CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 85384 OF 2016

[Arising out of Order-in-Original No. PUN-EXCUS-002-PR.COM-009-010-15-16 dated 27th November 2015 passed by Commissioner of Central Excise, Pune-II.]

Anusaya Auto Press Parts Pvt Ltd
Gat No. 388 and 614, Vill: Mahalunge,
Talegaon-Chakan Road, Tal: Khed, Dist: Pune - 410501 … ***Appellant***

versus

Commissioner of Central Excise
Pune – II
ICE House, 41-A, Sassoon Road, Pune – 411 001 ***…Respondent***

<u>APPEARANCE</u>:

Shri S Narayanan, Advocate for the Appellant

Shri Amrendra Kumar Jha, Deputy Commissioner (AR) for the Respondent

WITH

SERVICE TAX APPEAL NO: 85385 OF 2016

[Arising out of Order-in-Original No. PUN-EXCUS-002-PR.COM-009-010-15-16 dated 27th November 2015 passed by Commissioner of Central Excise, Pune-II.]

Shrikant Auto Press Parts Pvt Ltd
Gat No. 614, Vill: Mahalunge,
Talegaon-Chakan Road, Tal: Khed, Dist: Pune - 410501 … ***Appellant***

versus

Commissioner of Central Excise
Pune – II
ICE House, 41-A, Sassoon Road, Pune – 411 001 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 85410 OF 2016

[Arising out of Order-in-Original No. PUN-EXCUS-002-PR.COM-009-010-15-16 dated 27th November 2015 passed by Commissioner of Central Excise, Pune-

II.]

Dattatray Industries
Gat No. 614, Vill: Mahalunge,
Talegaon-Chakan Road, Tal: Khed, Dist: Pune - 410501 … ***Appellant***

versus

Commissioner of Central Excise
Pune – II
ICE House, 41-A, Sassoon Road, Pune – 411 001 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 85411 OF 2016

[Arising out of Order-in-Original No. PUN-EXCUS-002-PR.COM-009-010-15-16 dated 27th November 2015 passed by Commissioner of Central Excise, Pune-II.]

Metfarm Industries
Gat No. 20, Vill: Mahalunge,
Talegaon-Chakan Road, Tal: Khed, Dist: Pune - 410501 … ***Appellant***

versus

Commissioner of Central Excise
Pune – II
ICE House, 41-A, Sassoon Road, Pune – 411 001 ***…Respondent***

APPEARANCE:

Shri S Narayanan, Advocate for the Appellant

Shri Nitin Ranjan, Deputy Commissioner (AR) for the Respondent

WITH

SERVICE TAX APPEAL NO: 85954 OF 2016

[[Arising out of Order-in- Original No: PUN-EXCUS-001-PR.COM-091-15-16 dated 15th January, 2016 passed by the Principal Commissioner of Central Excise, Pune – I.]

Snehal Industries
Gat No. 107 & 108, Jyotiba Nager, Talwade, Chikali,
Tal-Haveli, Pune. … ***Appellant***

versus

Principal Commissioner of Central Excise
Pune – I
ICE House, 41-A, Sassoon Road, Pune – 411 001 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 85955 OF 2016

[[Arising out of Order-in- Original No: PUN-EXCUS-001-PR.COM-091-15-16 dated 15th January, 2016 passed by the Principal Commissioner of Central Excise, Pune – I.]

Mahesh Industries
Gat No. 107 & 108, Jyotiba Nager, Talwade, Chikali,
Tal-Haveli, Pune. … ***Appellant***

versus

Principal Commissioner of Central Excise
Pune – I
ICE House, 41-A, Sassoon Road, Pune – 411 001 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 85956 OF 2016

[[Arising out of Order-in- Original No: PUN-EXCUS-001-PR.COM-091-15-16 dated 15th January, 2016 passed by the Principal Commissioner of Central Excise, Pune – I.]

Anubhav Auto Industries
Gat No. 107 & 108, Jyotiba Nagar, Talwade, Chikali,
Tal-Haveli, Pune. … ***Appellant***

versus

Principal Commissioner of Central Excise
Pune – I
ICE House, 41-A, Sassoon Road, Pune – 411 001 ***…Respondent***

APPEARANCE:

Shri S Narayanan, Advocate for the Appellant

Shri Sunil Kumar Katiyar, Assistant Commissioner (AR) for the Respondent

WITH

EXCISE APPEAL NO: 85957 OF 2016

[Arising out of Order-in-Original No: PUN-EXCUS-001-PR.COM-091-15-16 dated 15th January, 2016 passed by the Principal Commissioner of Central Excise, Pune – I.]

Suresh Press Works
Plot No. 50, D-III Block, MIDC, Chinchwad,
Pune-411019 … ***Appellant***

versus

Principal Commissioner of Central Excise
Pune – I
ICE House, 41-A, Sassoon Road, Pune – 411 001 ***…Respondent***

WITH

EXCISE APPEAL NO: 86031 OF 2016

[Arising out of Order-in-Original No: PUN-EXCUS-001-PR.COM-095-096-15-16 dated 28th January, 2016 passed by the Principal Commissioner of Central Excise , Pune – I.]

S M Rolling Works
Plot No. 21/12, D-1 Block, MIDC, Chinchwad,
Pune-411019 … ***Appellant***

versus

Principal Commissioner of Central Excise
Pune – I
ICE House, 41-A, Sassoon Road, Pune – 411 001 ***…Respondent***

APPEARANCE:

Shri S Narayanan, Advocate for the Appellant

Shri Amrendra Kumar Jha, Deputy Commissioner (AR) for the Respondent

WITH

SERVICE TAX APPEAL NO: 86032 OF 2016

[Arising out of Order-in-Original No: PUN-EXCUS-001-PR.COM-095-096-15-16 dated 28th January, 2016 passed by the Principal Commissioner of Central Excise , Pune – I.]

Sumit Plastic Industries
Gat No. 174, Ganesh Nagar, Talwade, Chikhali,
Tal: Haveli, Pune-412114 … ***Appellant***

versus

Principal Commissioner of Central Excise
Pune – I
ICE House, 41-A, Sassoon Road, Pune – 411 001 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 86033 OF 2016

[Arising out of Order-in-Original No: PUN-EXCUS-001-PR.COM-095-096-15-16 dated 28th January, 2016 passed by the Principal Commissioner of Central Excise , Pune – I.]

Spray All
Plot No. 12/29,D-I Block, MIDC, Chinchwad, Pune-411019 … ***Appellant***

versus

Principal Commissioner of Central Excise
Pune – I
ICE House, 41-A, Sassoon Road, Pune – 411 001 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 86034 OF 2016

[Arising out of Order-in-Original No: PUN-EXCUS-001-PR.COM-095-096-15-16 dated 28th January, 2016 passed by the Principal Commissioner of Central Excise , Pune – I.]

Shreekant Auto Engineering Works
Plot No. 12/2,D-I Block, MIDC, Chinchwad, Pune - 411019 … ***Appellant***

versus

Principal Commissioner of Central Excise
Pune – I
ICE House, 41-A, Sassoon Road, Pune – 411 001 ***…Respondent***

AND

SERVICE TAX APPEAL NO: 86039 OF 2016

[Arising out of Order-in-Original No: PUN-EXCUS-001-PR.COM-095-096-15-16 dated 28th January, 2016 passed by the Principal Commissioner of Central Excise , Pune – I.]

Lotus Flexible Packing Co Pvt Ltd
Plot No. 21/1,D-I Block, MIDC, Chinchwad, Pune - 411019 … ***Appellant***

versus

Principal Commissioner of Central Excise
Pune – I
ICE House, 41-A, Sassoon Road, Pune – 411 001 ***…Respondent***

APPEARANCE:

Shri S Narayanan, Advocate for the Appellant

Shri Amrendra Kumar Jha, Deputy 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 / 85501-85513/2023

DATE OF HEARING: 11/10/2022
DATE OF DECISION: 27/03/2023

PER: C J MATHEW

The ordinary, like tax assessment, does not make news headlines and is very rarely remarkable. Nevertheless, the renowned poetess, Ntozake Shange did find that

'In our ordinariness we are most bizarre!'

but whether that is to be said about the foray of tax administration concerned with this dispute or about the appellant remains to be seen. At stake is ₹ 2,96,95,510 and ₹ 49,59,792 availed by M/s Anasuya Auto Press Parts Pvt Ltd, a manufacturer registered under Central Excise Act, 1944, in their CENVAT credit account from April 2010 to September 2014 and from October 2014 to March 2015 respectively on discharge of tax liability under Finance Act, 1944 by providers of service procured by them which, along with another ₹ 58,19,219 taken and utilized by them on capital goods received by them during the former period, was directed to be recovered under rule 14 of CENVAT Credit Rules, 2004, besides applicable interest thereon, in order[1] of Principal Commissioner of Central Excise, Pune – II while imposing penalty of ₹ 49,59,792 under rule 15 of CENVAT Credit Rules, 2004. Attendant thereto, is the redesignation of ₹ 25,44,180, ₹ 2,42,64,876 and ₹ 82,11,226, paid as tax under Finance Act, 1994 by M/s Metfarm Industries, M/s Shreekant (Shrikant) Auto Engineering Pvt Ltd and M/s Dattatraya Industries during the span of the dispute, as credit of theirs under deposit with the exchequer.

2. Apparently, such happening did not occur singly for, by another order[2], ₹ 1,40,04,098 availed by M/s SM Rolling Works, a manufacturer registered under Central Excise Act, 1944, in their CENVAT credit account from April 2010 to September 2014 and from October 2014 to March 2015 respectively on discharge of tax liability under Finance Act, 1944 by providers of service procured by them, along with another ₹ 6,05,215 taken and utilized by them on capital goods received by them during the former period, was directed to be recovered under rule 14 of CENVAT Credit Rules, 2004, besides applicable interest thereon, by Principal Commissioner of

[1] [order-in-original no. PUN-EXCUS-002-PR.COM-009-010-15-16 dated 27th November 2015]
[2] [order-in-original no. PUN-EXCUS-001-PR.COM-095-96-15-16 dated 28th January 2016]

Central Excise, Pune – I while imposing penalty under rule 15 of CENVAT Credit Rules, 2004. Attendant thereto, is the redesignation of ₹ 11,18,332, ₹ 16,17,673, ₹ 62,50,848 and ₹ 32,53,970, paid as tax under Finance Act, 1994 by M/s Sumit Plastic Industries, M/s Spray All, M/s Shreekant Auto Engineering Works and M/s Lotus Flexible Packaging Pvt Ltd during the span of the dispute, as credit of theirs under deposit with the exchequer.

3. Again, order[3] for recovery of ₹ 79,36,338 availed by M/s Suresh Press Works, a manufacturer registered under Central Excise Act, 1944, in their CENVAT credit account from April 2010 to September 2014 and from October 2014 to March 2015 respectively on discharge of tax liability under Finance Act, 1944 by providers of service procured by them, along with another ₹ 51,583 taken and utilized by them on capital goods received by them during the former period, was directed to be recovered under rule 14 of CENVAT Credit Rules, 2004, besides applicable interest thereon, by Principal Commissioner of Central Excise, Pune – I while imposing penalty under rule 15 of CENVAT Credit Rules, 2004. Attendant thereto, is the redesignation of ₹ 42,07,677, ₹ 7,13,994 and ₹ 40,85,619, paid as tax under Finance Act, 1994 by M/s Anubhav Auto Industries, M/s Mahesh Industries and M/s Snehal Industries during the span of the dispute, as credit of theirs under deposit with the exchequer.

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[3] [order-in-original no. PUN-EXCUS-001-PR.COM-091-15-16 dated 15th January 2016]

4. The three manufacturers are in appeal before us against the deprivation of credit and the other ten, being 'job-workers' and though not burdened with demand, are, nonetheless, aggrieved that, despite retention of tax paid by them, their entire business model stands besmirched requiring appellate intervention. All thirteen are, admittedly, constituents of "Wadhokar group of companies' which throws up one of the facets of the controversy for, if such inter-connectedness did not exist, it would have been business as usual.

5. The entire, and labyrinthine, exercise is all about a scheme for 'job-work' born from economic compulsion of specialization-driven operational efficiency, and acknowledged in central excise procedure after several disputes of over half century ago, in which the ten, offering 'support facilities', *viz.*, 'bending, welding, powder coating, forming, notching, piercing, pressing, cutting, assembling etc., to the three manufacturers of 'automotive parts', discharged tax devolving upon on them under section 65(105)(zzb) and section 65B(44) respectively of Finance Act, 1994 as providers of 'business auxiliary service' from April 2011 to June 2012 and 'taxable services' thereafter on value as agreed upon in advance on 'piece rate' for which invoices are raised even though, as tax authorities contend, activity amounting to manufacture is specifically excluded from the ambit of section 65(19) of Finance Act, 1994 as well as by notification 8/2005-ST dated 1st March 2005, issued under section 93

of Finance Act, 1994, even when such activity did not amount to manufacture; for the period from 1st July 2012, activity amounting to manufacture was excluded from the ambit of tax under Finance Act, 1994 by inclusion in 'negative list' of section 66D of Finance Act, 1994 and that not amounting to manufacture was also similarly exempt subject to condition prescribed in notification 25/2012-ST dated 20th June 2012 notwithstanding which, the tax liability continued to be discharged. The ten suppliers of service were, thereby, enabled to avail credit of tax paid on 'manpower recruitment and supply service' that was used for discharge of tax liability on their 'output service' to the three principals. This is the second facet of the controversy in this dispute.

6. In the scheme of duties of excise liable to be discharged, 'job-work' conforms to 'manufacture', as defined in section 2(f) of Central Excise Act, 1944, and is, by default, to be assessed thereto on 'job-worker' unless, in conformity with conditions specified in notification 241/86-CE (NT) dated 25th March 1986, issued under section 5A of Central Excise Act, 1944, the liability is to be fastened on the 'principal manufacturer' supplying raw material or semi-processed goods. The three manufacturer-assessees undertook the responsibility to discharge duties of central excise on the value at which they cleared the finished products to their customers and, thus, availed credit of tax discharged, under Finance Act, 1994, by the

service tax-assessees. This was the third facet of the controversy.

7. The three ‘principal manufacturers’, suppliers of ‘sheet metal components of automobiles’ to M/s Tata Motors Ltd and others, procure ‘mild steel sheets’ which are sent for further working to the ten ‘job-workers’ against documentation prescribed in rule 4(5)(a) of CENVAT Credit Rules, 2004 governing the treatment accorded to credit taken under the CENVAT credit scheme straddling both ‘manufacturer-assessees’ under Central Excise Act, 1944 and ‘service providing assessees’ under Finance Act, 1994. It would appear from the records that the some capital goods, procured by the three manufacture-assessees and on which credit was availed, had been shifted to the premises of ‘job-workers’ that was permissible under CENVAT Credit Rules, 2004 subject to return within the prescribed time. That is the fourth facet of the controversy.

8. Thus, there are two purported schemes of activity. That relating to manufacture in which the three entities registered under Central Excise Act, 1944 procured raw materials for undertaking production, or to be processed by ‘job-workers’, and discharged duties of central excise on the clearances effected by them. Likewise, the ten ‘job-workers’ undertook ‘taxable services’ in relation to those very goods and discharged appropriate levy under Finance Act, 1994. By discharge of duties on ‘excisable goods’ and of taxes under Finance

Act, 1994, all thirteen of the appellants became eligible to take credit of duties/taxes borne by them on procurement of goods and taxable services and could discharge duty/tax liability devolving on them by drawing upon the credit permissible under CENVAT Credit Rules, 2004. The structuring of the transactions, culminating in clearance of ‘sheet metal parts of automobiles’, thus had all the appearances of a wholesome door panel made of properly treated solid wood that could be faulted either for its aesthetics or for being unassailably impregnable. Nothing bizarre here, too.

9. It was a combination of the relationship among the thirteen entities, along with the manner in which the production of goods was arranged among them, which brought the interlinked flow of goods and sequence of activity under the scanner of investigative agencies. Implicit in the initiation of proceedings thereafter is that, but for the relationship conferring benefit to the Wadhokar group, the transactions would have passed muster in the eyes of the law. That the duties and taxes deposited were entrusted to the exchequer, and that debited in CENVAT credit account represents depletion of accumulated credit to such extent, is not in dispute. The objection of tax authorities appears to centre around the extent to which availing credit by the ‘job-worker’ has altered the mix of drawal for discharge of duty liability by the manufacturer. In indirect taxes, characterized by transaction-specific levy, relationships between entities are of

relevance, in law, only to valuation. Also, in certain schemes that engender unintended motivation to splinter, relationships may be evidence of *mens rea* but that is not an allegation in the impugned proceedings. We are, therefore, restricted, in the resolution of this dispute, to any breach of CENVAT Credit Rules, 2004 or of any evasion of duties spurned by *mala fides* in structuring of the transactional flow.

10. On perusal of the impugned orders, we take note that the worm in the wood, so to speak, is the access of 'job-workers', contrived by payment of tax under Finance Act, 1994 that they are not obliged to, both before, and in, the 'negative list' regime, to CENVAT Credit Rules, 2004. There is no doubt that section 65(19), and section 66D, of Finance Act, 1994 did, and appropriately so, render 'manufacture' and 'providing of service' to be mutually exclusive. That, however, is not the issue here for duty liability under Central Excise Act, 1944 is not being sought to be fastened, *in lieu* of taxability under Finance Act, 1994, on the 'job-workers' in the impugned proceedings. On the other hand, the adjudicating authority placed reliance on the lack of option in availing exemptions under section 5A of Central Excise Act, 1944 to be no less applicable to the parallel legislation intended for levy of service tax and the enablement of exemption under section 93 of Finance Act, 1994 which was held to be germane to the 'job-workers' who had, incorrectly, declined to avail the exemption

afforded by notification no. 8/2005-ST dated 1st March 2005 and notification no. 25/2012-ST dated 20th June 2012.

11. Learned Chartered Accountant, appearing for the appellants, contends that the proposition of the tax authorities that exemption provided by notification issued under section 93 of Finance Act, 1994 is mandated to be availed is not tenable as the facility, so far as notification no. 8/2005-ST dated 1st March 2005, as well as the successor notification no. 25/2012-ST dated 20th June 2012, are concerned, is conditional and, being conditional, cannot be imposed on an assessee opting not to comply with the conditions therein. It was also contended that eligibility of the 'job workers' for the exemption is contingent upon the activity not amounting to manufacture which has not been considered by the adjudicating authority. He relied upon the decision of the Hon'ble High Court of Karnataka in *Commissioner of Central Excise, Bangalore-II v. Federal Mogul TPR India Ltd [2016 (334) ELT 476 (Kar)]* in support of this contention.

12. Furthermore, according to him, the entitlement to CENVAT credit could not be disputed once the taxability issue stood resolved. As far as the movement of 'capital goods' was concerned, he argued that the procedure laid down in CENVAT Credit Rules, 2004 did permit such temporary transfer and that, even if the prescribed period had been exceeded, there would be no loss of revenue as was held by

the Tribunal in *Zenith Machine Tools Pvt Ltd v. Commissioner of Central Excise, Belgaum [2010 (255) ELT 83 (Tri-Bang)]* and in *Pooja Forge Ltd v. Commissioner of Central Excise, Faridabad [2006 (196) ELT 18 (Tri-Del)]*.

13. Learned Authorised Representative submitted that it is settled law that the availment of exemption notification is not an option to be exercised by an assessee with any credit availed by the recipient of service being, in consequence, liable to be disallowed under rule 9 of CENVAT Credit Rules, 2004 and any tax deposited by the purported provider of service to be deposit intended by section 73A(2) of Finance Act, 1994. Relying upon the decision of the Tribunal in *Hema Engineering Industries Ltd v. Commissioner of Service Tax, New Delhi [2017 (5) GSTL 43 (Tri-Del)]*, he contends that the embargo in rule 6 of CENVAT Credit Rules, 2004 would stand in the way of availment of credit. The decision of the Tribunal in *re Federal Mughal Goetze India Ltd v. Commissioner of Central Excise, Bangalore [2015 (318) ELT 340 (Tri-Bang)]* would not, he argued further, apply as it pertained to availment of notification no. 214/86-CE (NT) dated 25th March 1986 in which the 'job worker' could not be expected to know the final disposition by the principal manufacturer but that lack of certainty could not be claimed in the present instance by entities belonging to the same group.

14. The sequence of detriment leading to recovery of credit availed by the three principal manufacturers under rule 14 of CENVAT Credit Rules, 2004 is founded upon the imposition of mandatory acceptance of exemption from tax as provider of ‘business auxiliary service’ and ‘taxable service’ over the time span of dispute for which the adjudicating authority has drawn upon the manner in which exemptions under section 5A of Central Excise Act, 1944 are administered. From such determination, it was held that tax, having been collected without authority of law, is transformed as ‘deposit’ contemplated in section 73A of Finance Act, 1994 and that, with the consequent erasure of documentation evincing supply of service, the principal manufacturers find themselves barred by rule 9 of CENVAT Credit Rules, 2004 from continued retention of credit. The matter of mandated availment of exemptions notified under section 93 of Finance Act, 1994 was decided upon by the Hon’ble High Court of Karnataka in *re Federal Mogul TPR India Ltd* thus

> *‘9. A bare reading of this notification denotes that this notification is issued under Section 93 (1) of the Finance Act, 1994 which exempts the taxable services of production of goods on behalf of the principal manufacturer from the whole of service tax leviability under Section 66 of the Finance Act. However, this exemption notification is subject to the condition that the said exemption shall apply only in cases where such goods are produced using raw materials or semi-finished goods supplied by the client, i.e., the principal manufacturer and good so produced a return back to the said*

> *client for use in or in relation to the manufacture of other goods on which appropriate duty of Excise is payable.*
>
> *10. Thus, this notification is condition precedent. The applicability of this notification shall be subject to the condition stipulated, i.e., The principal manufacturer discharging the liability of appropriate duty of excise on these manufactured goods. Any job worker who undertake services of processing is not free to avail the benefit of the said notification unless the recipient of the service pays appropriate duty of excise on the goods returned back by the job worker. This condition of payment of appropriate duty of excise by the recipient, i.e., the principal manufacturer is sine qua non for availing the benefit of the notification by the job worker. Thus, the condition stipulated the notification establishes that it is a conditional notification.'*

and the contention of Learned Authorised Representative that the 'job workers' in this dispute could not deny the intention of the principal manufacturer owing to their inter-relationship is insinuation of extraneous, and irrelevant, factor that has not been evaluated and established in the show cause notice. Presumption based on inferred inter-connection of 'job-worker' and principal manufacturer cannot be the basis for determination of compliance with condition. Moreover, the essence of the impugned orders on the mirroring of exemptions allowed by notification under section 5A of Central Excise Act, 1944 and section 93 of Finance Act, 1994 has also been taken note of in the said judgement thus

> *'11. Section 5A (1) of the Central Excise Act provides for power to grant exemption from duty of excise. Section 5A (1A) of the Central Excise Act specifically provides that "for the removal of doubts, it is hereby declared that where an exemption under sub-section (1) in respect of any excisable goods from the whole of duty of excise leviable thereon has been granted absolutely, the manufacturer of such excisable goods shall not take the duty of excise on such goods."*
>
> *12. The words "shall not pay" enumerated in the said provision specifically denotes that it is the mandatory requirement on the manufacture of such excisable goods not pay the duty of excise on such goods in respect of which an exemption under Section 5A (1A) has been granted absolutely. Such a mandatory requirement of "not to pay" the duty of excise on goods exempted under sub-section (1) of Section 5 (A) is not found in Section 93 of the Service Tax Act. Section 83 of the Service Tax Act provides for application of certain provisions of Central Excise Act, 1944 in relation to service tax under Finance Act, 1994. Absence of Section 5A of Central Excise Act, in Section 83 of the Finance Act, 1994, indicates that the provisions of Section 5A of Central Excise Act, is not applicable to the Finance Act, 1994.'*

With that decision, the denial of credit availed by the 'job workers' for having undertaken exempted services fails in law. The domino effect leading up to the recovery of credit of tax availed by the principal manufacturers on the tax paid on service procured from the 'job workers' discharged by availment of credit is, thereby, halted at the start.

15. It also would not be appropriate for us to overlook the invoking of section 73A of Finance Act, 1994 by the adjudicating authority for reconciling the oddity of tax already paid by the 'job workers' while, at the same time, holding that exemption from tax in the two periods were deemed to have been availed on the service for which levy stood discharged. Section 73A of Finance Act, 1994 comprises three elements: the requirement of depositing with the government any collection in excess of tax, or collection of tax not leviable, by such person of his own volition, empowerment of Central Excise Officer to place such person on notice and determine the amount so due, and the disposition of such amount so deposited culminating in refund to the person who has borne the incidence of such amount. It is plainly obvious from a bare reading thereof, that the said provision may be invoked only for recovery of such amounts as have not been deposited with the Central Government. It does not envisage such amount to be segregated from tax paid as a 'deposit' in the manner accomplished by the adjudicating authority. The depositing of such amount is no different from depositing tax due save that its ultimate disposition is not appropriation by legislative sanction but for adjustment and, finally, refund in manner akin to section 11B of Central Excise Act, 1944. There is no determination in the impugned orders of any dues arising from finalization of assessment; on the contrary, the case of tax authorities is of no assessment at all. The logical conclusion of

invoking section 73A of Finance Act, 1994 would be the issue of public notice intimating eligibility of person who has borne the incidence of such amount for refund. The adjudicating authority, as Central Excise Officer contemplated in the provision, has not administered the mandate of law appropriately even if section 73A of Finance Act, 1994 could have been drawn upon. The consequence of such determination in the adjudication order has been the recovery of identical amount from the three principal manufacturers; the entitlement to refund of the amount, under section 73A of Finance Act, 1994, renders the entire exercise of adjudication, insofar as availment of credit of tax collected by the 'job worker' is concerned, to be futile and in a circular loop. That is bizarre, if nothing else!

16. Turning to the issue of capital goods that were not found in the premises of the principal manufacturers who had availed credit thereon under CENVAT Credit Rules, 2004, the decision of the Tribunal in *re Zenith Machine Tools Pvt Ltd* has held that

> *'5. …… The first issue involved in this case is whether the lower authorities were justified in seeking reversal of Cenvat credit and capital goods (sic) which are found in the job workers premises. It is undisputed in this case, that the said job worker M/s. Aditya Engineering is doing job work for the appellant. It is also undisputed that the entire job work material from M/s. Aditya Engineering comes to the appellant for use in the further manufacturing of excisable products. I find that the provisions of Rule 4 (5) (a) very clearly*

envisages eligibility to Cenvat credit on the inputs or capital goods which are sent to a job worker. The only condition in Rule 4 (5) (a) is that the said capital goods has to be received back within 180 days of that being sent to job worker and this condition not complied with, then assessee shall traverse an amount equivalent to the Cenvat credit taken and can take the Cenvat credit when the capital goods are received back in the factory or the job worker's premises. I find that there is no dispute that the said capital goods are utilised by the job worker, it would lend support to the argument that there would be a revenue neutrality and the reversal of Cenvat credit would be revenue neutral as the appellant is entitled to take credit on such amount as soon as he receives the capital goods back from the job worker's premises. This being the case, I do not find any reason for reversal of the Cenvat credit on the capital goods which are found in the factory premises the job worker, who is undisputedly one of the group concerns of the appellant. I also find that the ratio of the decision of the Division Bench of the Tribunal in the case of Pooja Forge Ltd. v CCE-2006 (196) ELT 18 (Tribunal) = 2007 (8) STR 318 (Tribunal) will cover the issue in favour of the assessee in this case. The decision of Tribunal in the case of Pooja Forge Ltd. was taken in appeal by the Revenue to Hon'ble High Court of Punjab & Haryana. The decision of Tribunal was affirmed as reported in 2008 (229) E.L.T. 46 (P&H). I also find that the decision of the Tribunal the case of S.G.Zaveri Pharmapack v. CCE, Mumbai - 2007 (217) E.L.T. 591 (Tri-Mum) and CCE, Aurangabad v. Vaishali India Ltd - 2008 (224) E.L.T. 247 (Tri.) = 2008 (84) RLT 576 (CESTAT-Mum) will also cover the issue in favour of the assessee.'

17. From the above, it is seen that the consequence of non-return of

the capital goods within the stipulated time is temporary reversal of the credit, taken initially on procurement, and to be restored upon the return, as and when it takes place, without any other consequence. The notice had been issued to the three principal manufacturers on the basis of physical inspection and, in the context of the limited and temporary deprivation of credit, it would have been inappropriate for the adjudicating authority to determine the deployment prevailing at the time of adjudication. Learned Chartered Accountant drew our attention to the reversal of credit affected by the principal manufacturers and of it having been taken note in the show cause notice. In the circumstances, it is surprising that the adjudicating authority went ahead with the detriment in the impugned orders in relation to the same capital goods. The reversal of credit, claimed well before the issue of show cause notice, has not been controverted by tax authorities at any stage till now. Consequently, the demand of the same under rule 14 of CENVAT Credit Rules, 2004 is not tenable.

18. The denial of credit to the ten 'job workers' and consequent deeming of tax paid under Finance Act, 1994 as deposit in terms of section 73A of Finance Act, 1994 is, in view of our findings, not maintainable. With the tax having been properly discharged, there is no scope for denial of such amount as credit available under CENVAT Credit Rules, 2004 to the three principal manufacturers. The recovery of ₹ 5,65,95,738 from the three principal manufacturers for

the period from April 2010 to March 2015 under rule 14 of CENVAT Credit Rules, 2014 lacks authority of law. The recovery of ₹ 64,76,017 of credit availed on capital goods under rule 14 of CENVAT Credit Rules, 2004, having already been reversed by the principal manufacturers, is redundant. The demand for appropriate interest and imposition of penalties also fails.

19. Accordingly, we set aside the impugned orders and allow the appeals.

(Order pronounced in the open court on 27/03/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*