CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 87421 OF 2013

[Arising out of Order-in-Appeal No: BR/161//Th-I/2013 dated 13th March 2013 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone – I.]

Tungabhadra Holding Pvt Ltd
Plot No. 440/441 Vill: Kakapada, Karjat-Murbad Road
Murbad, Dist: Thane – 421 601 … ***Appellant***

versus

Commissioner of Central Excise
Thane – I
4th Floor Navprabhat Chambers, Ranade Road
Dadar (W), Mumbai - 400028 ***…Respondent***

APPEARANCE:
Shri H G Dharmadhikari, Advocate with Shri Tanmay Bhave, Advocate for the appellant
Shri P K Acharya, Superintendent (AR) for the respondent

CORAM:

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

FINAL ORDER NO: A / 86245/ 2023

DATE OF HEARING:	01/05/2023
DATE OF DECISION:	29/08/2023

PER: C J MATHEW

The sole, and limited, issue in this appeal of M/s Tungabhadra

Holding Pvt Ltd is the determination in order[1] of first appellate authority, consequent on appeal directed by jurisdictional Commissioner of Central Excise, of inoperability of CENVAT credit in relation to 'job work' undertaken by them owing to coverage by scheme for discharge duties of central excise at the final stage of manufacture by the principal as set out in notification no. 214/86-CE dated 25th March 1986. Essentially, it has been held that the appellant clears 'exempted goods' which operationalizes rule 6 of CENVAT Credit Rules, 2004 on 'inputs' used for such manufacture and, arising from failure to reverse credit to the extent of such deployment, rule 14 and rule 15 of CENVAT Credit Rules, 2004 come into play.

2. The appellant, a manufacturer of 'galvanized pipes' and 'MS black pipes' in their own right, also undertakes 'job work' production in which their own inputs are consumed along with that supplied by the principal. On clearances effected as 'job worker', duty liability is deferred, and displaced to the principal, upon assumption of that obligation by principal in terms of notification *supra*. Notice was issued for recovery of ₹26,64,757 included as duties of central excise on procurement of 'furnace oil' and 'chemicals and paints' on the premise allegedly to have been originally availed as CENVAT credit between April 2006 and February 2011 that, with those clearances being exempt, the appellant was required to reverse in proportion to

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[1] [order-in-appeal no. BR/161//Th-I/2013 dated 13th March 2013]

consumption of inputs in such production.

3. The original authority dropped proceedings that was reversed by Commissioner of Central Excise (Appeals), Mumbai Zone – I leading to this appeal on the limited plea that the issue stands settled by the Tribunal in *Jindal Polymers v. Commissioner of Central Excise, Meerut [2001 (135) ELT 657]*, in *MPI Papers Pvt Ltd v. Commissioner of Central Excise, Mumbai-I [2016 (336) ELT 86 (Tri-Mumbai]* and by Larger Bench in *Sterlite Industries (I) Ltd v. Commissioner of Central Excise, Pune [2005 (183) ELT 353]* which had been affirmed by the Hon'ble High Court of Bombay and that the first appellate authority had brushed these aside on specious grounds.

4. We have heard Learned Authorized Representative. On considering the rival submissions, we find that the issue is no longer *res integra*.

5. In *re MPI Papers Pvt Ltd*, it was held that

> *'4. I have considered the rival arguments. I find that the Tribunal in case of Sterlite Industries Ltd. (supra) has observed as follows :-*
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> > *"3. We are also in agreement with the appellant's contention that Rule 57C debars taking of credit in respect of the inputs used in the manufacture of the final product, if final product is exempted from the whole of duty of excise leviable thereon or chargeable to nil rate of duty. As such, to attract the provisions of Rule 57C, two situations in respect of the final product should be satisfied. Either the final product should be exempted, which situation can arise only when there is an exemption notification issued under Section 5A of the Central Excise Act or the final*

> *product is chargeable to nil rate of duty. Expression chargeable to nil rate of duty or exempted from whole of duty was considered by the Tribunal in the case of Orissa Synthetics Ltd. v. Collector of Central Ex. [1995 (77) E.L.T. 350 (Tri.)] and after taking note of the Ministries clarifications issued vide Circular No. 10/75/CX.6, it was held that clearance [of] goods under provision of [Rule] 191BB for export without payment of duty would not get covered by the above expression. Reference was made to the advice received from the Ministry of Law dealt [with] in the paragraph of 9 in the said decision. It was opined in the said letter of the Law Ministry that the term 'exempted' has a definite connotation. The same as attributed to the notification issued by the Central Government. Similarly, the chargeable to nil rate of duty would refer to the tariff rate being nil and the goods cleared in terms of provision of Rule 199BB would not be covered by the said expression inasmuch as the same are not chargeable to nil rate. In the present case, we find the job worker could have cleared the goods on payment of duty and manufacturer could have claimed credit of the same. It is only under the special procedure laid down in terms of the Rule 57F(3) that the duty does not get paid at the job worker's end at the time of clearance of the goods, but ultimately gets paid at the manufacturer's end. In these circumstances, we are in agreement with the decision rendered in the case of Bajaj Tempo and Jindal Polymers.*
>
> *4. …………….*
>
> *5. …………….*
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> *6. In view of the foregoing, we answer the reference in favour of the assessee. The papers may be placed before the original Bench for passing the appropriate orders."*

The said decision of the Tribunal has been upheld by Hon'ble Bombay High Court (cited supra). While the decision in case of Sterlite Industries Ltd. has been given in respect of disputes which had arisen during the Modvat regime, the same argument are equally applicable to the Cenvat Credit Rules, 2004. It is seen that the decision of the Tribunal in the case of Sterlite Industries Ltd. (supra) relies on the spirit of the Modvat Rules and no specific rules. The ratio of the said judgment is equally applicable to Cenvat Credit Rules, 2004.

6. The Larger Bench of the Tribunal has, in *re Sterlite Industries (I) Ltd,* held that

'This Larger Bench has been constituted to answer the following question referred to it.

> *"Whether the law settled by Jindal Polymer [2001 (135) E.L.T. 657 (Tribunal) = 2001 (43) RLT 680] following Bajaj Tempo [1994 (69) E.L.T. (122)] should be followed or the interpretation as arrived at by Alfa Lavan [2001 (137) E.L.T. 763] should prevail."*

We have heard Shri Vimlesh Kumar, SDR appearing for the revenue and Shri Vipin Kumar Jain, CA appearing for the appellant. It is seen that the Tribunal in the case of Jindal Polymers [2001 (135) E.L.T. 657 (Tribunal) = 2001 (43) RLT 680 (Tri. - Delhi), has followed the earlier order of the Tribunal in the case of Bajaj Tempo and has held that a job worker, who has received the goods from the manufacturer under Rule 57F, is entitled to take credit of duty in respect of the other inputs received directly and used by him in the manufacture of the said goods on job work basis. The main reason for arriving at this conclusion was of two fold. First that Rule 57F is a self-contained provision and the goods processed under the said rule were being returned to the principal manufacturer who was paying duty on the same. Secondly, it weighed with the bench that the provision of Rule 57C would not get attracted inasmuch as the removal of the goods was neither under the exempted notification nor the goods were chargeable to nil rate of duty. For arriving at the above conclusion reliance was placed upon the earlier decision of the Tribunal of Bajaj Tempo. In the case of Bajaj Tempo, provision of Rule 57F as also provision of Rule 57C were considered in detail along with the consideration of Notification No. 217/86. It was observed that under Modvat scheme, credit of duty paid on notified inputs is to be given for payment of duty on the notified final products, if such inputs are used in or in relation to the manufacture of the final products and such inputs are not hit by exemption to Rule 57A. Notification No. 217/86 [which laid down the procedure for sending the basic raw material to the job *worker's factory and receipt of the same in the manufacturer's factory after processing for further utilisation in the manufacture of the final products on which duty is paid by the manufacturer. The notification is mainly intended to avert payment of duty at each intermediate stage and take credit of such duty at each subsequent stage, starting from the basic material, turning out components and finally ending with ultimate final product. Hence, the scope of Rule 57C in such a situation like this has to be constituted in the context of the Modvat scheme and not to destroy the basic concept.*

2. The revenue is denying the Modvat credit to the present job worker on the grounds that the inputs were used in the manufacture of the goods which were cleared without payment of duty. Pausing here for a second, let us take a situation where the basic inputs is sent by the principal manufacturer after debiting the Modvat credit taken by him. The job worker takes the credit of the same his factory, utilises other inputs procured directly by him after taking the Modvat credit on the same and clear the processed goods to the principal manufacturer on payment of duty and the principal manufacturer takes the credit of the same in his factory and utilises such credit for payment of duty on his final products at the time of clearance. In such a situation, there can be no objection or dispute by the revenue as regards the admissibility of the credit on the inputs received directly by the job worker and utilised in his factory. The only effect of the above procedure adopted by the principal manufacturer and the job worker would be additional paper work. It is basically to avoid such a situation the procedure under Rule 57F(3) has been enacted. As rightly observed by the earlier decision's the mechanical application of Rule 57C which destroys the basic benefit intended to be extended to the assessee should be avoided. If the interpretation adopted by the revenue is upheld, the benefit otherwise intended to be given will get frustrated apart from *leading to discriminatory situation, where the manufacturer has himself processed the inputs and in the other case were he is sending it to the job worker.*

3. We are also in agreement with the appellant's contention that Rule 57C debars taking of credit in respect of the inputs used in the manufacture of the final product, if final product is exempted from the whole of duty of excise leviable thereon or chargeable to nil rate of duty. As such, to attract the provisions of Rule 57C, two situations in respect of the final product should be satisfied. Either the final product should be exempted, which situation can arise only when there is an exemption notification issued under Section 5A of the Central Excise Act or the final product is chargeable to nil rate of duty. Expression chargeable to nil rate of duty or exempted from whole of duty was considered by the Tribunal in the case of Orissa Synthetics Ltd. v. Collector of Central Ex. [1995 (77) E.L.T. 350 (Tri.)] and after taking note of the Ministries clarifications issued vide Circular No. 10/75/CX. 6, it was held that clearance under goods under provision of 191BB for export without payment of duty would not get covered by the above expression. Reference was made to the advice received from the Ministry of Law dealt in the paragraph of 9 in the said decision. It was opined in the said letter of the Law Ministry that the term 'exempted' has a definite connotation. The same as attributed to the notification issued by the Central Government. Similarly, the chargeable to nil rate of duty would refer to the tariff rate being nil and the goods cleared in terms of provision of Rule 199BB would not be covered by the said expression inasmuch as the same are not chargeable to nil rate. In the present case, we find the job worker could have cleared the goods on payment of duty and manufacturer could have claimed credit of the same. It is only under the special procedure laid down in terms of the Rule 57F(3) that the duty does not get paid at the job worker's end at the time of clearance of the goods, but *ultimately gets paid at the manufacturer's end. In these circumstances, we are in agreement with the decision rendered in the case of Bajaj Tempo and Jindal Polymers.*

3. Apart from the above two decisions, we also note that identical view was taken in the case of Shakti Insulated Wires Ltd. v. CCE & C, Mumbai-V [2002 (149) E.L.T. 668 (Tri.) = 2002 (51) RLT 115 (CEGAT-Mum)] & also in the case of CCEx, Jaipur v. Noorani Textiles Mills [2000 (122) E.L.T. 744 (Tribunal)].

4. In only case of Escorts Ltd. v. CC Ex, Delhi [2003 (160) E.L.T. 623 (Tri-Del.)] while interpreting Rule 57C of the Central Excise Rules, the Tribunal rejected the appellants claim of Modvat credit of duty paid on the inputs used in the manufacture of the parts, which were cleared without payment of duty to, appellant's other unit under Chapter X procedure and utilised in the manufacture of tractor which were cleared on payment of duty by observing that since no duty was paid on the part at the time of clearance, Rule 57C will apply and no Modvat credit would be admissible. However, the said decision was subsequently reversed by the Supreme Court as reported in Escort v. C.C.Ex. [2004 (171) E.L.T. 145 (S.C.)]. For appreciation, we reproduce paragraphs 8 & 9 of the said decision.

> *"8. It is to be seen that the whole purpose of the Notification and the Rules is to streamlines the process of payment of duty and to prevent the cascading effect if duty is levied both on the inputs and the finished goods. Rule 57D(2), which has been extracted hereinabove, shows that in the manufacture of a final product an intermediate product may also come into existence. Thus in cases where intermediate product may also come into existence. Thus in cases where intermediate product comes into existence, even though no duty has been chargeable to Nil rate of duty, credit would still be allowed so long as duty is paid on the final product.*
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> *9. In cases of manufacturers like the Appellants the final*

> *product is the tractor. The intermediate product would be parts which are manufactured for being used in the tractor. In such a case the parts would not be the final product. Thus Rule 57C would have no application. The mere fact that the parts are cleared from one factory of the Appellants to another factory of the Appellants would not disentitle the Appellant from claiming benefit of Notification No. 217/86-C.E., dated 2nd April, 1986. As stated above, the Notification itself clarifies that the inputs can be used within the factory of production or in any other factory of the same manufacturer."*

By applying the ratio of the above decision, it becomes clear that Modvat credit of duty paid on the inputs used in the manufacture of final product cleared without payment of duty for further utilisation in the manufacture of final product, which are cleared on payment of duty by the principal manufacturer, would not be hit by provision of Rule 57C. Inasmuch as, the matter stands decided by the Honourable Supreme Court, we would hold in favour of assessee.'

7. In view of the above, we find that the impugned order is contrary to settled law and must be set aside. Accordingly, appeal is allowed.

(Order pronounced in the open court on 29/08/2023)

(AJAY SHARMA)	**(C J MATHEW)**
Member (Judicial)	***Member (Technical)***

**/as*