

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. III

EXCISE APPEAL No.41503 of 2013

[Arising out of Order-in-Appeal No.113/2013 (M-II) dated 26.03.2013 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Chennai]

M/s.Tansi Pump Unit
C-14, Ambattur Industrial Estate,
Chennai 600 058.

: Appellant

VERSUS

The Commissioner of GST & Central Excise,
Chennai North Commissionerate,
No.26/1, Mahathma Gandhi Road,
Nungambakkam,
Chennai 600 034.

: Respondent

APPEARANCE:

Mr. P.C. Anand, Consultant
For the Appellant

Ms. K. Komathi, Additional Commissioner (A.R)
For the Respondent

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 40116 / 2023

DATE OF HEARING: 03.03.2023

DATE OF PRONOUNCEMENT: 07.03.2023

Per: Ms. SULEKHA BEEVI C.S

Brief facts are that the appellants are registered as manufacturer of hand-pumps, EB line material, Benches, Desks etc. They availed small scale exemption under Notification No.8/2003-CE dt. 1.3.2003 and after crossing the exemption limit were clearing the products on payment of

duty. Appellant also availed cenvat credit while paying duties on the finished product. On verification of records, it was found that appellant had converted steel scrap into angles and channels through job workers for which purpose they removed scrap under Rule 4 (5) (a) of Cenvat Credit Rules, 2004 to the job worker. The scrap so sent to the job worker was returned to the appellant as angles and channels. While so returning the goods to the appellant, the job worker discharged duty liability on angles and channels. The Department was of the view that the appellant ought to have paid duty on scrap while removing them to the job worker. Show cause notice 14.06.2012 was issued proposing *inter alia* to recover an amount of Rs.1,10,221/- as Central Excise duty on scrap removed to job worker for the period from September 2008 to February 2010, to demand interest thereon and for imposing penalty under Section 11AC of the Central Excise Act, 1944.

2. After due process of law, the adjudicating authority confirmed the demand along with interest and imposed equal penalty. On appeal, the Commissioner (Appeals) upheld the same. Hence this appeal.

3. Ld.Consultant Shri P.C. Anand appeared and argued for the appellant. He submitted that at the time of audit, the audit team was satisfied that the quantity despatched to the job worker had been brought back to the factory as converted into angles and channels. In fact, all the delivery challans were available and the demand has been quantified on the basis of such challans. Therefore, the show cause notice issued alleging suppression of facts is without any factual basis.

4. On merits of the case, the Ld. Consultant submitted that there is no duty liability on the scrap removed to the job worker. To support his argument, he relied upon the decision in the case of *Shree Shyam Pipes Pvt. Ltd. Vs CCE Noida* - 2006 (201) ELT 34 (Tri-Del.), *Wyeth Laboratories Ltd. Vs CCE Bombay* - 2000 (120) ELT 218 (Tri.-LB) and *National Torch & Tubes Vs CCE Mumbai-II* - 2004 (175) ELT 622 (Tri.-Bom.). Ld. Consultant adverted to Circular No.15/89 in F.No.261/76/2/88-CX.8 dated 19.04.1989 and submitted that the Board has issued instructions to permit movement of aluminium scrap generated during the process of manufacture and for converting the same into aluminium ingots and return thereof to the principal manufacturer. He prayed that the appeal may be allowed.

5. Ld. A.R Ms. K.Komathi supported the findings in the impugned order.

6. The issue to be considered is whether the appellant is liable to pay duty on the scrap that has been sent to the job workers for manufacture of intermediate products such as angles and channels. It is not disputed that removal of the scrap to the job worker was done as per Rule 4 (5) (a) of Cenvat Credit Rules, 2002. So also, it is not disputed that the job worker cleared intermediate goods in the nature of angles and channels to the appellant by paying duty and raising invoices. The Board in its circular dt. 19.04.1999 has given instructions as under :

"I am directed to invite your attention to the minutes of Point No.17 of the monthly Modvat meeting held on 6-2-1989 regarding liability of duty on turnings and borings of aluminium arising during the course of manufacture of pistons. Vide Board's telex of even No. dated 3-10-1988, it was clarified that scrap of Aluminium arising during the process of manufacture of Pistons out of Aluminium ingots cannot be permitted to be removed under rule 57F (2). This has resulted in unnecessary – paper work and difficulties to the assessees.

2. The matter has been re-examined by the Board. It has been decided to permit movement of aluminium scrap generated during the process of manufacture of pistons out of aluminium ingots under Rule 57F (2) for converting the same into Aluminium ingots and return thereof for subsequent manufacture of pistons."

7. The Tribunal in the case of *National Torch & Tubes* (supra) analysed the same issue and held as under :

“4. Before the lower authorities, it was claimed that, even if duty was to be paid at the time of removal of generated scrap, the assessee would get the consequential benefit of availing Modvat credit on the duty so paid, since there is no allegation of diversion of scrap to any other purpose. The Adjudicating authority held that the removal under Rule 57F(2) permits only the removal of inputs as such or the inputs which are partially processed. Separate Rule 57F(5) exists for removal of the scrap, hence scrap must be removed to the job worker only on payment of duty.

5. On this ground the demand was confirmed against the appellants. The Commissioner (Appeals)'s order reiterates the findings of the adjudicating authority.

6. During the hearing, the appellants placed reliance on Board's Circular No. 15/89. The said circular permits the manufacture to send the scrap to a job worker even under Rule 57F(2). From the above it is apparent that, despatch of aluminium scrap can either be under Rule 57F(2) (subject to compliance of procedure as prescribed there under) or also could be under Rule 57F(5) (which is specifically applicable to removal of scrap), on payment of duty. The manufacturer has an option to work under either scheme.

7. Accordingly, I hold that, there is no case for demanding duty from the appellants for despatch of aluminum scrap, during the period involved. The appeal succeeds and the same is allowed, and the impugned order is set aside."

8. After appreciating the facts and position of law made in the above decision, we are of the view that the demand cannot sustain and requires

to be set aside which we hereby do. The show cause notice dated 14.06.2012 is issued invoking the extended period. It is not disputed that the appellant has accounted the removal of scrap to the job worker as well as the clearance of the intermediate goods (angles and channels) by payment of duty. The Department has vaguely alleged that the appellant has suppressed facts with intention to evade payment of duty. There is no evidence to show that the appellant has done any positive act to deliberately suppress the facts so as to evade payment of duty. The appellant therefore succeeds on the ground of limitation also. The impugned order is set aside on merits as well as on the ground of limitation. Appeal is allowed with consequential relief, if any, as per law.

(pronounced in open court 07.03.2023)

Sd/-
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

Sd/-
(VASA SESAGIRI RAO)
MEMBER (TECHNICAL)

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