

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

Appeal No. E/590, 591/09

(Arising out Order-in- Appeal No. IPL/01 & 02/NSK/2009 dated 05.03.2009 passed by the Commissioner of Central Excise (A), Nashik)

Appeal No. E/681, 682/09

(Arising out Order-in- Appeal No. IPL/29 & 30/NSK/2009/1843 dated 18.02.2009 passed by the Commissioner of Customs & Central Excise (A), Nashik)

Appeal No. E/1058/07

(Arising out Order-in-Original No. 14/CEX/2007 dated 13.04.2007 passed by the Commissioner of Central Excise, Nashik)

Appeal No. E/515/08

(Arising out Order-in- Appeal No. CEX/AKD/50/APL/NSK/2008 dated 03.03.2008 passed by the Commissioner of Central Excise, Nashik)

Appeal No. E/305/09

(Arising out Order-in- Appeal No. IPL/229/NSK/2008 dated 23.12.2008 passed by the Commissioner of Central Excise (A), Nashik)

Appeal No. E/1274/07 & E/CO/235/07

(Arising out Order-in-Original No. 14/CEX/2007 dated 13.04.2007 passed by the Commissioner of Central Excise, Nashik)

For approval and signature:

Hon'ble Shri Ramesh Nair, Member (Judicial)

Hon'ble Shri Raju, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	Yes

1. Arihant Udyog
2. Vinayak Inds.
3. Murthy Gopalkrishnan Nadar
4. Nageshwar Enterprises
5. CCE Nashik
6. Shri Samart Ashok Bhutada
Vs.

Appellant

1. to 4. CCE Nashik
5. Nageshwar Enterprises

Respondent

Appearance:

Shri M.H. Patil, Advocate for the appellant no. 1 & 4
None for appellant no. 2 & 3

Shri S.V. Nair, AC (AR) for the respondent
Shri N.N. Prabhudesai, Supdt (AR) for respondent no. 2&3

CORAM:

Hon'ble Shri Ramesh Nair, Member (Judicial)

Hon'ble Shri Raju, Member (Technical)

Date of hearing : 25.01.2018 & 29.01.2018

Date of decision : 03.04.2018

O R D E R No: **A/85868-85875 / 2018**

Per: Ramesh Nair

In all these appeals the common fact is that the appellants are availing SSI exemption vide notification no. 8/2000-C.E. dated 01.03.2000 in respect of product namely spanners under the brand name "Taparia" owned by M/s Taparia Tools Ltd. Though in general they are not entitled for SSI exemption in respect of goods bearing the brand name of another person but if the unit is located in rural area the goods manufactured even though under the brand name of another person exemption is available.

2. The fact of the process is that the appellants are purchasing unbranded spanner on which they are embossing/ engraving the brand "Taparia". Thereafter it is sent for job work to various job workers. One job work is heat treatment, the second is shot blasting and the third is plating. All these job work are carried out by individual job worker. Thereafter the spanners are brought to the factory of the appellant and the same are packed and sold. The case of the department is that though the appellant's factories are located in rural area but major process of manufacturing is carried out by the job workers who are not located in rural areas but in urban areas. Therefore the goods are not completely manufactured in rural area. As per the notification, in order to avail the SSI exemption, the goods should be manufactured by the assessee who is

located in rural area. Accordingly, there is a contravention of the notification 8/00-C.E. and the appellants are liable to pay duty on their clearances.

3. Shri M.H. Patil, Id. Counsel appearing on behalf of the appellants submits that firstly the appellant purchased the manufactured spanner. They only embossed/ engraved the brand name of "Taparia". This process does not amount to manufacture. If at all it is assumed manufacturing process work carried out by the job worker in respective factories located in urban areas and if at all duty liability arises it is recoverable from those job workers who are independent manufacturers. In this regard, he placed reliance on the Larger Bench judgment of this Tribunal in the case of *Thermax Babcock and Wilcox Ltd. & Thermax Ltd.* 2017-TIOL-4390-CESTAT-MUM-LB. He further submits that even if all the processes taken together i.e. process carried out by the appellant as well as by the job workers the activity is not of manufacture as goods are spanner as the process of affixing the brand, heat treatment, shot blasting and plating do not change the form of the product which remains as spanner only. Therefore even entire process does not amount to manufacture. He further submitted that the unit located in the rural area can get the job work done from outside and still the assessee is entitled for SSI exemption. In this regard, he placed reliance on the following judgement:-

- *CCE vs. Sannihita Electronics Ltd.* 2003 (159) ELT 815 (T) upheld Supreme Court in 2015 (318) ELT 621 (SC).

He submits that one of the appeals is from the revenue wherein the issue of time bar is involved as the lower authority has dropped the demand on limitation. He submits that since there is no suppression of fact demand for the extended period was rightly dropped. Therefore the revenue's appeal is not maintainable.

4. Shri S.V. Nair, Ld. AC (AR) appearing on behalf of the revenue reiterates the finding of the impugned order inasmuch as the demand of duty was confirmed within the normal period. He submits that the notification no. 8/2000-C.E. provided the exemption even to the goods bearing the brand name of another person if it is manufactured in rural area. In the present case admittedly, the major process of manufacturing was carried out outside the rural area. Therefore, the products which were not fully manufactured in the rural area are not eligible for exemption notification. In support of his submission, he placed reliance on the following judgments:-

- *Standard Fireworks Industries* 1987 (28) ELT 56 (SC)
- *CCE vs. Tara Agencies* 2007 (214) ELT 491 (SC)
- *CCE vs. Ace Auto Comp. Ltd.* 2011 (263) ELT 3 (SC)

5. As regards the revenue's appeal, he submits that the lower authorities have wrongly dropped the demand being time bar as the appellant suppressed the fact regarding the overall activity from the department. Therefore the extended period was invocable and the demand dropped on limitation by the lower authority needs to be reversed and revenue's appeal be allowed.

6. Heard both sides. We have carefully considered the rival submission.

7. We find that there is no dispute in the facts of the case that all the assesseees in the present case are engaged in identical activity. As per the activity the appellant is only carrying out affixation of brand on the tools i.e. spanner by embossing/ engraving. This process alone does not amount to manufacture. As regards other processes which are carried out by the job workers, it prima facie appears that the independent process of heat treatment, shot blasting and plating do not amount to manufacture as held in various judgments. However, even if it is held that the activities carried out by the job worker do amount to manufacture the duty liability arises on such job workers as they are the sole manufacturer even though on job work basis. This issue has been decided by the Larger Bench of this Tribunal in *Thermax Babcock and Wilcox Ltd. &*

Thermax Ltd. (supra) wherein this Tribunal has taken the following view:-

"8. As per above discussion, we hold that the Jobworker M/s Thermax being manufacturer of excisable goods is liable to pay duty on the intermediate goods manufactured by him on jobwork basis which supplied to their principal M/s Thermax Babcock. The question referred to this larger bench is answered accordingly. Registry is directed to place the appeals before the referral bench for appropriate orders."

8. In view of above Larger Bench judgement, if at all there is a liability of duty arising, the same is recoverable from job worker. Under this legal position, we find that the appellant cannot be charged to duty even if the exemption notification no. 8/2000 is not admissible to them. Only on this threshold point, we set aside the demand and allow the appeals of the assesseees. Accordingly, the revenue's appeal is dismissed. Cross objection is also disposed of.

(Pronounced in Court on 03.04.2018)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)