CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Excise Appeal No. 1610 of 2012

(Arising out of Order-in-Appeal No. BC/213/M-II/2012-13 dated 22.08.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-III)

M/s. Fabkraft Industries **Appellant**
2nd Floor, Good Wood,
Patanwala Estate, LBS Marg,
Ghatkopar (W), Mumbai 400 086.

Vs.

Commissioner of Central Excise, Mumbai-II **Respondent**
9th Floor, Piramal Chambers, Jijibhoy Lane,
Lalbaug, Parel, Mumbai 400 012.

Appearance:

Shri Pankaj Pai, Consultant, for the Appellant
Shri Sunil Kumar Katiyar, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

Date of Hearing: 03.01.2023
Date of Decision: 03.01.2023

FINAL ORDER NO. A/85346/2023

PER: SANJIV SRIVASTAVA

This appeal is directed against Order-in-Appeal No. BC/213/M-II/2012-13 dated 22.08.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-III. By the impugned order, Commissioner (Appeals) has rejected the appeal filed by the appellant challenging the Order-in-Original No. CV/51/ADC/M-II/10 dated 21.04.2011 of the Additional Commissioner of Central Excise, Mumbai-II, by which the following has been held:-

"ORDER

I confirm the demand of the Central Excise duty amounting to Rs. 13,36,872/- (Thirteen Lakhs Thirty Six Thousand Eight Hundred Seventy Two only) on M/s Fabkraft Industries under Section 11A(1) of Central Excise Act, 1944 and direct them to *pay the same along with interest as per Section 11AB of the Central Excise Act, 1944.*

I impose a mandatory penalty of rupees 13,36,872 (Thirteen Lakhs Thirty Six Thousand Eight Hundred Seventy Two only) under Section 11AC of Central Excise and Salt Act 1944 read with Rule 25 of the Central Excise rules 2000."

2.1 Appellant is registered for manufacture of fiber glass fabric classifiable under CETH 70195900. During the course of audit of the records of the appellant, it appeared that the appellant is availing the benefit of Notification No. 8/2003-CE dated 01.03.2003 and also they are undertaking the job work on the goods by other manufacturers/traders which is cleared without payment of duty.

2.2 Revenue was of the view that the job work undertaken by the appellant did not satisfy the provisions contained in Notification No. 214/86-CE dated 25.03.1986 as amended by Notification No. 83/94-CE dated 11.04.1994 as neither the appellant nor the supplier of raw material has followed the conditions laid down in the said notification. Therefore no exemption could be allowed under these notifications.

2.3 Accordingly investigations were initiated and on completion of investigation, Revenue was of the view that the appellant has wrongly availed the benefit of Notification 8/2003 as amended, on the goods so manufactured on job work basis as well as availed the benefit of Cenvat credit of the duty paid on inputs and cleared the same without payment of central excise duty thereby contravening:-

i) the provisions of Rules 4,5,6 &8 of Central Excise Rules, 2002 in as much as the assessee had manufactured and cleared the said goods without determining, assessing and payment of appropriate Central Excise duty.

ii) the provisions of notification No. 214/1986-CE, 84/1994 CE both dated 11.4.1994, as amended, in as much as they failed to follow the procedure prescribed therein and cleared the goods without payment of duty.

iii) The provisions of Section 4 of Central Excise Act 1944 read with the provisions of Rule 11 read with Rule 6, and Rule 10A of Valuation Rules 2000, in as much as the assessee had failed to determine the value of the said goods properly

iv) the provisions of Rule 10 Central Excise Rules, 2002 in as much as the said excisable goods were manufactured and cleared by the assessee without properly accounting them in the daily stock account and without observance of proper procedure.

v) The provisions of Rule 11 Central Excise Rules, 2002 in as much as the assessee had cleared the said goods without the cover of the valid invoices.

vi) the provisions of Rule 12 Central Excise Rules, 2002 in as much as the said excisable goods were manufactured and cleared by the assessee without showing the same in their monthly returns in form ER-1 filed with the department during the relevant period.

2.4 A show cause notice dated 11.02.2010 was issued to the appellant calling them to show cause as to why:-

"(i) The value of the goods manufactured under job work and cleared without payment of duty should not be determined under Rule 11 read with Rule 6 of the Valuation Rules, 2000. for the period from 2005-06 and under Rule 10A for the period from 20070=-08 to 2008- 09 of Valuation Rules, 2000 read with Section 4 of Central Excise duty amounting to Rs.13,36,872/- (Rupees Thirteen lakhs thirty six thousand eight hundred and seventy two only) on such value should not be demanded and recovered from them under the proviso to Section 11A(1) of Central Excise Act, 1944, and;

(ii) Interest should not be demanded and recovered from them under Section 11AB of the Central Excise Act, 1944, and;

(iii) Penalty should not be imposed upon them under Section 11AC of Central Excise Act, 1944."

2.5 The show cause notice was adjudicated as per the order-in-original referred in para 1 above and upheld by the impugned order of the Commissioner (Appeals). Aggrieved appellant has filed this appeal.

3.1 We have heard Shri Pankaj Pai, Consultant for the appellant and Shri Sunil Kumar Katiyar, Assistant Commissioner, Authorised Representative for the Revenue.

3.2 Arguing for the appellant, learned counsel submits that:-

- In terms of Notification No.83/94CE and No.84/94-CE both dated 11.04.1994 it is the supplier of the raw material who has to give necessary undertaking to the jurisdictional officer and not the job worker. Thus, onus to file declaration was not on the appellant. The show cause notice states that no evidence submitted to establish that goods job worked supplied were further worked by principal and cleared on central excise duty. In para 10 of the said show cause notice it is clearly indicated that the supplier of raw materials viz. (1) M/s Indian Tape Manufacturing Co., (ii) M/s S.V. Industries and (iii) Insulex Industries, whose statements were recorded during the course of enquiry, have utilized the job worked goods for further manufacture of their own finished goods and iv)Shree Laxmi Enterprises has also admitted that they were manufacturer cum trader and even registered with Central Excise as "Dealer', Copies of statement of said 4 entities annexed.
- The Impugned Notice cited two case laws:

  (a) Eagle Flask Industries Ltd. 2004(171) ELT 296 (SC);

  (b) Non-Ferrous Industries 2002 (150) ELT 99 (Tri. Kolkatta)

  Distinguishable:

  Both the case laws are for the Person (The Appellants) therein who were required to comply the conditions of

Notification. In the instant matter, the said Notifications imposes compliance on the Principal and not on Job Worker.

- The Appellants quoted following citations in support that in case of Job Work, no CED liabilities can be fastened to Job Worker and any conditions of Notifications not followed by the Principal, in such cases also Job Worker cannot be fastened with liabilities:
  - 2009 (234) E.L.T. 457 (Tri. Mumbai)
  - 2007 (215) E.L.T. 434 (Tri. - Chennai)
  - 2008 (227) E.L.T. 281 (Tri. - Mumbai) 2012 (278) E.L.T. 610 (Tri. - Mumbai)

  For no penalty imposable, the Appellants relied upon following case laws:
  - 2008 (225) E.L.T. 282 (Tri. - Bang.)
  - 2009 (245) E.L.T. 542 (Tri. - Bang.)
- The appellant respectfully submits that the impugned order deserves to be set aside and prays accordingly.

3.3 Arguing for the Revenue, learned AR reiterates the findings recorded in the impugned order.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 Commissioner (Appeals) in the impugned order has recorded the following findings:-

"7. I have perused both the notifications. The process. of manufacturing goods on job work basis is exempted subject to the condition that the supplier of the raw materials or semi-finished goods gives an undertaking to the proper officer having jurisdiction over the factory of the supplier. It follows that in order to avail the exemption under the said notification, it is the primary and mandatory on the part of the supplier of the inputs to furnish an undertaking to the proper officer having jurisdiction over the factory of the supplier. The appellants gets the benefit of notification No. 83/94 or 84/94 provided the supplier of the inputs gives an undertaking. Non following this mandatory condition would make the process of job work not entitled for

benefit of the notification. This procedure has been devised in order to safe guard the revenue involved. Holding this procedure as non mandatory would create chaos, anarchy and no body would be accountable for any loss of revenue.

8. Hon'ble Apex Court in the case of Eagle Flask Industries Ltd 2004 (171) E.L.T. 296 (S.C.) held that "Exemption from licensing under Notification No. 11/88-C.E. (N.T.) subject to filing of declaration and giving of an undertaking as specified in the Form annexed with the said notification Filing of declaration not an empty formality or mere procedural requirement - Conditions of exemption notification to be fulfilled for claiming its benefit - Exemption not available as declaration not filed'.

Exemption notification Conditions thereto to be strictly complied with for availing its benefit Condition of filling declaration/undertaking under exemption notification not merely procedural, hence exemption to be denied for non-observance of said conditions Section 5A of the Central Excise - Act, 1944 and Rule 174 of the erstwhile Central Excise Rules, 1944.

9. Hon'ble Tribunal in the case of Non Ferrous Industries (2002 (150) E.L.T. 99 (Tri. Kolkata)) held that "Job-work - Procedure to regulate movement of raw materials from sender to job-worker not a mere technicality but basic to ensuring goods received back by supplier of raw material and used in manufacture of final goods removed on payment of duty - Assessee's appeal for not having followed procedure under Rule 57F(3) of erstwhile Central Excise Rules, 1944 rejected.

10. Hence, the conditions laid down in the notification No. 83/94 and 84/94 are mandatory. Not following the same can not be brushed aside holding them as procedural lapses. The job worker would get the exemption from payment of duty provided the supplier gives an undertaking. It cannot be said that the job worker cannot be held responsible for not following the procedure by the input supplier. Further, the manufacturer has not submitted any evidence that the input supplier cum manufacturer has utilised the job worked goods in their finished *goods and whether the input supplier is a manufacturer or dealer or manufacturer cum dealer.*

11. It is admitted by the appellants that they are receiving inputs from Traders and after the goods are manufactured, they are supplied back to the Traders. Both the notifications i.e. 83/94 and 84/94 are meant for manufacturers who supply inputs to job worker. Hence, the benefit of these notifications cannot be claimed in respect of clearances made to Traders. Further, the question of payment of duty would arise. The trader being trader is not under Central Excise control. If the appellants do not pay the duty then who else will pay the duty. In that case, it is the job worker who is the manufacturer and has to pay appropriate duty.

12. Rule 10A of the Central Excise Valuation Rules, 2000 has been introduced to take care of the situations where the Principal Manufacturer is selling goods at higher price either directly from the place of the job worker or from their depot, etc. Hence, duty has to be determined in respect of those clearances which fall under the category of Rule 10A of the said rules.

13. It is the contention of the appellants that neither of the Notification No. 83/94 or 84/94 cast any obligation on the part of the job worker to intimate details of such job work. Hence, they are not required to intimate these details to the Department. Here I observe that it is obligatory on the part of the appellants to inform the details of inputs received and goods removed without payment of duty in the erstwhile RT 12 returns and also in the present ER 1 returns. The appellants have not put forth before me any evidence showing that they have intimated these details in the monthly returns. Hence, the appellants contention does not hold good and consequently, provisions of Section 11AC are invokable.

14. The appellants have relied upon case law M/s Sriman Plastics Pvt. Ltd. (2009 (245) E.L.T. 542 (Tri. - Bang.) wherein it was held that "Demand and penalty - Limitation - Extended period - Show cause notice for the period 1-6-1998 to 31-8-1999 issued *on 2-8-2003- Supplier did not follow procedure prescribed under Notification No. 83/94-C.E. On this ground it cannot be concluded that appellants made clearances with wilful suppression and intent to evade payment of duty, appellant being only job worker returning job work finished goods to supplier - No justification for invoking extended period - Proviso to Section 11A and Section 11AC of Central Excise Act, 1944". The said case law is distinguishable from the present case for the reasons that the appellants in the instant case have not submitted any details in their monthly returns. Hence, the ratio of the said case law is not applicable.*

15. The appellants have also relied upon case law M/s.Suvikram Plastex (P) Ltd 2008 (225) ELT 282 (Tri-Bang). The said case law is distinguishable from the present case law as the issue in cited case law is not about submission of declaration. Hence, the ratio of the said case law is not applicable."

4.3 The issue involved in the present case is no longer res integra. The Tribunal has in the case of Vandana Dyeing Pvt. Ltd. [2014 (307) ELT 528 (Tri.-Mumbai)] has held as follows:-

*"**4.** The learned Additional Commissioner (AR) appearing for the Revenue, on the other hand, reiterates the findings of the lower appellate authority. It is his contention that under Rule 4(5)(a) goods can be moved without reversal of credit for job-work. However, the duty liability at the job-worker's end is not exempted by Notification and since fabrics are excluded from the scope of Notification 214/86-C.E., the job-worker should have discharged duty liability. The Additional Commissioner (AR) also submits that there is no evidence available on record that the processed goods have been returned within 180 days. In these circumstances, he pleads that the impugned order is sustainable in law.*

***5.** We have carefully considered the submissions made by both the sides. As held by us in appellant's own case and also in Trico Process Pvt. Ltd. and Akash Fashion Prints (P) Ltd. cases (supra), the liability to pay duty in respect of goods moved under Rule 4(5)(a) is on the supplier of the goods and not on the* *job-worker. Therefore, notwithstanding the fact that the process fabrics are not included in Notification 214/86, the job-worker is not liable to discharge excise duty liability and any liability thereon is required to be discharged by the supplier of the raw materials. Rule 4(6) of the Cenvat Credit Rules makes it abundantly clear that, if the goods are required to be cleared from the job-worker's premises instead of being returned to the supplier, then the Commissioner can direct clearance of the goods on payment of duty from job-worker's premises. This would also indicate that the liability to discharge duty under the provisions of Rule 4(5)(a) is on the supplier of the goods and not on the processor of the goods. In this view of the matter, we find that the impugned order is not sustainable in law and merits to be set aside. Accordingly we allow the appeal."*

4.4 In the case of Inar Profiles Pvt. Ltd. [2014 (310) ELT 200 (Tri.-Bang.)] following has been held:-

*"**3.** The learned counsel relied upon the decisions of the Tribunal in the case of Salem Weld Mesh - 2007 (218) E.L.T. 405 (Tri.-Chennai) and in the case of Bharat Foundry - 2009 (246) E.L.T. 561 (Tri.-Ahmd.). In the case of Bharat Foundry, it was held that once the goods have been supplied under challan and properly accounted for by both the principal manufacturer and the job worker, the benefit of Notification No. 83/94 CE cannot be denied on the ground that there was no undertaking given by the principal manufacturer. In the case of Salem Weld Mesh also, a similar view was taken. It has to be noted that in the case of Bharat Foundry the author of the order was one of the Members of this Bench. We find both these decisions are applicable to the facts of this case as far as supplies to principal manufacturers who were availing the benefit of SSI exemption.*

This is in view of the provision in Clause (a) of Notification No. 83/94-CE which reads as under:

"that the specified goods received from the job worker shall be used in the factory of such supplier in or in relation to the manufacture of specified goods which are exempted from whole

of duty of excise leviable thereon under the aforesaid Notification."

4. *Further, we also find that in these cases, the learned counsel submitted that in the challans the SSI units who had supplied the raw materials had specifically stated that they are availing the benefit of SSI exemption Notification and, if and when, they cross the limits prescribed under Notification they would pay duty. There is no contrary finding to any of the submissions in the impugned order. Therefore we have to come to the obvious conclusion that the facts of this case are similar to the ones considered by the Tribunal and held in favour of the assessee.*

5. *At this stage, we also take note that the learned AR relied upon a decision in the case of International Engg. and Mfg. Services P. Ltd.: 2001 (135) E.L.T. 551 (Tri.-Del.). He draws our attention to paragraph 5 and 6 to submit that appellant being a job worker has to be considered as a manufacturer of the goods and not the raw materials supplier. Further, he also submits that if the conditions of Notification are not fulfilled, the benefit cannot be extended. Ongoing through the impugned order and the relevant paragraphs brought to our notice by the learned AR, we find that in paragraph 4, there is a clear submission and Tribunal has taken note of the same. In that case that there was no dispute that raw materials were received by the job worker without any challan and therefore there was no ground to hold that the appellants sincerely believed that they were operating under Notification No. 214/86-CE. Further, it was also submitted in that case that there was no explanation as to why the raw materials were received by them without any challans. Since the materials were received without challan in that case and there was no basis to hold that the appellant's entertained a bona fide belief that they were availing the Notification No. 214/86, the Tribunal took a view that benefit of Notification would not be available. Therefore in view of the facts which are different in the cases considered by us and held to be applicable to the facts of this case, we are unable to hold that the decision relied upon by the learned AR is applicable to the facts of this case.*

6. *The discussion above would show that the appellant is eligible for the benefit of Notification in respect of their supplies made to the SSI units. As regards contractors and traders, etc., the learned counsel drew our attention to the table submitted by them in reply to the show-cause notice wherein they had shown that if the clearances to third category of traders alone is taken in all the years under consideration by us, the total clearances made by the assessee would be less than the limit for total exemption prescribed by the SSI exemption Notification."*

4.5 In the case of Bharat Foundry [2009 (246) ELT 561 (Tri.-Ahmd.)] following has been held:-

*"**4.** We have considered the submissions made by both the sides. In respect of spare parts cleared by the principal manufacturer under SSI Notification No. 83/94 dated 11-4-1994, the exemption is subject to the condition that the supplier of raw material files an undertaking of the proper officer having jurisdiction over the factory of the job worker. There is no dispute about the eligibility of the goods to the Notification, the only objection is that under taking was not filed by the La Gajjar Machinery Pvt. Ltd., the principal manufacturer. Since the procedure has not been followed fully and only omission is non-filing of declaration by the principal manufacturer, we agree with the Commissioner (Appeals) that respondents are entitled to the benefits. As regards components meant for use in the manufacture of PD Pumps by the principal manufacturer, Notification No. 3/2001 required Chapter-X procedure to be followed. In this connection ld. Advocate has cited the decision of this Tribunal in Neatwell Castings case in order A/1090-1091/WZB/AHD/2008 dated 6-5-2008, wherein it was held that mere non following of Chapter-X procedure by itself should not be made the basis for denial to the benefits of Notification. Therefore, on the ground also appeal filed by the Revenue is to rejected and further, we also agree that observation of the Commissioner that there is substantial compliance on the part of job worker and facts of proper accounting of goods by the principal manufacturer or job worker is not in dispute. In view of*

the above discussion, the appeal filed by the Revenue is rejected. Cross objections also gets disposed of."

4.6 In the case of Sunco Rubber Ltd. [2004 (176) ELT 223 (Tri.-Chennai)] the Tribunal has held as follows:-

*"**7.** From the above it is clear the raw materials required for the manufacture of strips tyres were supplied by the primary manufacturers (raw material suppliers) and the job worker has contributed his skills with the help of his tools for various processing and collected only job charges. Further, while a major processing of the raw material is done by the job worker, certain process are done at the hands of the suppliers of raw materials to make the manufacturing process complete. The question is, in such a situation can it be said that what has been cleared by the job workers were fully finished goods or the goods have reached the fully manufactured stage at the hands of the raw material suppliers? We are of the considered opinion that in the present case, it cannot be said that the manufacturing activity has been fully completed at the hands of the job workers. We are fortified in our view by the decision of the Larger Bench of the Tribunal in the case of M. Tex & Anr. v. CCE, Jaipur reported in 2001 (136) E.L.T. 73 (Tribunal) = 2000 (39) RLT 1091 wherein it was held that when processed fabrics received by job worker for heat setting and stentering under Rule 57F(4) and returned after processing, the job worker cannot be held liable to duty. The appeal filed by the Department against the above decision has been dismissed by the Hon'ble Supreme Court on 3-10-2002. Further, the Hon'ble Supreme Court in the case of Prestige Engineering (India) Ltd. v. CCE, Meerut reported in 1994 (73) E.L.T. 497 has held "that job work means goods produced out of raw materials supplied by customer and where the job workers contribute mainly their labour and skill though done with the help of their own tools, gadgets or machinery. It was also held therein that when job worker contributes his own raw material to the article supplied by the customers and manufacturers different goods, it does not amount to job work, however addition or application of minor items by job worker would not detract it being a job worker....". Further in the case of Addisons & Co. v. CCE, reported in 1990 (48) E.L.T. 281 it was held that*

the term "process incidental or ancillary to the manufacture of a product as envisaged under Section 2(f) of the Act, will embrace the process which is required to be carried out to put the production in the marketable form. In the present case, it is not the case of the department that the goods in the form in which they have been returned by the job worker to the raw material suppliers were fit for marketing or was marketed by them without subjecting the goods to the various process as has been done by the raw material suppliers, as noted above, who happens to be the primary manufacturer.

8. *In view of what has been discussed above, we are of the considered opinion that the goods in the present case have attained the stage of fully manufactured goods at the hands of the raw material supplier (Primary manufacturer) and not at the hands of the job worker. Accordingly, we hold that the impugned order is not legal and proper and we set aside the same and allow the appeals with consequential relief, if any."*

4.7 Upholding the above judgment of the Tribunal, Hon'ble Madras High Court as reported in [2008 (228) ELT 27 (Mad.)] has held as follows:-

*"**5.** The various activities/process carried out by the primary manufacturer (raw material supplier) and the job worker have been clearly stated in the order of the CESTAT, which are as follows :*

"(i) Raw materials such as masticated rubber with PBR, carbon black stearic acid and anti oxidents are removed to the job worker under Rule 57F(2)/57F(3)(b).

(ii) By various process, such as mixing the raw materials in a kneader at 145 to 160° centigrade for 10-12 minutes and cooling it in water for about 24 hours, the master batch is prepared at the premises of the job worker.

(iii) The master batch is then again mixed in the kneader for 3 to 4 minutes and again cooled in water and kept for 24 hours for aging at the hands of the job worker. This process is called PT batch. This is also done by the job worker.

(iv) The PT batch is returned to the raw material suppliers (primary manufacturer) who have supplied the various raw materials/semi finished goods.

(v) The final batch i.e. mixing these sheets with sulphur and accelerators, are done at hands of the raw material suppliers at their premises.

(vi) Extruding of the above final batch and cutting the strips to the specific lengths is also done at the premises of the raw material suppliers.

(vii) The extruded strips are again sent to the job worker for further processing for heating on a matrix holder.

(viii) After the heating is over at the hands of the job worker, the next process is sanding i.e., the bottom side of the tread rubber is roughened to get the buffed surface of the tyre. After this process is over, at the hands of the job worker, the tread rubber strips are returned to the raw material supplier under Rule 57F(2)/(57F(3).

(ix) During the process of manufacture of tread rubber on the matrix, excess rubber flows out of the mould and as a result both the sides of the strip would have excess flattened rubber ends called flash. The top portion of the tread would have excess rubber in the form of air vents sticking out. This is to be deflashed by cutting and trimming and this is done by the raw material supplier.

(x) After the de-flashing is over at the hands of the raw material suppliers, the vulcanized strips are subjected to testing for hardness and also for thickness with verniers to ensure uniformity and this is done by the raw material suppliers. It is after this process, the strips are inspected for final despatch to the customers by the primary manufacturers (raw material suppliers)."

6. *From the above activities, it is evident that the goods are made ready for marketing only after the goods are subjected to deflashing, testing and inspection at the hands of the raw* *material suppliers, i.e., primary manufacturers. The Tribunal has also found on facts that the raw materials required for manufacture of strips tyres were supplied by the primary manufacturer (raw material supplier) and the job worker has contributed his skills with the help of his tools for various processing and collected only job charges. The major processing of the raw material was done by the job worker and certain process were done at the hands of the suppliers of raw materials to make the manufacturing process complete.*

7. *Having regard to the activities above-referred to, the Tribunal has rendered a factual finding that it could not be said that the manufacturing activity has been fully completed at the hands of the job worker. In order to support their view, the Tribunal has also taken the aid of the ratio of the Supreme Court judgment in the case of Prestige Engineering (India)Ltd. v. Commissioner of Central Excise, Meerut reported in 1994 (73) E.L.T. 497, wherein, the Supreme Court has categorically held that once an expression is defined in the Act, that expression wherever it occurs in the Act, Rules or Notifications issued thereunder, should be understood in the same sense. Indubitably, the definition of "manufacture" in Section 2(f) endows a wider content to the expression; several processes which would not ordinarily be understood as amounting to manufacturing are specifically included within its ambit. Clauses (i) and (ii) of the definition make this aspect clear beyond any doubt. The Apex Court further observed that it must be remembered that even the unamended definition of "manufacture" included within the ambit of the definition several processes and activities which would not otherwise have amounted to manufacture. The Apex Court ultimately held that any activity which is incidental or ancillary to the manufacture of the final product would be regarded as a manufacturing activity. If the ratio of the said decision of the Supreme Court is applied to the present case, we are of the view that the Tribunal has come to the correct conclusion that the goods received back by the raw materials supplier from the job worker, cannot be regarded as fully manufactured goods, and as such, the ultimate conclusion reached by the Tribunal having regard to the activity undertaken* *by the respondent are to be regarded as a manufacturing process, as required under Rule 57F(2)/57F(3) of the Central Excise Rules, 1944.*

8. *On an analysis of the entire order of the Tribunal, we are of the view that the Tribunal has reached the correct conclusion. Hence, we do not find any question of law, much less substantial question of law arising in this case, so as to entertain this appeal. Accordingly, this Civil Miscellaneous Appeal is dismissed. There will be no order as to costs."*

4.8 The decisions relied in the impugned order are clearly distinguishable and do not come the way of holding that the benefit of Notification No. 214/86 dated 25.03.1986 as amended by Notification No. 83/94, 84/94 both dated 11.04.1994 cannot be extended in the present case in respect of the job worker. In above cases the demand has been made on the principal manufacturer i.e. the raw material supplier for whom the job work was carried out. Notification casts an obligation on the supplier of the raw material and not on the job worker to file such a declaration. The only reason for denial of the benefit of this notification as referred above is that the principal manufacturer i.e. the raw material supplier has not filed any declaration as required. The appellant in the present case could not have been held responsible for the failure of the supplier of raw material to give the undertaking as ascribed to the proper officer having jurisdiction over the factory of the job worker/supplier.

5.1 Appeal is allowed in above terms setting aside the impugned order.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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