

2014 (2) ECS (220) (Tri.- Ahm.)

In the Customs, Excise & Service Tax Appellate Tribunal

West Zonal Bench, Ahmedabad

M/S. NATIONAL CONDUCTORS

VS.

CCE & ST., DAMAN

Date of Hearing: 19.03.2014

Date of Decision: 04.04.2014

Appeal No. E/893,894/2012 SM

[Arising out of order in appeal No. SRP/111-112/DMN/SDMN/2011-12 dated 05.09.2012 passed by the Commissioner (Appeals), Customs & Central Excise Customs Daman].

Appearance:-

Shri S D Gohil (Adv.)

for the appellant

Shri Alok Srivastava (AR)

for the respondent

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Mr. M.V. Ravindran, Hon'ble Member (Judicial)

Order No. A/10506-10507/2014 dt. 04.04.2014

There is no dispute as to the facts that the appellant had cleared finished goods manufactured out of their own raw material as job work items under job work challans. In my view, the lower authorities were correct in holding that the appellant should discharge the duty liability as the procedure for functioning under the job work is different and clearance of finished goods manufactured in the appellant's factory from his own raw materials is different... . The provision of job work scheme is totally different and needs to be followed in a manner prescribed which has been not done by the appellant (para 8)

Per : Mr. M.V. Ravindran;

These two appeal are directed against OIA No. SRP/11-112/SMN/SDMN/2011-12 dated 5.09.2012. Since the issue involve in this two appeals arise out of the same impugned order they are being disposed of by a common order.

2. The facts of the case in brief are that during the course of preventive checks in the appellant's unit it was observed that the appellant had received goods from their principal manufacture for carrying out job work. The appellants instead of clearing goods manufactured out of

the said raw materials received from their principal manufactures cleared their own manufactured finished goods under the cover of job work challans to principal manufactures during period from 15.05.2007 to 01.11.2007. A SCN dated 21.07.2011 was issued to the appellants demanding duty of Rs. 1266230 under Sec. 11A of Central Excise Act 1044 (hereinafter referred to as 'CEA') on their own challan alongwith interest under Sec. 11AB of CEA and imposition of Rules without payment of duty. Vide the impugned order the adjudicating authority confirmed the entire demand alongwith interest and imposed penalty of Rs. 1266230 on the appellant under Sec. 11AC of CEA read with Rule 25 of CER. Penalty of Rs. 317000 was also imposed on Shri Dilip C Modi partner of the appellant firm under Rule 26 of CER.

3. Aggrieved by such an order the appellant preferred the appeal before the first Appellate Authority. The First Appellate Authority after considering the issue raised before him in the personal hearing as well as ground of appeal upheld the OIO in respect of the individual partner of main appellant M/s. National Conductors but reduced penalty on the Individual partner of main appellant.
4. Learned Advocate appearing on behalf of the appellant gave an overall picture of the functioning and the issue in hand. It is his submission that the appellant M/s. National Conductor had received broken and used copper wire from their client under job work challan as per Rule 4 (v)(a) of Cenvat Credit Rule 2004 for conversion into copper rods. his submission that the appellant has sent this used copper wire for further job working by following the procedure and received back the same and use them for converting into copper rods. It is his submission that when the Departmental officers visited the partner of the appellant had specially stated that due to exigency/emergency at the end of the persons who had sent materials for job working they had cleared their own finished goods which was incidentally the same i.e. copper rods. It is his submission that subsequently the appellant had discharged Central Excise duty on the copper rods which were cleared by them which were manufactured out of job worked items. It is his submission that there was no evidence of corroborative nature to prove that there has clandestine removal of goods as the finished goods was sent back to main principal manufacture under job work challan. It is also submission that when the investigation took place in November 2007 panchnama, statements were recorded on the same date but Show Cause Notice was issued on 21.07.2011 hence demand cannot sustained for extended period. He would submit that at the most the appellant can be held to have violated the procedures but for that purpose there cannot be any demand of duty by invoking

extended period. For this proposition he would rely upon the following decision:

- i) M/s. Castwell Metal Industries-2001(137) ELT. 161
 - ii) M/s. Uniworth Textile Ltd- 2013(288) ELT. 161
 - iii) CCE Mangalore vs. Pals Microsystems Ltd.- 2011(270) ELT. 305
 - iv) M/s. Prashant Electrodes- 2006(196) ELT. 297
5. It is his submission that demands be set aside and their appeals be allowed.
 6. Learned Department Representative on the other hand draw my attention to the findings recorded by the Adjudicating Authority as well as First Appellant Authority. It is his submission that partner of the firm has accepted that they have cleared their own finished goods manufactured by them under the job work challan.
 7. I have considered the submission made at length by both sides and perused the records. I find that the only issue that arises for my consideration is whether the main appellant National Conductors could clear finished goods manufactured out of their own raw-materials without payment of duty under job work challans.
 8. There is no dispute as to the facts that the appellant had cleared finished goods manufactured out of their own raw material as job work items under job work challans. In my view the lower authorities were correct in holding that the appellant should discharge the duty liability as the procedure for functioning under the job work is different and clearance of finished goods manufactured in the appellant's factory from his own raw material is different. It is statutory requirement that the appellant should record all the production that took place in his factory premises out of his own raw material in the statutory books of account which were not done so as it is undisputed that the appellant had cleared the finished goods manufactured out of his own raw material to their clients. In my considered view record to be maintained by the appellant for the materials received for job working would show the balance of raw materials while finished to be manufactured were already dispatched. The provision of job work scheme is totally different needs to be followed in a manner prescribed which has been not done by the appellant.
 9. Another argument of the learned Advocate as regards Revenue neutrality has to be also discarded as the question of Revenue neutrality would arise only when the activities of clearance take place within the sister concern or their own units.

10. As regard the reliance placed by the Learned Counsel on the various judgment. I find that the facts those judgments were totally different than the facts as mentioned in this case. Hence the said ratio if the judgments, may not applicable in these cases.
11. In my considered view foregoing reasons there are no merits in the appeal. The impugned order is upheld and appeals are rejected.