

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI**

**PRINCIPAL BENCH-COURT NO. II**

**Excise Cross Application No. 50947 of 2019  
in  
Excise Appeal No. 52070 of 2019**

[Arising out of Order-in-Appeal No. 450-451(CRM)CE/JDR/2019 dated 09.05.2019 passed by the Commissioner (Appeals), Central Excise & CGST, Jodhpur.]

**M/s Commissioner of Central Goods  
And Service Tax, Excise Customs, Udaipur**  
142-B, Sector-11, Hiran Magri,  
Udaipur, Rajasthan-313001

**APPELLANT**

VS.

**Sonex Marmo Grani Pvt Ltd**  
N.H.-8, Amberi,,  
Udaipur, Rajasthan-313001

**RESPONDENT**

WITH

**Excise Cross Application No. 50948 of 2019 (DB)  
in  
Excise Appeal No. 52091 of 2019**

(Arising out of Order-in-Appeal No. 469-470(CRM)CE/JDR/2019 dated 16.05.2019 passed by the Commissioner (Appeals), Central Excise & Central Goods & Service Tax, Jodhpur)

**Commissioner of Central Goods And  
Service Tax, Excise Customs, Udaipur**  
142-B, Hiran Magri,  
Sector-11, Udaipur-313001(Raj)

**Appellant**

VERSUS

**M/s Divyam Marble Udyog**  
N.H.-8, Amberi, Udaipur

**Respondent**

AND

**Excise Cross Application No. 50949 of 2019 (DB)  
in  
Excise Appeal No. 52092 of 2019**

(Arising out of Order-in-Appeal No. 460-461(CRM)/CE/JDR/2019 dated 15.05.2019 passed by the Commissioner (Appeals), Central Excise & Central Goods & Service Tax, Jodhpur)

**Commissioner of Central Goods And  
Service Tax, Excise Customs, Udaipur**

New Customs House, Near IGI Airport,  
New Delhi-110037

**Appellant***VERSUS***M/s Sonex Marble Pvt Ltd**

2393/114, Vidya Market,  
Chatta Shahji, Chawri Bazar,  
Delhi-110006

**Respondent****APPEARANCE:**

Mr. O.P. Bisht , Authorised Representative for the Appellant  
Mr. Bipin Garg, with Ms. J. Kainaat, Advocates for the Respondent

**CORAM:**

**HON'BLE MR.ANIL CHOUDHARY, MEMBER (JUDICIAL)**  
**HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)**

**DATE OF HEARING : 25.01. 2023**  
**DATE OF DECISION : 18-05-2023**

**FINAL ORDER No. 50675-50677 /2023**

**PER: HEMAMBIKA R PRIYA**

As the facts and circumstances are similar, we take the appeals together and deal with the facts of Appeal No. 52092 of 2019 of M/s Sonex Marble. The present appeals has been filed by the revenue / appellant challenging the Order-in-Appeal No. 460-461(CRM)CE/JDR/2019 dated 15.05.2019 whereby the learned Commissioner (A) Central Excise, Udaipur set aside the demand of Central Excise duty of Rs.1,43,42,824/-along with interest and penalty confirmed vide Order-in-Original No. 35/CE/UDR/2018-19-Jt.Commr. dated 28.02.2019.

1.2. The respondent M/s Sonex Marbles Pvt. Ltd. [hereinafter referred to as the assessee] was engaged in sawing marble blocks on job work basis for various parties. They were maintaining job work ledger and issuing job work invoice for the same. Raw material suppliers were sending the marble blocks directly to the assessee. It was noted that

the assessees did not maintain any kind of record for goods sent or received for job work.

1.3. It was also noted that none of the suppliers had filed any declaration before the Deputy/Assistant Commissioner of Central Excise having jurisdiction over the factory of the job worker that the said goods shall be used in or in relation to the manufacture of the final products in his factory or removed without payment of duty from his factory in certain cases or removed on payment of duty for home consumption from his factory or used in manufacture of goods by another job worker in terms of Notification No. 214/86-CE or Notification No. 84/94-CE dated 11.04.94 as amended.

1.4. The excise duty is on "manufacturing" and the duty liability arises when the goods are manufactured. The process undertaken on job work by the assessees, viz., sawing of 'marble blocks' into 'marble slabs' amounts to manufacture as a new article having a distinctive character or use has emerged from the said process.

1.5. Since the principal manufacturers had not undertaken the responsibilities of discharging the liabilities in respect of Central Excise duty leviable on the finished products as required under Notification No. 83/94-CE, 84/94-CE or 214/86-CE, the value of clearance of goods manufactured on job work basis were required to be considered along with the value of goods manufactured by the assessees on their own account for the purposes of ascertaining the eligibility of the Small-Scale Exemption Notification No.08/2003-CE dated 01.03. 2003. The assessees was eligible for aggregate value of clearance of 150 lakhs in each Financial year. As the assessees crossed the limit of 400 lakhs in financial year 2013-14, the small-scale exemption in terms of Notification No.08/2003-CE dated 01.03.2003 was not available to them from Financial year 2014 -15 onwards and duty was payable from first clearance.

1.6. Against the above background, Show Cause Notice dated 06.08.2018 was issued to the assessees demanding Central Excise duty amounting to Rs.1,80,11,679/-(for the period 2012 to 2015-16) along

with interest and penalty under Section 11A (4) Section 11AB and Section 11AC of the Central Excise Act, 1944.

2. The Show Cause Notice was adjudicated on contest by Additional Commissioner vide 34/CE/UDR/2018-19-Jt.Commr. dated 28.02.2019 whereby, the central excise duty liability calculated on the total quantity of Marble slab cleared in square meters for Rs. 1,66,07,824/- (CENVAT Rs. 1,63,33,603/-; Education Cess Rs. 1,82,814/-; and Secondary & Higher Education Cess Rs. 91,407/-) for the period 2012-13 to 2015 16 was confirmed along with interest and equal penalty was imposed. Demand amount of Rs. Rs. 14,03,945 calculated in excess in Show Cause Notice was dropped. The demand was confirmed on following grounds that: -

- i) The principal manufacturers who have sent their raw material for job work at the Appellant's premises have neither paid any Central Excise duty on these marble slabs manufactured by the Appellant on job work basis nor they undertook any option under Notification No. 83/94, 84/84 or 214/86 in as much, no undertaking was given by the principal manufacturers for use of such goods manufactured by the respondent on job workers in his factory and payment of duty on the same.
- ii) None of the supplier of raw material worked under job work procedure of Central Excise and these suppliers neither operated under Rule 4(5)(a) of Cenvat Credit Rules, 2004 nor ever undertook the responsibility of using such goods manufactured by others on job work basis in further manufacturing of dutiable goods or to discharge duty liability on such goods in terms Notification No. 83/94-CE, 84/94-CE or 214/86-CE as the case may be, as no declaration/undertaking under above said notifications were filed by the principal manufacturer. Hence, the requirement of the Notification was not complied. Therefore, the assessee as an independent manufacturer was liable to pay Central Excise duty on the marble slabs manufactured by him on job work basis. The benefit of the small-scale exemption was denied as value of the clearances exceeded the prescribed limit.
- iii) Valuation of the goods manufactured by the Appellant on job work basis was required to be worked out in terms of Rule 10A(ii) of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 (hereinafter referred to as

Valuation Rules, 2000), on the basis of sales price prevalent at the principal manufacturer's premises on the date when such slabs were cleared by the Appellant.

- iv) The quantity of the goods manufactured taken from the job work bills and the value of marble slabs manufactured on job work basis have been worked out as per Rule 10A(ii) of the aforementioned Valuation Rules, on the basis of sales price prevalent at the principal manufacturer's premises on the date when such slabs were cleared by the appellant as the marble slabs were not sold by the principal manufacturers from the premises of the job worker.
- v) For job worked marble slabs were neither the principal manufacturers nor the job worker provided the details, the sales prices were taken equivalent to the average price of marble slabs sold by the appellant in that financial year.
- vi) Accordingly, the value of goods manufactured on job work basis worked out for the financial years from 2012-13 to 2015-16 respectively and same added to the value of goods sold by the appellant for determining total value of clearances for the purpose of ascertaining eligibility of the Notification No. 08/2003-CE dated 01.03.2003. (SSI exemption)
- vii) The method adopted for the calculation of duty in the Show cause Notice was held correct except calculation error resulting excess demand of duty amounting to Rs.14,03,945/- which was dropped.

(emphasis supplied)

3. The assessee filed an appeal before the Commissioner (Appeals) against the order dated 28.02.2019 of the adjudicating authority, which was allowed by the Commissioner (A) vide Order-in-Appeal No. 450-451(CRM)CE/JDR/2019 dated 09.05.2019 on following grounds: -

- (a) impugned order being non-speaking is violative of principles of natural justice.
- (b) they are entitled to avail exemption under Notification No.83/94-CE on marble slabs cleared after job work.
- (c) the wrong method has been applied for valuation of job worked slabs.

- (d) the adjudicating authority has not analysed declarations of the principal manufacturers supplied by them for determining value of job worked goods.
- (e) the adjudicating authority erred in law by taking the deemed quantity of sale of job worked slabs which has been calculated on assumption and presumption without any reasonable basis.
- (f) the calculation of own turnover for the purpose of calculating turnover of Rs.150 Lakhs or Rs.400 Lakhs, the export turnover, exempted (non- excisable) turnover, trading turnover has been included. Similarly, duty on such turnover has also been calculated which was legally wrong.
- (g) the duty has been wrongly calculated because effective duty cannot exceed the duty prescribed by Central Excise Tariff i.e. duty calculated by Tariff.
- (h) the entire demand was time barred therefore the demand under Section 11(4) of CEA,1944 and penalty under Section 11AC of the CEA, 1944 has been wrongly confirmed/imposed(ix) the penalty @100% of duty amount has been wrongly imposed for the period upto 14.05.2015.
- (i) The appellant did not have the capacity and required machinery for polishing and other process in their unit and have done the job work of only sawing of rough green marble blocks into slabs. Court below have erred in calculating duty on the sale price of finished marble slabs (after polishing, edging repairing by epoxy resin application on cracks, netting, grading packing, trimming, buffing, colouring etc.)
- (j) The principal manufacturers for whom the appellant did job work, have further processed marble slabs and have mostly exported the goods through merchant exporters supported by declaration form (sales tax) VAT-15/H form.
- (k) The court below have ignored the evidence on record- Mr. Dilip Kumar Soni (Director) in his statement had stated that they are engaged in sawing of marble blocks for self and on job work basis, having two Gang saw machines. Appellant was charging Rs. 60/- per CFT as job charges. In some cases, jobs charges varied between Rs. 60/- to Rs. 100/-. It was also stated that the principal manufacturers upon delivery by the appellant, took the marble slabs to their premises and

after further proceedings, have sold the goods. This fact is also supported by the reply submitted by some of the principle manufactures – Grace Marble and Granite Pvt Ltd (sent to revenue), that they have received 586.339 CFT marble slabs after job work and they have sold the goods on payment of Central Excise Duty.

- (l) Appellant assessee also led evidence that the value of job work (including cost of blocks done by them) was about Rs. 20 per square feet and the sale price of the principal manufacturer was further higher by Rs. 7 to Rs. 10, due to further value addition by way of filling cracks, edge cutting, polishing, buffing, edging, etc.
- (m) The appellant also disputed the quantum of slabs, (calculated by Revenue) of marble manufactured from the marble blocks.
- (n) Chapter note to Chapter 25 of Central Excise Tariff provides that one cubic meter of marble block is deemed to generate 30 square meters of marble slabs. Thus, calculation of more quantity of slabs by revenue is erroneous.
- (o) As the marble blocks are of irregular shape (that is not of perfect rectangular shape) the marble slabs produced after cutting were also of irregular shape. The invoices of principal manufacturers considered for valuation by revenue are mostly of finished marble slabs that is after edge cutting, crack filling, epoxy polishing, buffing, etc.
- (p) The court below have erred in adopting separate formula for quantum of marble slabs, one for calculating the assessable quantity for duty purpose and the other at higher quantity for calculating sales.
- (q) The court below have ignored Rule 11 of the Central Excise Valuation Rules 2000, which provides that if the value of an excisable goods cannot be determined under the foregoing rules, the value shall be determined using reasonable means consistent with the principle and general provision of the Rules and Section 4(1) of the Act. Thus, in view of the ruling of the Apex court in Ujagar Prints, in the facts of the present case, valuation should be cost of raw material+job charges.

4. Aggrieved by the decision of Commissioner (A), the Department filed the present appeals on following grounds:

5. The Commissioner (Appeals) was pleased to allow the appeals of the respondent assessee on his findings that- the assessee has returned all the goods to the principal manufacturer(s) after job work, who further processed the same before sale. The principal manufacturer were not required to file declaration under job work exemption Notification No. 83/94-CE, as marble block are not excisable. Secondly, if principal manufacturer did not follow the procedure prescribed under Notification No. 83-/94-CE, duty liability lies on them and not on the assessee- job worker. The Commissioner (Appeals) also held that there is error in valuation adopted by revenue, as the assessee cleared rough marble slabs whereas the price adopted for valuation was clearly with respect to finished and polished marble slabs.

5. It was further held that the respondent assessee's sales were below threshold exemption limit as per Notification No. 8/2003-CE, and they were not required to be registered with the department. Also held that appellant was not liable to pay duty on the green marble slabs manufactured on job basis in terms of Notification No. 83/94-CE, as admittedly appellant has returned the marble slabs to the principal manufacturer. It is further observed that the Adjudicating Authority has not conducted enquiry from the principal manufacturers regarding (i) production process and machines used by them, (ii) quantum of marketable finished slabs manufactured from rough irregular marble slabs received after job work, (iii) sale price of the slabs in domestic market/export sales, (iv) quantum/ value of finished slabs exported which were manufactured from rough irregular marble slabs, received



after job work, and (v) no information regarding turnover of manufactured goods was obtained. It was also held that Rule 4(5) (a) of CCR is not relevant, as in the facts of this case, the principal manufacturers are not registered, being SSI Units working under SSI Exemption Notification No. 08/2003-CE. Revenue have not denied the fact that the principal manufacturers (except two) were not eligible for SSI exemption. Further held that the benefit of exemption Notification 84/94-CE available to a job worker cannot be denied on technical reasons, and duty is payable by the principal manufacturer, on crossing the SSI exemption limit. The Commissioner (Appeals) relying on the ruling in Commissioner vs. Bharat Electricals 2001-127-ELT-468 (Tri.-Delhi) held that-as no exemption from payment of duty was availed in respect of raw material or marble blocks, benefit of Notification No. 84/94-CE is available to the job worker.

6. The Commissioner (Appeals) also observed that the valuation done by revenue under Rule 10A is contrary to the said rule. As per the facts on record, respondent assessee has cleared white marble slabs (own manufacture), but the marble slabs cleared under job work were rough green marble slabs only. Further held that revenue have erred by adopting the sale price of the principal manufacturer for calculation of escaped turnover. Moreover, in view of the fact that the principal manufacturers have exported substantial part of their goods. In case of export, the price is higher than the domestic market as various risks are involved like money, transportations, etc. Further observed that as regards quantity of marble slabs manufactured on job work basis, no

consideration has been made for uneven corners, cracks etc. which are discounted in the trade by way of trade practice.

7. It was further observed that some of the Principal manufacturers including one M/s Kailash, Udaipur in their declaration sent to the department, confirmed that they undertake further processing after receiving the marble slabs from the job worker, which is valued about Rs. 6 per Square feet. Thus, the net price or value of job work will be (Rs. 24-6) or Rs. 18 per square ft. Thus, the value adopted by revenue for calculation of turnover is erroneous and not tenable. Further observed that the method of valuation adopted by revenue is contrary to Board circular No. 619/10/2002-CX dated 19.02.2002, where it have been made clear that the value of goods cleared by job worker will be intrinsic value of same/similar like goods, cleared from the premises of the job worker. Thus, revenue have erred in not taking the value of goods in the condition it is cleared by the job worker. It was further observed that most of the principal manufacturers have cleared the regular finished and polished green marble slabs @ Rs. 25 per square ft., after incurring further process cost of Rs. 7 to Rs. 10 per square ft. Thus, the transaction value for the respondent assessee shall not be more than Rs. 18 per square ft.

8. The Commissioner (Appeals) also observed that the adjudicating authority have failed to discuss the factual aspects placed by the assessee on record like year wise details of export turnover, exempted (non excisable) turnover, trading turnover and other excisable turnover duly supported by certificate of CA. These figures were already reflected

in the balance sheet of the relevant years which were part of RUD. Such facts on record have been ignored by the Adjudicating Authority.

9. He further observed that the goods exported are exempt from payment of duty under Rule 19 of CER, 2002, which authorizes to export excisable goods without payment of duty. Further marble slurry is a waste product and is Nil rated in the CETA under CTH 25309099. Marble blocks are also Nil rated in CETA under CTH 25151210. Further held that exports through merchant exporter supported by VAT 15/H form is not required to be considered for SSI Exemption. Relying on the ruling in CCE vs Udaipur Surgicals 2011(264)ELT 145 and also in CCE vs. Universal Packaging 2013 (292)ELT.191 (Bombay). He also observed that the duty have been wrongly calculated, as effective duty cannot exceed the duty prescribed under CETA.

10. It was further observed that the Adjudicating Authority has erred in not giving the benefit of tariff rate of duty on marble slabs or @ Rs. 30/60 per square meter (whichever is lower). The Adjudicating Authority failed to consider the legal position of law that effective duty in no case can exceed the duty calculated from tariff rate. Referring to Notification No. 12/2012-CE dated 17.03.2012 which prescribes duty on marble slabs @ Rs. 30/60 per square meter, reveals that exemption have been provided on the duty calculated from tariff rate from so much of such duty of excise, as is in excess of the amount calculated @ specified in the corresponding entry in column (4) of the table, which in the case of marble was Rs.30/60 per square meter. Thus, the ad volerum duty in excess of the specified rate of 30/60 per square meter

is exempted. There is no question of giving an option by the assesseees in this regard. Thus, the Adjudicating Authority has erred in observing that the assesseees did not opt to pay duty at tariff rate.

11. It was further observed that the assesseees have rightly discharged the duty in terms of provision of Section 5A(3) and duty cannot be demanded in terms of Notification No. 4/2006-CE dated 01/03/2006, as the same exceeds the duty leviable as per tariff rate which is the statutory duty and thus demand is not sustainable.

12. Aggrieved by the decision of the Commissioner (Appeals) the Department filed the instant appeal on following grounds :

12.1 Notification No. 83/94-C.E., allows exemption to the goods manufactured on job work from whole of the duty of excise leviable, subject to the condition that the supplier of the raw materials or semi-finished goods gives an undertaking to the proper officer having jurisdiction over the factory of the job worker.

12.2 The process undertaken on job work i.e. sawing of marble blocks into marble slabs amounts to manufacture and that a new article having a distinctive character or use has emerged from the said process. The job worker would be liable to pay duty of excise on the goods so manufactured unless the principal manufacturer, who has supplied the goods for job work, furnishes a declaration as required under the conditions prescribed therein. None of the supplier of raw material worker under job work procedure of Central Excise and these suppliers neither operated under Rule 4(5)(a) of Cenvat Credit Rules, 2004 nor ever undertook the responsibility of using such goods manufactured by others on job work basis in further manufacturing of dutiable goods or to discharge duty liability on such goods in terms Notification No. 83/94-CE, 84/94-CE or 214/86-CE as the case may be as no declaration/ undertaking under above said notifications were filed by

the principal manufacturer. Reliance is placed in the case FUSION POLYMERS LTD. Vs COLLECTOR OF CENTRAL EXCISE [1991 (56) E.L.T. 665 (Tribunal) and COMMISSIONER OF C. EX., GOA VS COSME FARMA LABORATORIES LTD. [2015 (318) E.L.T. 545 (S.C.)].

12.3 The law does not differentiate whether the incidence of manufacture is by way of job work or on account of the assessee undertaking such activity or in any other situation. Section 5A of the Central Excise Act, 1944 grants power to the Central Government to exempt generally either absolutely or subject to such conditions (to be fulfilled before or after removal) as may be specified in the notification, excisable goods of any specified description from the whole or any part of the duty of excise leviable thereon. The fact that the notification granting exemption to goods manufactured by a person on job work basis is issued under the provisions of the said section 5A which give emphasis to the stand that the goods manufactured on job work basis are chargeable to duty of excise.

12.4 Whether the Commissioner (Appeals) has corrected relied upon the declaration filed by the principal manufacturers without any verification or authentication which are against the provisions of law r/w relevant Notification No. 83/94-CE, 84/94-CE-214/86-CE.

12.5 Further urged that the Commissioner (Appeals) had erred in setting aside the Order-in-Original instead of remanding the matter back for verification and correct quantification of turnover and duty payable, with direction to the assessee to provide the desired information.

13. The assessee also filed cross objections on following points.

- i) Respondent was entitled for exemption under Notification No.83/94-CE dated 11.04.1994.
- ii) Neither Notification Nos. 214/1986 nor 83/94 -Ce cast liability to pay duty on respondent job worker, since goods manufactured have been sent to the principal

manufacturer, they were liable for duty as above notification cast responsibility on them.

- iii) Principal manufacturers are working under Small Scale exemption hence, are not liable to pay duty.
- iv) The adjudicating authority did not discuss the declaration filed by 23 principal manufacturers.
- v) Value adopted for duty liability was not correct.
- vi) Learned Commissioner (Appeals) had elaborately discussed all the issues and held that the respondent was not liable to pay duty, thus the impugned order is required to be upheld and appeals filed by revenue deserves to be rejected.
- vii) Respondent relied upon some decisions relating to the issue in support of his contention.

14. Sh. O.P.Bisht , the learned Authorised Representative appearing for the department supported the findings of the adjudicating authority and further submitted that:-

14.1. Since, none of the supplier of raw material worked under job work procedure of Central Excise and these suppliers neither operated under Rule 4(5)(a) of Cenvat Credit Rules, 2004 nor ever undertook the responsibility of using such goods manufactured by others on job work basis in further manufacturing of dutiable goods or to discharge duty liability on such goods in terms Notification No. 83/94-CE, 84/94-CE or 214/86-CE as the case may be, as no declaration/ undertaking under above said notifications were filed by the principal manufacturer, hence the requirement of the Notification is not complied. Therefore, the Assessees as an independent manufacturer was liable to pay Central Excise duty on the marble slabs manufactured by him on job work basis. The benefit of the small-scale exemption is to be denied as the value of the clearances exceeded the prescribed limit.

14.2. Valuation of the goods manufactured by the Appellant on job work basis was required to be worked out in terms of Rule 10A(ii) of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, on the basis of sales price prevalent at the principal manufacturer's premises on the date when such slabs were cleared by the Appellant.

14.3 In support of his contention, he placed reliance upon the following decisions:

- i) CCE Vs Hari Chand Shrigopal 2010(260) ELT-3(SC)].
- ii) Union of India Vs Ganesh Metal Processors Industries. [2003(151) ELT.21(S.C)
- iii) Comm. of Cus (Import), Mumbai Vs Dilip Kumar & and Comp [2018(361) E.L.T. 577(S.C.)];

15. On behalf of the Assessees, Shri Bipin Garg, learned advocate appeared and supported the findings of the appellate authority. He further stated that the Assessees was a job worker who was working below the exemption limit, so they were not required to pay the duty. Hence, job work goods were not liable for duty. The principal manufacturers are duty bound to follow or comply with the Notification, thus liability is on them to pay duty, not on job worker. All the principal manufacturers were working under Small Scale Exemption Notification No. 08/2003-Ce dated 01.03.2003, hence were not liable to pay duty as they didn't cross exemption limit. That the declarations submitted by the 23 principal manufacturers was not considered by the adjudicating authority.

16. The submissions advanced by the learned authorised representative for the appellant-Revenue and learned counsel appearing for the respondent-assessees have been considered. The issues which arise for our consideration are the following: -

16.1 Whether duty liability is of the job worker who actually manufactured the goods or the supplier of the inputs, unless the raw material supplier undertakes the responsibility of paying duty as per provisions of Notification No. Notification No. 83/94-CE, 84/94-CE or 214/86-CE.

16.2 Whether respondent was covered by the exemption Notification No. 83/94-CE, 84/94-CE or 214/86-CEand, therefore, entitled to the exemption from payment of excise duty.

16.3 Wrong availment of benefit of SSI exemption Notification No. 08/2003-CE dated 01.03.2003. and Notification No. 83/94-CE, 84/94-CE or 214/86-CE. resulting non-payment of duty on goods manufactured by the respondents as job worker.

**16.4 Whether duty have been rightly calculated.**

16.5 Whether the extended period of limitation is invocable in the facts and circumstances of the case: and

16.6 Whether appellant is liable for penalty for the contraventions of the provision of law.

17. We observe that Note (6) of the SECTION V of CHAPTER 25 of Central Excise Tariff Act,1985, in relation to products of headings 2515 and 2516, specifies that the process of cutting or sawing or sizing or any other process, for converting of stone blocks into slabs or tiles, shall amount to "manufacture". We note that the process undertaken by the respondent on job work i.e. sawing of marble blocks into marble slabs amounts to manufacture and that a new article having a distinctive character or use has emerged from the said process. The marble slabs manufactured by the respondent falling under chapter heading 2515 are new article having a distinctive character or use and marketable, therefore eligible to levy of excise duty.



17.1. A Manufacturer is the one who actually undertakes the manufacturing activity. A customer does not become manufacturer by merely supplying raw materials or getting goods manufactured according to his drawing or specification. Once the goods have been manufactured, duty liability arises and fastened on the manufacturer of the said goods as Central Excise duty is on 'manufacture'.

17.2 It is common in this industry to supply raw material to a job worker or processor and get the goods manufactured from him in his factory. In such cases, raw material supplier will not be treated as 'manufacturer' even if the raw material is supplied by them and right of rejection is retained by them. As per law, the excise duty is on manufacturing and therefore the duty liability arises only when the goods are manufactured during the job work. Some of the relevant decisions in this regards are as follows:

- i) **FUSION POLYMERS LTD. Vs COLLECTOR OF CENTRAL EXCISE [1991 (56) E.L.T. 665 (Tri.)**, it was held that job worker being independent units are the manufacturers.
- ii) **COMMISSIONER OF C. EX., GOA VS COSME FARMA LABORATORIES LTD. [2015 (318) E.L.T. 545 (S.C.)]**, it was held that job workers were liable to pay duty as they were carrying out manufacturing activity independently.
- iii) **Ujagar Prints v. UOI - 1989 (39) ELT 493 (SC)** (5-Member Constitution Bench), it was held that excise duty is on 'manufacture and production of goods' and liability to pay duty is not dependent upon whether the manufacturer is owner or not. Job worker is the manufacturer, even if raw material and designs were given by appellant.
- iv) **Raymond Ltd. v. CCE (2014) 308 ELT 151 (CESTAT)**: In **Mayo India Ltd. v. CCE 1999(113) ELT 1036** (CEGAT 3-member bench) also, it was held that job worker is the manufacturer and raw material supplier is not manufacturer if relationship is principal to principal basis.

17.3 From the facts on record, we find that the respondent assesseees have done the job work of sawing the green marble blocks and cleared the same as such (without finishing, polishing etc.) to the principal

manufacturers. It is the principal manufacturers who also have established units for processing of marble who have done the further process of finishing, polishing etc. and thereafter cleared the goods from their premises. Thus, we find that though the respondent assessee is liable to pay excise duty on the job work goods, we find that such duty have been wrongly calculated both with respect to the quantum of clearance and also the calculation of duty, as have been rightly observed by learned Commissioner (Appeals). Such observations have not been disputed by revenue.

18. We find that in the case of M/s Kartar Rolling Mills, [2006 (197) ELT 151 (SC)] the Supreme Court has held that unless there is an undertaking by the principal manufacturer that they would discharge the duty liability, the job worker is liable to discharge duty on the clearances from the premises of job worker. The Tribunal in the case of ETERNIT EVEREST LTD, versus COMMISSIONER OF CENTRAL EXCISE, BHOPAL [2010 (254) E.L.T. 507 (Tri. - Del.)] has been held that duty has to be demanded from job worker, and not from principal manufacturer, when transaction between the two are on principal to principal basis.

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.

20. In view of our aforementioned observations and findings, we allow the appeals of revenue by way of remand to the original Adjudicating Authority with the following directions:

- i) To calculate the quantum of marble slabs cleared on job work basis as per the formula prescribed in the tariff.
- ii) To calculate the duty on the job work by taking value of job work goods (including cost of marble blocks)
- iii) To recalculate the SSI exemption from the turnover after taking into account the exempt and export turnover.
- (iv) The penalty amount under Section 11AC shall also be modified accordingly.
- v) The respondent assessee shall be entitled to pay the reduced amount of penalty, upon such redetermination, in accordance with law.
- vi) We also direct the respondent assessee to appear before the Adjudicating Authority with a copy of this order and seek opportunity of hearing within a period of 45 days from the date of receipt of this order.

21. Thus the appeals and the cross objections is allowed by way of remand to the original adjudicating authority for de-novo adjudication.

(Pronounced in the open court on 18-05-2023 )

**(ANIL CHOUDHARY)**  
**MEMBER (JUDICIAL)**

**(HEMAMBIKA R. PRIYA)**  
**MEMBER (TECHNICAL)**