

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,  
KOLKATA  
EASTERN ZONAL BENCH: KOLKATA**

**Excise Appeal Nos. 199-201 of 2009**

(Arising out of Order-in-Original No. 77/Commr./CE/Kol-II/Adjn.2008-09 dated 23.01.2009 passed by Commissioner of Central Excise, Kolkata-II.

**i) M/s. Comet Technocom Pvt. Ltd.,**

**ii) M/s. Deo Krishan Mohta**

**iii) Shri Vivek Mohta**

Naskarpara, Kalitala, Baltikuri, Howrah.

**..Applicant(s)/Appellant (s)**

*VERSUS*

**Commissioner of Central Excise & S. Tax, Kolkata-II.**

15/1, Strand Road, (M.S. Building),  
Customs House, Kolkata-700001.

**..Respondent(s)**

**With**

**Excise Appeal Nos. 70151 of 2013, CO-70979 of 2013, E/70165-70166  
of 2013**

(Arising out of Order-in-Original No. 01/Denovo/Commr./CE/Kol-II/Adjn./2012-13 dated 30.11.2012 passed by Commissioner of Central Excise, Kolkata-II.

**Commissioner of Central Excise & S. Tax, Kolkata-II.**

**Applicant (S)/Appellant (s)**

*VERSUS*

**i) M/s Commet Technocom Pvt. Ltd,**

**ii) M/s Deo Krishan Mohta**

**iii) Shri Vivek Mohta**

**..Respondent (s)**

**APPERANCE :**

Shri Arijit Chakraborty, Advocate for the Appellant

Shri S. Mukhopadhyay, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR. P. K. CHOUDHURY, MEMBER (JUDICIAL)**

**HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)**

**FINAL ORDER Nos. 75260-75265/2023**

DATE OF HEARING : 21.03.2023

DATE OF PRONOUNCEMENT: 28<sup>th</sup> April, 2023

**PER P.K. Choudhury :**

That this Tribunal vide Final order No. F/77097-77102/2018 dated 14.12.2018 allowed the Assesee's Appeal Nos. E/199-201/2009 by setting

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aside Order-in-Original No. 77/Commr./CE/Kol-II/Adjn. 2008-2009 dated 23.01.2009 and rejected the Revenue appeals being nos. E/70151, 70165-70166/2013 arising out of O-I-O No. 01/Denovo/Commr./CE/Kol-II/Adjn/2012-13 dated 30.11.2012 upon the findings recorded at Para 16 to 21 thereof. In the "Order Forwarding Letter" the date of Order was mentioned as "05/12/2018" however.

2. That the Revenue preferred appeal being CEXA No. 57 of 2019 Commissioner of Central Excise, Kolkata-II v. M/s. Comet Technocom (P) Ltd., & Ors.] alongwith G.A. No. 2348 of 2019 before the Hon'ble High Court, Calcutta against the said Order dated 14.12.2018/ 05.12.2018 of this Tribunal. The Hon'ble High Court vide Order dated 03.02.2020 set aside the said Order dated 05.12.2018 of this Tribunal and directed the Tribunal to rehear and re-determine the issue upon hearing the parties and by passing a reasoned order, preferably within four months of communication of the said order upon the finding that ...

"In this case, the Tribunal, in our opinion, addressed the issue, without bearing in mind the above principle of law. We do not hesitate to say that the Tribunal has passed a detailed and well considered order. But for some reason this distinction between a manufacturer and an agent of the manufacturer and the liability to pay excise duty has not been investigated by it.

In those circumstances, we set aside the impugned order of the Tribunal dated 5<sup>th</sup> December, 2018 and direct it to rehear and re-determine the issue upon hearing the parties and by passing a reasoned order, preferably within four months of communication of this order."

3. The issue here is very short. The assessee sent materials to diverse job workers for manufacture of the final product. Only inspection of the finished goods was carried out at the premises of the assessee. If the job workers are proved to be the agents of the assessee who work under their supervision and control, then the assessee is the real manufacturer and not the job workers. Excise duty is payable by the assessee. On the other hand, if the job workers

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are proved to be independent contractors with little or no supervision by the assessee then they are the manufacturers and the liability of paying excise duty is with them. This issue was before the Supreme Court in Collector of Central Excise, Baroda Vs. M.M. Khambhatwala reported in 1996 (84) ELT 161 (SC). The Supreme Court observed in paragraph 7 as follows:-

*"7. We have considered the submissions advanced before us by the learned counsel on both the sides. We find force in the arguments of the learned counsel for the respondents: on the admitted facts which we will set out immediately the respondents cannot be considered as manufactures of agarbatti, amlapodi and dhup etc. manufactured in the premises of house-hold ladies as described above without the aid of power. The undisputed facts are that the respondents supplied raw materials for rolling incense sticks etc. to outside manufacturers and paid wages to them on the basis of number of pieces manufactured. Such manufacture was without the aid of power. There was no supervision over the manufacture. Incense sticks were put in packets and such packets were sold from the premises of the house-hold ladies and they did not go to the factory premises of the respondents. No doubt the sale proceeds went to the respondents but that will not the change the character of manufacture. If the conclusion is that the house-hold ladies were the real manufacturers then the decision of the Tribunal cannot be faulted. CEVAT after considering the materials before it concluded that the respondents are not the manufacturers of agarbati, amlapodi, dhup et. Manufactured by various cottage type manufacturers on job work basis. On the facts narrated above, we do not think that the assumption of the Collector that the respondents got the goods in question manufactured by 'hired labourers' can be sustained. On the other hand we find, on the facts, the house-hold ladies are the manufacturers of the goods in question and the liability to excise duty will be attracted on their manufacture of the goods and therefore, it cannot be clubbed with the goods manufactured in the factory premises of the respondents to deny the exemption claimed."*

4. That as such, the scope of remand before this Tribunal is for determination of the fact as to whether the job workers of the assessee were independent manufacturers or agent of the manufacturers in the parameter of

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the fact whether such job workers had undertaken the job of manufacture under supervision and control of the assessee company or not.

5. That the Ld. Commissioner of Central Excise, Kolkata-II Commissionerate in the Order-in-Original dated 30.11.2012, referred Supra, at Para 8.2 to 8.9 [internal page no. 22 to 26 in Appeal No. F/70151/2013] has reproduced the outcome of cross-examination of 7 job workers of the assessee company wherefrom it would be evident that such job workers were independent manufacturers having their independent man and machinery for manufacture of the goods. Before the Ld. Commissioner i.e. the Adjudicating Authority such job workers have categorically submitted that the assessee company i.e. M/s Comet Technocom (P) Ltd, had no supervision or control in such processes of manufacture apart from supply of raw-materials and visit through their employees for the purpose of counting of materials and verification of quality after manufacture. The said job workers further stated that they used to inform the assessee company herein after completion of manufacture of the goods only.

6. That the Ld. Commissioner further at para 9.7 & 9.14 (internal page no. 30 & 32 in Appeal No. E/70151/2013] of the O-I-O dated 30.11.2012 has held that it is evident from the fact that the job workers in question were independent manufacturers having little or no supervision by the assessee company herein. To be specific, the Ld. Commissioner has held at Para 9.14 that "such checks do not in any way imply that the whole manufacturing processes being undertaken at the job workers' premises were controlled and supervised by the said Noticee No. 1".

7. That the Ld. Commissioner has rightly relied upon the following decisions in this regard:-

(i) Ginne Steels Private Limited Vs. CCE [2005(183)ELT142]

(ii)ORG System Vs. CCE [1998 (102) ELT 3 (S.C.)]

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(iii) Kerala State Electricity Board Vs. CCE [1990 (47) ELT62]  
r/w [1992 (62) ELT A 52 (S.C.)].

8. That it is held in the Order dated 03.02.2020, referred supra, passed by the Hon'ble High Court, Calcutta in CEXA No. 57 of 2019, that if the job workers are proved to be independent contractors with little or no supervision by the assessee then they are the manufacturers and the liability of paying excise duty is with them. From the above it would be evident that in the present case, the job workers of the assessee company were independent contractors/manufacturers and hence, the assessee company and/or its directors cannot be saddled with any liability of payment of excise duty and/or consequential penalty with respect to the goods so manufactured by the said job workers.

9. Accordingly, Appeals Nos. E/199-201/2009 are allowed with consequential relief to the assessee company and its directors and the Appeals Nos. E/70151,70165-70166/2013 of the Revenue are rejected. Cross objection filed by the Respondent assessee also gets disposed of.

(Pronounced in the open court on...28<sup>th</sup> April, 2023...)

Sd/-  
**(P. K. Choudhury)**  
**Member (Judicial)**

Sd/-  
**(K. Anpazhakan)**  
**Member (Technical)**

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