CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH-COURT NO. I

EXCISE CROSS OBJECTION NO.50579/2019

IN

EXCISE APPEAL NO. 51328/2019

[Arising out of Order-in-Original No. JOD-EXCUS-000-COM-007-18-19 dated 30.01.2019 passed by the Commissioner, CGST & Central Excise, Jodhpur]

COMMISSIONER, CENTRAL EXCISE & CGST-JODHPUR 1 — **Appellant**

Vs.

KHEMANI METAL INDUSTRIES PRIVATE LIMITED A-46 A 46(A) Phase II, Basni, Jodhpur, Rajasthan. — **Respondent**

WITH

EXCISE APPEAL NO. 52163 OF 2022

[Arising out of Order-in-Original No. JOD-EXCUS-000-COM-007-18-19 dated 30.01.2019 passed by the Commissioner, CGST & Central Excise, Jodhpur]

COMMISSIONER, CENTRAL EXCISE & CGST- G-105, Road No. 5, Behind AIIMS Hospital, New Jodhpur Industrial Aear, Basni Jodhpur (Rajasthan). — **Appellant**

Vs.

SHRI R A KHEMANI, DIRECTOR
M/S. KHEMANI METAL INDUSTRIES PRIVATE LIMITED
A-46 A 46(A) Phase II, Basni,
Jodhpur, Rajasthan — **Respondent**

WITH

EXCISE APPEAL NO. 52164 OF 2022

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COMMISSIONER, CENTRAL EXCISE & CGST-JODHPUR G-105, Road No. 5, Behind AIIMS Hospital, New Jodhpur Industrial Aear, Basni Jodhpur (Rajasthan). — **Appellant**

Vs.

SHRI DHEERAJ GANDHI, MANAGER
M/S. KHEMANI METAL INDUSTRIES PRIVATE LIMITED
A-46 A 46(A) Phase II, Basni,
Jodhpur, Rajasthan **Respondent**

APPEARANCE:

Shri Sanjay Kumar Singh, Authorized Representative of the Department
Shri O P Agarwal , Chartered Accountant for the Respondent

CORAM:
HON'BLE MR.JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

DATE OF HEARING : 30 May, 2023,
DATE OF DECISION : 30 June, 2023

FINAL ORDER No. 50787-50789/2023

PER RAJEEV TANDON

The impugned appeals have been filed by the Revenue against the order passed by the learned Commissioner Central Goods & Service Tax, & Central Excise, Jodhpur vide Order-in-Original No. 007/18-19 dated 30.01.2019. Learned Commissioner vide aforesaid order has dropped the proceedings initiated vide show cause notice dated 12.01.2018. As the proceedings have been dropped, the Revenue has now filed appeals against Shri R A Khemani, Director and the Shri Dheeraj Gandhi, Manage of Khemani Metal Industries Pvt Ltd. respectively as well. The appellants have also filed cross objections in the impugned matter.

2. Briefly stated the facts of the case are that the respondents are manufacturers of Stainless steel cold rolled patta/ patti falling under Tariff heading 7219 9090 of the Central Excise Tariff Act,

1985[1]. They were paying the duty on the finished goods manufactured by them by cold rolling process with the aid of cold rolling machines in terms of Rule 15 of the Central Excise Rules, 2002[2] read with Notification No. 17/2007-CE dated 01.03.2007. The compounded duty at compounded rates in terms of said notification was fixed based on the number of cold rolling machines installed and used for manufacture. Respondents accordingly, were not availing the cenvat credit on the goods so used in the manufacture and input services utilized thereto, during the period October 2014 to 30.06.2017 as provided under Rule 15 ibid.

2.1 It is the case of the Department that during the aforestated period the respondents cleared stainless steel circles falling under chapter heading 7222 40 20 of the First Schedule of the Central Excise Tariff Act, 1985, without payment of central excise duty of Rs.1,87,98,590/- and stainless steel scrap generated during the manufacture of stainless steel circles falling under chapter sub heading 7204 2190 without payment of central excise duty of Rs.21,86,753/-. It is the revenue's case that during the course of audit of the assessee's unit, it was observed that the assessee was engaged in the manufacture of SS Patta/ Patti (falling under Tariff Heading No.7219 90 90) through cold rolled process and was paying central excise duty under compounded levy scheme as stated supra on per machine basis. During the course of audit and the examination of records, it was noticed by the department that the

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1 The Tariff Act
2 The Rules

assessee was also clearing S.S. Circles and scrap but without payment of applicable central excise duty and that such clearances were not reflected in their monthly ER returns. The department, therefore, alleged that scrutiny of such invoices indicated that the assessee was wrongly/ fraudulently clearing the SS circles showing them as being produced and cleared under Compounded Levy Scheme under Notification No. 17/2007-C.E., dated 01.03.2007. Likewise, the stainless steel scrap generated in the course of manufacture of stainless steel circle and received from their job workers without payment of Central Excise duty on wrongful/ fraudulent heading under exemption Notification No. 03/2005 CE (now 12/2012-CE dated 17.03.2012- Sl.No.202). It is the case of the Revenue that said notification exempts only waste and scrap arising out of manufacture of cold rolled stainless steel Patties or Pattas whereas the afore mentioned stainless steel scrap was generated during the manufacture of stainless steel circles and so assessee was liable for payment of central excise duty.

2.2 The respondents on the other hand, contended that as they were working under compounded levy scheme, they have not availed of the Cenvat credit scheme and not taken credit of duty paid on inputs and capital gods as well as not availed Cenvat credit of service tax paid on input services and sent the stainless steel patta manufactured to other manufacturers under the cover of challans for conversion into stainless steel circles. The stainless steel circles so produced and scrap so generated were received by the said manufacturer under the cover of challans and invoices of

the manufacturer. Such circles and scrap received back was then sold by them under the cover of their own invoices.

3. The learned Commissioner however, did not find any merit in the plea of the Department that the respondent as principal manufacturer were liable to pay duty on the finished goods (SS circles/ scrap) cleared by the respondents under the cover of their own invoices. It is an undisputed fact on record that while the respondents were sending stainless steel Patties or Pattas for job work under the cover of challans receiving the goods as stainless steel circles along with stainless steel scrap and were clearing them under their own invoices they had filed no declaration with the department for availment of job work benefit in terms of Notification No. 214/86-CE dated 25.03.1986. Declaration as may be applicable for removal of goods for job work under Rule 16A of the Central Excise Rules, 2002[3] was also not filed by the assessee-respondents. The Department, however had therefore, alleged suppression and mis-declaration on part of the respondent and had thereby invoked extended period of limitation.

4. Contrary to above, the respondent-assessee claims to be the manufacturers of stainless steel circles and stainless steel scrap under Compounded levy scheme though they were getting conversion of stainless steel Patties or Pattas into stainless steel circles on job work basis under cover of job challans.

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3 The Rules

5. Having heard the rival contentions and after perusing the relied upon case laws drawn for support by both the sides in support of their contentions we proceed to analyze and discuss the legal position in subsequent paragraphs hereunder.

6. The Revenue has, made out this case stating that the assessee was liable to discharge central excise duty on the stainless steel circles and stainless steel scrap as the assessee was a manufacturer and only job worker were exempted from payment of duty under Notification No. 214/86-CE dated 25.03.1986. It was, therefore, incumbent upon the respondent-assessee to discharge the legal obligation and clear the goods on payment of appropriate central excise duty. The learned Commissioner, however, has not found sufficient merit in the said pleadings and contention of the department and therefore, dropped the entire proceedings initiated against the noticees vide Show cause notice referred to supra. While discussing the Revenue's contentions, he inter alia observed as under:

> "*17. I observe that the main allegation of the department is that the assessee as principal manufacturer had cleared SS Patta-Patti for manufacture of circles on job work to various job workers under Notification No. 214/86-CE, as such it was the responsibility of the assessee to pay duty on subsequent clearances of the said circles after return by the job workers; further, scrap generated during manufacture of circles was also returned by the job workers along with manufactured circles but as no duty was paid on clearances of such scrap by the job worker or assessee, they were bound to pay duty on such clearances of scrap also. The department strongly alleged that filing undertaking was an obligation on the part of the assessee hence non filing of undertaking is a procedural violation, which does not grant immunity to the assessee from discharging their liability on such manufactured goods along with scrap*

cleared from the factory of the assessee. The department has placed reliance on various decisions of Hon'ble Tribunals in support of the allegation.

18. I observe that the assessee has pleaded their case mainly on the ground that filing of undertaking is a very essential ingredient of Notification No.214/86-CE, whereby only it can be decided that who would pay duty on the goods manufactured on job work. Since they did not file the undertaking and the alleged goods i.e. circles and scrap were manufactured by their Job workers, therefore the job workers were the manufacturer, hence they were not liable to pay duty as demanded. The assessee also pleaded that they were not under any obligation to follow the said procedure of the Notification No. 214/86-CE as the goods cleared from their factory for job work were already duty paid and neither Cenvat Credit had been taken by them nor the SS Patta-Patti were removed under Rule 4(5)(a) of Cenvat Credit Rules, 2004. The assessee also raised question about classification of S.S. Circles and pleaded that circle cutting is not a process of manufacture. The assessee has referred to the Notification No. 12/2012-CE dated 17.03.2012 and claimed that under S.No. 203 of the said Notification, the process of cutting SS Patta Patti into circles is anyway exempted from payment of Central Excise duty. In addition to this the assessee also raised the issue of limitation, cum tax value and imposition of equal penalty as proposed in the show cause notice."

6.1 While adjudicating the matter and perusing the case laws relied upon by the respondent-assessee before the adjudicating authority, the learned Commissioner found merit in the assessees' contention with reference to the Hon'ble Apex court's decision in the case of **Kartar Rolling Mills vs CCE**[4] that unless the undertaking is submitted to the effect, that duty on goods manufactured would be paid by the supplier of raw material, benefit of exemption Notification No. 214/86-CE was not attracted and the job worker only is liable to discharge the duty liability at the time of clearance of said goods from the premises of the job worker. In the said

4 [2006 (197) ELT 151 (SC)]

case, the appellant job worker was supplied raw material by the principal manufacturer, however, no duty was paid either by the principal manufacturer or the job worker for goods manufactured by them. Paragraph 11 of the order of the Hon'ble Apex Court is noted below for ready reference:

> "*11. In the order of remand, the Tribunal had specifically held that the products manufactured by the appellants were marketable and therefore excisable to the levy of excise duty. The finding recorded in the order of remand regarding the marketability of the goods and excisability to the levy of excise duty having not been challenged, has become final and it is not open to the appellants to challenge the same. On the second point, we find that the appellants failed to bring any evidence on record to prove that the supplier of the raw materials had supplied the materials to them under the provisions of Notification No. 214/86. The conditions laid in the notification for its applicability were not satisfied. The finding recorded by the Tribunal and the authorities below on this point is a finding of fact which cannot be interfered with in the absence of any material to the contrary. Since the third point had not been raised before the Tribunal and has been raised before us for the first time, the appellants are not entitled to raise the same in this Court. Otherwise also, we do not find any merit in this submission. It is trite to say that exemption notification have to be construed strictly. Since the notification came into effect from 11-4-1994, the benefit of the notification cannot be extended to the appellants retrospectively w.e.f. 1-3-1994.*
>
> *12. For the aforesaid reasons, we do not find any merit in these appeals and dismiss the same with costs."*

6.2 Learned Commissioner therefore, concluded as under:-

> *"From the above judgment of Apex court, it is clear that condition laid down in the notification viz. undertaking by the supplier of raw materials or semi-finished goods is must to cast duty liability on the raw material supplier. It is not in doubt that the circles were manufactured by the job worker and the duty liability as per Central Excise laws is only on the manufacturer. The duty liability can be shifted to the supplier of raw materials or semi- finished goods only if the supplier gives an undertaking in terms of the notification. This is a substantive condition which cannot be*

taken as a procedural condition, as it shifts the duty liability from the job worker to the supplier of raw materials or semi-finished goods. Until and unless this condition of giving undertaking is fulfilled, the duty liability cannot be shifted on the supplier of raw materials or semi-finished goods, as they were not the manufacturer of circles as well as scrap arising during the manufacture of circles."

6.3 Learned Commissioner agreeing with the contentions of the notices that the SS patta/ patti cleared by them on job work challans were in effect duty paid as they were working under compounded levy scheme, held that a basic purpose of Rule 16A of Central Excise Rules, 2002 and Rule 4(5)(a) of the Cenvat Credit Rules, 2004 was to protect the government revenue, if the goods were removed without duty payment for job work or if the assessee had taken Cenvat credit and removed the raw material or semi processed goods for job work. It was in such cases, it is the responsibility of the principal manufacturer to ensure the payment of duty at the time of clearance of goods at the end of job work or themselves after return of the same from the job worker. Rule 4(5)(a) of Cenvat Credit Rules, 2004 and Rule 16A of Central Excise Rules, 2002 are reproduced herein-

Cenvat Credit Rules, 2004

"Rule ***4(5)(a)*** *The CENVAT credit shall be allowed even if any inputs or capital goods as such or after being partially processed are sent to a job worker for further processing, testing, repair, re-conditioning or any other purpose, and it is established from the records, challans or memos or any other document produced by the manufacturer or provider of output service taking the CENVAT credit that the goods are received back in the factory within one hundred and eighty days of their being sent to a job worker and if the inputs or the capital goods are not received back within one hundred eighty days, the manufacturer or provider of output service*

shall pay an amount equivalent to the CENVAT credit attributable to the inputs or capital goods by debiting the CENVAT credit or otherwise, but the manufacturer or provider of output service can take the CENVAT credit again when the inputs or capital goods are received back in his factory or in the premises of the provider of output service.

Central Excise Rules, 2002

***Rule 16A. Removal of goods for job work**, etc. -Any inputs received in a factory may be removed as such or after being partially processed to a job worker for further processing, testing, repair, re-conditioning or any other purpose subject to the fulfilment of conditions specified in this behalf by the Commissioner of Central Excise having jurisdiction*."

6.4 However, as in the present case, the stainless steel Patta-Patti cleared by the respondents was duty paid and no Cenvat credit have been availed on the raw material required for the manufacture of stainless steel Patta-Patti, therefore, they were under no obligation to ensure duty payment on goods manufactured by the job worker. The learned Commissioner, also dismissed reliance of the Revenue on certain case laws cited in support of their contention, as the goods were mainly removed by the supplier of raw material, on which Cenvat credit had not been availed by the supplier. For sake of greater clarity, the analysis undertaken by the learned Commissioner in the following cases is enumerated herein:

1. **M/s Moon Chemicals Vs CCE, Thiruvananthanpuram**[5]: In this case, the Hon'ble Tribunal observed that "the appellants have claimed that the Sodium Silicate Solution returned after job work to their customer was removed by the latter on payment of duty for home

5 [2007(215) ELT434 (Tri-Chennai)]

consumption from their foctory. This claim has not been contested by the Revenue. In the circumstances, the appellants were eligible for the benefit of the Notification subject to the surviving condition that the raw material-supplier gave an undertaking to the Asst. Commissioner or Deputy Commissioner of Central Excise having jurisdiction over the appellants' factory to the effect that the goods would be removed (by the raw material-supplier) on payment of duty for home consumption." In such circumstances, the Tribunal had held that duty cannot be demanded from job worker for non-submission of undertaking by the principal manufacturer.

2. **M/s OPG METALS PVT. LTD.Vs. COMMISSIONER OF C. EX., TIRUCHIRAPALLI**[6] : In this case, the raw materials were sent by principal for conversion under Rule 4(5)(a) of Cenvat Credit Rules, 2004 and invoices contained clear endorsement that material was sent for conversion under Rule 4(5)(a) of Cenvat Credit Rules, 2004. Further, principal manufacturer had by mistake filed the declaration before their jurisdictional authority instead of jurisdictional authority of job worker. In such circumstances, the Tribunal had held that duty was required to be discharged by principal manufacturer and not job worker for procedural violation of non-submission of undertaking to the jurisdictional authority of the job worker.

3. **M/s G.G. AUTOMOTIVE GEARS LTD. Vs COMMR. OF C. EX. & SERVICE TAX, INDORE**[7]: In this case, the Hon'ble Tribunal observed that "… in view of the substantial compliance on the part of the job worker and the facts of proper accounting of goods by the principal manufacturer, non-filing of undertaking by the principal manufacturer would by itself not make the job worker eligible for the exemption."

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6 [2016 (343) E.LT. 230 (Tri. - Chennai]
7 [2014 (308) E.LT. 546 (Tri. Del.)]

It seems from the facts of the case that the goods received back by the principal manufacturer were properly accounted for further manufacture and clearance on proper payment of duty. In such circumstances, the Tribunal had held that duty was not required to be discharged by job worker for non-submission of undertaking by the principal manufacture to the jurisdictional authority of job worker.

4. **M/S SUVIKRAM PLASTEX (P) LTD. Versus COMMISSIONER OF C. EX., BANGALORE-III**[8]: In this case, the Tribunal has allowed the benefit to job worker relying on Board Circular No. 306/22/97-CX., dated 20-3- 1997, which is reproduced below:

> "*Subject: Availability of Modvat credit on inputs used by job workers in job-working contracts-Regarding.*
>
> *1. Instances have come to the notice of the Board where job workers have availed the credit on inputs used for job-work done by them under the provisions of Rule 57F(4) of the Central Excise Rules, 1944.*
>
> *2. The provisions of Rule 57F(4), a manufacturer can get the job work done on his inputs or on partially processed inputs in terms of the provisions of Rule 57F(4) of the Central Excise Rules, 1944. In such cases, duty liability is required to be discharged by the manufacturer and not by the job workers. Accordingly job worker is not eligible to avail credit in such cases*."

7. Learned Commissioner, therefore, arrived at a categorical finding that the charges made out were not sustainable and therefore, held no discussions on the question regarding limitation, cum -tax-value, exemption to the job worker under Notification No. 12/2012-CE dated 17.03.2012 (S No. 203). These, therefore, were not taken up for consideration by him.

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8 [2008 (225) E.LT. 282 (Tri. - Bang.)]

8. Learned Authorised Representative for the Revenue, Shri Sanjay Kumar Singh, vehemently argued in support of Revenue and placed heavy reliance in the case of **Moon Chemicals** (supra) to fasten onto the respondents the leviability of the duty as the principal manufacturer.

8.1 We however, find that the aforesaid decision of this Tribunal in the case of **Moon Chemicals** does not come to the support of the Revenue in the light of the facts of the present case. In the said case, the Department had sought to demand duty against the appellant therein as they had not followed the procedure set out in Notification No. 214/86-CE dated 25.03.1986.

9. Learned Authorised Representative also relied upon the decision of this Tribunal in the case of **Poduval Industries vs Commissioner of Central Excise and Customs & Service Tax, Cochin**[9] wherein this Tribunal held as under:

> "*4. To protect the interest of the Revenue, the duty will have to be paid by someone. In the instant case, the appellant is the principal and by not giving the undertaking, the appellant has developed a system to evade payment of Central Excise duty. By connivance of two parties, sovereign function of payment of duty cannot be avoided. In the instant case, the principal and the job worker with a conspiracy as stated above have made an attempt to evade the payment of duty. They tried to take advantage of the technicality of the law.*
>
> *5. In view of above, we find no infirmity in the impugned order and the same is hereby sustained along with the reasons mentioned therein*."

9 [2018 (362) ELT 149 (Tri-Bang)]

10. It may be pertinent to indicate that exemption to job workers from payment of duty is conditional under Notification No. 214/86-CE dated 25.03.1986 and based on filing of the undertaking by the Principal manufacturer. This cannot be held to be a mere procedural requirement. For better understanding of the provisions of the said notification, the same is reproduced as under:

> "*In exercise of the powers conferred by sub-section (1) of section 5A of Central Excise Act, 1944 (1 of 1944), read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), (herein after referred to as Special Importance Act), and sub-section (3) of section 136 of the Finance Act, 2001 (14 of 2001), the Central Government being satisfied that it is necessary in the public interest so to do, hereby exempts goods specified in column (1) of the Table hereto annexed (hereinafter referred to as the said goods) "**manufactured in a factory as a job work and**:-*
>
> *(a) used in relation to the manufacture of final products specified in column (1) of the said Table,*
>
> *(i) ……..*
> *(ii)*
> *(iii)*
> *(iv)*
>
> *(b) cleared as such from the factory of the supplier of raw materials or semi- finished goods-*
>
> *(i) on payment of duty for home consumption (on which duty of excise is leviable whether in whole or in part); or*
> *(ii) without payment of duty under bond for export; or*
>
> *(iia) by a manufacturer of dutiable and exempted final products, after discharging his obligation in respect of said goods under rule 6 of the CENVAT Credit Rules, 2002; or*
>
> *(iii) without payment of duty to a unit in a Special Economic Zone or to a hundred per cent export-oriented undertaking or to a unit in an Electronic Hardware Technology Park or Software Technology Parks or supply to the United Nations or an international organisation for their official use or supply to projects funded by*

them, on which exemption of duty is available under notification of the Government of India in the Ministry of Finance (Department of Revenue) No.108/95-Central Excises, dated the 28th August, 1995,

from the whole of the duty of excise leviable thereon, which is specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), the additional duty of excise leviable thereon, which is specified in the Schedule to the said Special Importance Act and National Calamity Contingent duty leviable under sub-section (1) of section 136 of the Finance Act, 2001 (14 of 2001).

(2) The exemption contained in this notification shall be applicable only to the said goods in respect of which,-

(i) The supplier of the raw materials or semi-finished goods gives an undertaking to the Assistant Commissioner of Central Excise having jurisdiction over the factory of the job worker that the said goods shall be-

(a) used in or in relation to the manufacture of the final products in his factory; or

(b) removed without payment of duty from his factory;

(i) under bond for export, or

(ii) to a unit in a Special Economic Zone or to a hundred per cent Export- oriented undertaking or to unit, an on electronic Hardware Technology Pork or Software Technology Parks or supplied to the United Nations or on International organisation for their official use or supplied to projects funded by then, on which exemption of duty is available under notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 108/95, Central Excise, dated the 28th August 1995, or

(iii) by a manufacturer of dutiable and exempted final products, after discharging his obligation in respect of said goods under rule 6 of the CENVAT Credit Rules, 2002; or

(c) removed on payment of duty for home consumption from his factory; *or*

(d) used in the manufacture of goods of the description specified in column (1) of the Table hereto annexed by another job worker for further use in any of the manner provided in clause (a), (b) and (c) as above.

(ii) the said supplier produces evidence that the said goods have been used or removed in the manner prescribed above; and
(iii) the said supplier undertakes the responsibilities of discharging the liabilities in respect of the Central Excise duty leviable on the final products."

Explanation : *1- For the purposes of this notification, the expression "job work" means processing or working upon of raw materials or semi-finished goods supplied to the job worker, so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for the aforesaid process.*

TABLE

Description of inputs	**Description of final products**
All goods falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), other polyester filament yarn falling under heading 5402 and tariff item 5406 00 10, light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol.	All goods falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), other than matches.

11. The Notification clearly states that said notification can be rendered applicable only in respect of goods for which the supplier has furnished an undertaking to the department/ jurisdictional authorities of the job workers. In the case of **Kartar Rolling Mills vs CCE**[3] discussed supra**,** the benefit of exemption from duty to the job worker was denied essentially as no undertaking was filed by the principal. It is common knowledge that the responsibility in the central excise statute is on the manufacturer for payment of duty on the manufacture of finished goods which could either be a principal manufacturer or the job worker and in the event of finished goods produced by the job worker in the normal course the said job worker would be deemed to be the manufacturer. Also for

entitlement of the availment of exemption notification, it is imperative that notification conditions are strictly complied with. The requirement of filing the declaration undertaking for availment of said exemption notification cannot be considered as mere procedural. In the event of non submission of such undertaking, ipso facto the said job workers of the respondent assessee automatically are the manufacturer of SS circles/ scrap so cleared by them and sent to the respondent assessee though, later cleared by them under the cover of their own invoices.

12. The following analysis of case law support drawn by either side in the matter would help better understand and clarify the issue at hand.

Case laws in support of the Departments' viewpoint:

1. **M/s Moon Chemicals Vs CCE, Thiruvananthanpuram[10]**:

The most question considered in the said case pertained to the admissibility of exemption benefit under Notification No. 214/86 CE dated 25.03.1986, in the absence of the requisite undertaking filed by the raw material supplier that finished goods will be cleared on payment of duty. It was however, held that the same could not be a ground to deny the benefit under Notification No. 214/86-CE to the job worker.

[10] **[2007(215) ELT434 (Tri-Chennai)]**

Thus the pleadings and question of law in this case, do not render any support to the issue at hand being on a different pedestal.

2. **M/s OPG METALS PVT. LTD.Vs. COMMISSIONER OF C. EX., TIRUCHIRAPALLI[11].**

This case was considered and argued from a job worker perspective which is not the case in the present matter and the demand fastened onto the job worker was set aside by the Tribunal.

3. **M/s. G G Automotive Gears Ltd. vs Commissioner of C Ex and Service Tax, Indore[12]**

The subject matter comprises of certain peculiar facts wherein various processes undertaken, did not amount to manufacture and hence no duty was payable. The substantive question for consideration was akin to the one in **Moon Chemicals** case viz. whether benefit of Notification No. 214/86 CE could be availed of by the job workers, in the absence of an undertaking by the principal raw material supplier of goods and when no deficiency in accountal of goods was made out by the department. On obvious lines such benefit of notification was held as not deniable to the job worker appellant in the matter.

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11 [2016 (343) E.LT. 230 (Tri. - Chennai]
12 [2014 (308) ELT 546 (Tri-Del)]

Thus, it may be noted that the said case law support sought to be denied by the department have no bearing to the impugned question for consideration in the present appeal.

13. In so far as this Tribunal's decision in the case of **Poduval Industries vs Commissioner of Central Excise and Customs & Service Tax, Cochin**[13] is concerned, it cannot be construed to be an order strictly on merits of the facts of the case, in as much as evident from paragraph 4 of the order, it appears to be a case of fait accompli and not based on sound legal tenets and discussions. The said paragraph is reproduced herein below:

> "*4. To protect the interest of the Revenue, the duty will have to be paid by someone. In the instant case, the appellant is the principal and by not giving the undertaking, the appellant has developed a system to evade payment of Central Excise duty. By connivance of two parties, sovereign function of payment of duty cannot be avoided. In the instant case, the principal and the job worker with a conspiracy as stated above have made an attempt to evade the payment of duty. They tried to take advantage of the technicality of the law.*"

13.1 The said matter, therefore appears to have been decided on technicalities and with a view to fasten the duty liability onto the goods manufactured and cleared.

14. **Case laws in support of the stance of the Respondent-Assessee**:

As against the reliance of the Revenue on certain case laws, the learned counsel relied primarily on the following case laws in support of the contention that the job worker was not exempted from payment of duty on goods manufactured and cleared, if no undertaking in terms of Notification No. 214/86 CE dated 25.03.1986 was furnished, i.e. to say exemption benefit was not

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13 [2018 (362) ELT 149 (Tri-Bang)]

available in the absence of substantial compliance of the Notification conditions.

1. **Desh Rolling Mills Vs. CCE [2000 (122) ELT 481 (Trib.)]**
2. **Kartar Rolling Mills Vs. CCE [2006 (197) ELT 151 (SC)]**
3. **CCE Vs. Hari Chand Shri Gopal [2010 (260) ELT 3 (SC)]**
4. **Eagle Flask Industries Ltd. Vs. CCE [2004 (171) ELT 296 (SC)]**
5. **Star Industries Vs. CC 2015 (324) ELT 656 (SC)]**
6. **Supreme Lamps Vs. CCE 2013 (296) ELT 45 (Tri-LB)]**

15. Learned Chartered Accountant for the respondents further placed significant reliance on the decision of the Larger Bench of this Tribunal in the case of **Thermax Babcock & Wilcox Ltd. vs CCE Pune I**[14]. They also placed reliance on the Tribunal's Final Order No. 50675-50677/2023 dated 18.05.2023 in the case of **CCE Vs Sonex Marmo Grani Pvt Ltd**.

15.1 The Tribunal's decision in the case of **Thermax Babcock & Wilcox Ltd. vs CCE Pune I,** sets to rest the controversy in the matter. It held in no uncertain terms that in a case where a principal manufacturer did not file the requisite undertaking to the jurisdictional authority in terms of Notification No. 214/86, it is evident that the principal manufacturer had no intention to pay the duty on the final product and the job worker was liable to pay the duty on the goods manufactured. In such circumstances, it was held therein that job worker automatically is the manufacturer and therefore liable to pay duty irrespective of the ownership of the said

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14 [2018 (364) ELT 945 (Tri-LB)]

goods. Relevant paragraphs of the said decision of the Tribunal are reproduced herein below:

> *"7.6 The job worker being the manufacturer of goods is liable to pay duty on goods manufactured by him albeit on job work. The ownership of the goods is immaterial for the purpose of levy of duty and thus any person who has undertaken the activity of manufacture is liable to pay duty. In order to save the job worker from payment of duty the principal manufacturer has to own the liability to pay such duty. It is only by virtue of the Notification No. 214/86-C.E., dated 25-3-1986 that the liability of the job worker to pay duty is transferred to the principal manufacturer who undertakes to pay duty.*
>
> *7.7 The intention of enactment of Notification (supra) was to shift the liability of payment of duty from job worker to the principal manufacturer under certain conditions as provided in the said notification. There is no blanket machinery provisions in the Central Excise law under which the liability to pay duty is transferred from the job work manufacturer to another person i.e. principal manufacturer. However when the principal manufacturer does not own up the liability to pay duty on finished goods, the provision of Notification No. 214/86-C.E., dated 25-3-1986 does not apply. In that case, it is the ultimate manufacturer i.e. the job worker who has to pay the duty. Following the procedure and conditions of the Notification (supra) only by the principal manufacturer, the job worker would be saved from payment of duty on goods manufactured by him.*
>
> *7.8 In the case under reference, the facts of non-payment of duty on final products by the principal manufacturer is not disputed. The goods received from the job worker were not used in the manufacture of dutiable final products but in goods on which no duty was paid. In such case when the principal manufacturer did not intend to pay duty on the final products, the job worker who is manufacturer of intermediate goods is liable to pay duty. Non-compliance of Notification No. 214/86-C.E., dated 25-3-1986 by the principal manufacturer has resulted into duty liability upon the job worker. Moreover, it is admitted by the appellant (job worker) that the inputs were not sent by the principal manufacturer under Notification No. 214/86-C.E. If the contention of the appellant is accepted it would lead to the situation where neither the principal manufacturer nor the job worker would pay duty, which has not been legislated.*

7.9 The appellant has relied upon the Tribunal's order in case of M/s. M. Tex & D.K. Processors P. Ltd. v. CCE, Jaipur - 2001 (136) E.L.T. 73 (Tri.-Del.) to support their views. However the facts are entirely different as the principal manufacturer was sending goods to the job worker in that case under Rule 57F(4) which reads as under :

> *"57F(4) - The inputs can also be removed as such or after they have been partially processed by the manufacturer of the final products to a place outside his factory under the cover of a challan specified in this behalf by the Central Board of Excise and Customs, for the purposes of test, repair, refining, re-conditioning or carrying out any other operation necessary for the manufacture of final products or for manufacture of intermediate products necessary for the manufacture of final products and return the same to his factory within a period of sixty days or such extended period as the Assistant Commissioner of Central Excise may allow in this behalf, for -*
>
> *(i) further use in the manufacture of the final product; or*
>
> *(ii) removing after payment of duty for home consumption; or*
>
> *(iii) removing the same without payment of duty under bond for export."*

Since the rule provided for exemption where the principal manufacturer pays duty on finished goods and therefore it was held that no duty is liable to be paid by the job worker. The job worker was exempted from payment of duty in case where the goods arising out of job work were to be used by the principal manufacturer either in the manufacture of goods on which duty was paid by him or were to be cleared as such on payment of duty. The said situation given in Rule (supra) cannot be equated with the present situation as Rule 4(5)(a) not being concerned with payment of duty but only limited to sending of cenvated inputs to the job worker.

7.10 In the present case the fact remains is that neither the goods after job work were cleared as such on payment of duty nor were used in manufacture of dutiable final products by the principal manufacturer. Hence the duty liability would be on the real manufacturer of goods i.e. the job worker. Since the principal manufacturer pays the duty on the product arising out of manufacture even at the job worker's end, he is eligible to avail credit. The Rule 4(5)(a) thus is a facility to the principal manufacturer to send goods for job work on which Cenvat has been availed. It is nothing to do with the duty payment of goods.

7.11 Rule 4(6) is a facility to the principal manufacturer to clear the goods directly from the premises of job worker after payment of duty. Notably it is not the case of the appellant that the principal manufacturer paid duty at anytime as the goods manufactured by him were exempted from duty. Thus the liability for payment of duty on such intermediate goods manufactured by the job worker is on job worker only."

16. In view of the facts aforesaid and the decision of the Larger Bench rendered in the matter, there remains no more any ambiguity on the subject. Discussions on other case laws are a mere repeat of the proposition that fulfillment of exemption notification conditions are mandatory to avail the benefit thereof. Very recently however, a decision on similar lines has also been rendered by this Tribunal in the case of **CCE vs. Sonex Marmo Grani Pvt. Ltd. [Final Order No. 50675-50677/2023 dated 18.05.2023].** Relevant paragraph of the said decision is reproduced herein:

"*19. Further, we note that in the present case, the transaction between job worker and principal manufacturer are on principal to principal basis. It is not in doubt that the marble slabs/tiles were manufactured by the job worker and the duty liability as per excise laws is only on the manufacturer. The duty liability can be shifted to the supplier of raw materials or semi-finished goods only if the supplier gives an undertaking in terms of the notification. We cannot accept the learned counsel's argument that this is a procedural lapse. We are of the opinion that this is a substantial condition which cannot be taken as a procedural condition, as it shifts the duty liability from the job worker to the supplier of raw materials or semi-finished goods. Until and unless this condition of giving undertaking is fulfilled, the duty cannot be fastened on the supplier of raw materials or semi-finished goods, as they were not the manufacturers of marble slabs/tiles. We note there are several case laws that have held that the condition of the exemption notification has to be construed strictly and if any condition is not fulfilled the same cannot be applied to a situation."*

17. As regards the other appeals filed by the Director and the Manager of the company to assail the imposition of penalty on the two, it may be pointed out that in view of the aforesaid discussions question of imposition of penalty in the matter does not survive. Also Shri R A Khemani, Director has since expired, death certificate in respect of which has also been furnished by the learned advocate for the respondent, and therefore, impugned appeal shall abate in terms of Rule 22 of the Customs Excise and Service Tax Appellate Tribunal Procedure Rules, 1982.

28. In view of the aforesaid discussions and the legal pronouncement on the subject, we feel the order of the learned Commissioner is not riddled with any infirmity and therefore, the appeals filed by the Revenue deserve to be dismissed. The Order-in-Original passed by the Adjudicating Authority is upheld and the appeals filed by the Revenue stand dismissed.

(Pronounced in the open court on 30.06.2023)

(JUSTICE DILIP GUPTA)
PRESIDENT

(RAJEEV TANDON)
MEMBER (TECHNICAL)

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