise uses excisable goods or an importer who issues an invoice on which CENVAT credit can be taken, shall get

registered....'

of Central Excise Rules, 2002, does not, of itself, suffice to make out a case of ineligibility for registration. Furthermore, revocation of 'registration certificate', empowered by paragraph 7 of notification no. 35/2001-Central Excise (NT) dated 26th June 2001 under the authority of rule 9 (3) of Central Excise Rules, 2002, only

'...if the holder of such certificate or any person in his employment, is found to have committed breach of any of the provisions of the Act or the rules made thereunder or has been convicted of an offence under section 161, read with section 109 or with section 116 of the Indian Penal Code (45 of 1860).'

and the sole ground adduced in the order of the original authority upheld in the impugned order of the first appellate authority is lack of conformity of the activity of the appellant with 'manufacture' as defined in section 2 of Central Excise Act, 1944 referred to *supra* and the conclusion in the order of the original authority that

'10.....the Central Excise Registration would be issued to a premise on the if the goods are manufactured in that premise only. Further any process or activity will be treated as manufacturing activity if it fulfils the conditions of manufacture as laid down in the above said definition.'

A definition in the statute is intended to specify, and elaborate upon, expressions deployed in the substantive provisions of the statute; it does not substitute for the object and purpose of the statute itself as to afford empowerment by any administrative authority established under the statute. In the context of Central Excise Act, 1944

empowering the levy and collection of

‘...

*(a) a duty of excise... On all excisable goods which are produced
all manufactured in India...’*

in section 3 of Central Excise Act, 1944, the said definition assumes significance for rule 9 of Central Excise Rules, 2002. The definition of ‘manufacture’ is, admittedly, inclusive in referring to any process incidental or ancillary to the completion of a manufactured product and, therefore, is not constrained except to the extent of any person, upon whom the said charge under section 3 of Central Excise Act, 1944 is sought to be fastened, seeking, and establishing, eligibility of escapement therefrom. A person opting to be subject to a tax regime prescribing conditions in such broad, and general, terms cannot, in the absence of legislative device, be excluded therefrom. It is also not open to tax authorities to contend otherwise after acknowledging discharge of duty liability arising thereon. To be permitted to do so would amount to placing conditions within the charging provision of Central Excise Act, 1944 that was not contemplated by the legislating authority. Contrary to the assumptions implicit in the proceedings culminating in the two impugned orders, levy of tax is not intended to be contingent upon net benefit deriving to the exchequer. We may even venture to state that the complexity of the commercial engagement undertaken by the appellant herein is comparable to the complexity of the process, and logic, adopted by the lower authorities

for detriment visited upon the appellant by the impugned orders.

8. It is no less surprising that the exercise of revocation has been undertaken by the tax authorities for recovery of credit, taken under CENVAT Credit Rules, 2004, of duty discharged by the appellant at the time of import and utilised towards partial discharge of duty liability arising on clearance of goods; it does not appear to us that there is sound logic in appellant choosing to discharge duty liabilities, at different stages, on goods that were ultimately to be exported and to be unduly benefited from the exchequer when all that was sought to be reimbursed were the very same duties that were eligible to be neutralised upon exports.

9. In *re Creative Enterprises*, on appeal of Revenue, the Hon'ble High Court of Gujarat had framed the question of law thus

‘...’

(1) Whether, in the facts and circumstances of the case, the tribunal is justified in granting benefit of Modvat credit despite the final product not being as a result of activity of manufacture within the meaning of Section 2 (f) of the Central Excise Act, 1944?’

and answered it thus

‘6..... The Tribunal is justified in holding that if the activity of the respondent-assessee does not amount to manufacture there can be no question of levy of duty, and if duty is levied, Modvat credit cannot be denied by holding that there is no manufacture.’

10. Revocation of registration, not provided for in Central Excise

Rules, 2002 and only in exercise of power of Central Board of Excise & Customs (CBEC) to specify conditions, safeguards and procedure in rule 9(3) of Central Excise Rules, 2002, can be triggered only within the rigour therein and with discharge of duty liability certainly not being breach of Act or Rules, the revocation upheld by the first appellate authority is not valid in law. Duty on final product having been discharged by the appellant, and not excluded, by any stretch, from the definition of manufacture applied to the 'taxable event' in section 3 of Central Excise Act, 1944, denial of CENVAT credit by the original authority in the order impugned here, as held in *re Creative Enterprise*, does not have sanction of law.

11. For the above reasons, the impugned orders are set aside and appeals allowed.

(Order pronounced in the open court on 23/02/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)