CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH, COURT NO. 1

SERVICE TAX APPEAL NO. 50200 OF 2020

[Arising out of the Order-in-Appeal No. 277 (CRM) CE/JPR/2019 dated 07/10/2019 passed by Commissioner (Appeals), Central Excise & CGST, Jaipur.]

M/s Agrawal Metal Works Pvt. Ltd., **...Appellant**
SPL-144, RIICO Industrial Area, Phase – I,
Bhiwadi – 301 109, District : Alwar (Raj.).

Versus

Commissioner of Central Goods and Service Tax, **...Respondent**
A Block, Surya Nagar,
Alwar – 301 001.

APPEARANCE:

Shri T.R. Rustagi, Advocate for the appellant.
Shri Ravi Kapoor, Authorized Representative for the Department

CORAM:
HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 50625/2022

DATE OF HEARING : 07.07.2022
DATE OF DECISION: 19.07.2022

P.V. SUBBA RAO

M/s Agrawal Metal Works Pvt. Ltd.[1] has filed this appeal assailing the order-in-original dated 07.10.2019[2] passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur, whereby he rejected the appellant's appeal against the order-in-original dated 21.02.2019 passed by the Additional Commissioner.

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[1] **appellant**
[2] **impugned order**

2. The appellant is registered with the Central Excise Department and manufactures Copper Wire, Brass Wire, Copper Sheet and Brass Sheet and has been paying central excise duty, as appropriate. In addition, the appellant also undertakes for other firms job work of converting copper and copper alloys. In respect of the job work, the appellant availed exemption from central excise duty under Notification No. 214/86-CE dated 25.03.1986. As per the scheme of this notification, the appellant would clear intermediate goods to the supplier of the raw material who would complete the manufacturing process and pay excise duty on the final product at his end. It is undisputed that this job work has been taking place for a long time and that the appellant has been claiming the benefit of the aforesaid exemption of notification. On 18.06.2018, a show cause notice[3] was issued by the Additional Commissioner, CGST (Audit), Jaipur stating that the job work carried out by the appellant is "an exempted service" and since the appellant had not maintained separate records in respect of the common inputs and input services used for manufacture of its dutiable final products and for providing this exempted service, it was required to pay an amount as per Rule 6(3) of the Cenvat Credit Rules, 2004[4]. Accordingly, a demand was made on the appellant for an amount under Rule 6 (3), equal to 7% of the value of the exempted services. In the SCN, the appellant was called upon to explain, as to why:

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[3] **SCN**
[4] **CCR**

> "(i) An amount of Rs. 1,67,85,366/- not paid by them in terms of Rule 6 (3) (i) of CCR, 2004, as they were required to pay 7% of value of exempted service, should not be demanded and recovered from them under the provisions of Rule 14 of the CENVAT Credit Rules, 2004 read with proviso to Section 73 (1) of the Finance Act, 1994.
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> (ii) Interest under provisions of Rule 14 of the CENVAT Credit Rules, 2004 read with Section 75 of the Finance Act, 1994 should not be demanded and recovered from them on the above amount so not paid, since due, and
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> (iii) Penalty under Rule 15 of the CENVAT Credit Rules, 2004 read with Section 78 of the Finance Act, 1994, should not be imposed upon them".

3. The appellant contested the SCN on the ground that it was not rendering any service, but was manufacturing goods on job work basis for the principal and has been availing the benefit of Central Excise Notification No. 214/86-CE dated 25.03.1986. The Department was well aware of this fact. Since its activity amounts to manufacture it cannot also simultaneously become a service. Therefore, no demand can be raised for reversal of an amount equal to 7% of the value of the job work under Rule 6 (3) of Cenvat Credit Rules.

4. Not agreeing with the submissions, the Original Authority has passed the following order :-

> "(i) I confirm the demand of amounting to Rs. 1,67,85,366/- (Rupees One Crore Sixty Seven Lakhs Eighty Five Thousand Three Hundred and Sixty Six only) payable under Rule 6 (3) (i) of the CENVAT Credit Rules, 2004 and order to recover the same from M/s Agrawal Metal Works Pvt. Ltd., SP-144, RIICO Industrial Area, Phase-I, Bhiwadi Distt. Alwar, Rajasthan under Rule 14 (1) (ii) of the CENVAT Credit Rules, 2004 read with proviso to Section 73 (1) of the Finance Act, 1994.

(ii) I confirm demand of interest to be charged at the applicable rate on the above confirmed amount of Rs. 1,67,85,366/- (Rupees One Crore Sixty Seven Lakhs Eighty Five Thousand Three Hundred and Sixty Six only) and order to recover the same from M/s Agrawal Metal Works Pvt. Ltd., SP-144, RIICO Industrial Area, Phase-I, Bhiwadi Distt. Alwar, Rajasthan under Rule 14 (1) (ii) of the CENVAT Credit Rules, 2004 read with proviso to Section 75 of the Finance Act, 1994.

(iii) I impose a penalty of Rs. 1,67,85,366/- (Rupees One Crore Sixty Seven Lakhs Eighty Five Thousand Three Hundred and Sixty Six only) on M/s Agrawal Metal Works Pvt. Ltd., SP-144, RIICO Industrial Area, Phase-I, Bhiwadi Distt. Alwar, Rajasthan and order to recover the same from them under Rule 15 (3) (ii) of the CENVAT Credit Rules, 2004 read with proviso to Section 78 (1) of the Finance Act, 1994. However, M/s Agrawal Metal Works Pvt. Ltd., SP-144, RIICO Industrial Area, Phase-I, Bhiwadi Distt. Alwar, Rajasthan, has liberty to pay reduced amount of penalty as laid down in the clause (ii) of second Proviso to Section 78 (1) of the Finance Act, 1994, if the amount of demand confirmed at (i) above and interest leviable thereon is paid within a period of thirty days of the date of receipt of this order, the penalty shall be twenty-five per cent of the demand confirmed in this order subject to the condition that such reduced penalty is also paid within such period".

5. This order was upheld by the Commissioner (Appeals) by the impugned order and, hence, this appeal.

6. Learned Counsel for the appellant has submitted as follows:-

(1) The appellant has been doing job work for several years and has been availing the benefit of Central Excise exemption Notification No. 214/86-CE dated 25.03.1986 which the Department was aware of. This exemption notification only defers the payment of central excise duty as it is paid by the supplier of raw materials after manufacturing the finished product and not paid by the appellant only manufactures the intermediate product. At

no point of time, has the Department in the past contended that the appellant was not manufacturing at all and its job work does not amount to manufacture. In the SCN, the Department has contended that the activity of job work is an exempted service as defined in clause (e) of Rule 2 of CCR as by virtue of Clause (f) of Section 66D of the Finance Act, 1994, any process amounting to manufacture of production of goods is covered under the negative list. As the appellant was only rendering the service and was not manufacturing goods, the appellant has taken credit of common input services used in dutiable goods and exempted service, and hence was liable to pay an amount equal to 7% of the value of exempted service as job work in terms of Rule 6 (3) of CCR.

(2) The Department's interpretation is not correct since the appellant was manufacturing intermediate goods and were not rendering any service. The same activity cannot be both a manufacture (which falls under the Central Excise Act) and service (which falls under Chapter V of the Finance Act, 1994). The goods manufactured and removed under exemption Notification No. 214/86-CE dated 25.03.1986 are not exempted goods, but only goods where the payment of duty is deferred. Therefore, they were manufacturing dutiable goods on job work basis and were not rendering any exemption service. Reliance is placed on the following case laws :-

(a) **Bentley & Remington Pvt. Ltd. Versus Commissioner of Central Excise, Bangalore**[5]

[5] **2016 (46) S.T.R. 671 (Tri. – Bang.)**

(b) **Aurangabad Auto Engineering Pvt. Ltd. Versus Commissioner of Central Excise, Aurangabad**[6]

(c) **Western India Forging P. Ltd. Versus Commissioner of Central Excise, Pune**[7]

(d) **Polycab Industries versus Commissioner of Central Excise, Daman**[8]

7. It is on the basis of the aforesaid submissions that the learned Counsel submitted that the demand is not sustainable on merits. Learned Counsel further submitted that the notice is time-barred as all facts of the appellant activities are within the knowledge of the Department. Further, as the demand itself is not sustainable on merits the question of imposition of penalty also does not arise. It has, therefore, been submitted that the appeal may be allowed and the impugned order may be set aside.

8. On behalf of the Revenue, learned Authorized Representative reiterated the findings of the impugned order and the order-in-original. He further placed reliance on the judgment of the Supreme Court in the case of **Commissioner of Customs (Import), Mumbai versus M/s Dilip Kumar and Company & Ors.**[9] He prayed that the appeal may be dismissed.

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[6] **2015 (40) S.T.R. 776 (Tri. – Mumbai)**
[7] **2014 (36) S.T.R. 637 (Tri. – Mumbai)**
[8] **2010 (19) S.T.R. 585 (Tri. – Ahmd.)**
[9] **2018 (361) E.L.T. 577 (S.C.)**

9. We have considered the submissions on both sides and perused the records.

10. It is undisputed that the appellant has been manufacturing goods on job work basis and has been clearing them without paying duty as per the Notification No. 214/86-CE dated 25.03.1986. If the activity amounted to manufacture- which has not been disputed by the Revenue at all in the past- it cannot also simultaneously become a service. If the processes undertaken by the appellant on job work did not amount to manufacture and was only a service, Revenue should have said so while assessing its central excise returns. Revenue should have informed that the appellant that it was not liable to pay any central excise duty at all and there was no need to claim the benefit of exemption Notification No. 214/86-CE dated 25.03.1986. Having accepted the excise returns claiming the process to be manufacture and knowing that the appellant was claiming the exemption notification from Excise duty, Revenue cannot at the same time take a stand that the processes amount to rendering a service and that such service was an exempted service. If Revenue was of the opinion that it's original position was not correct and no manufacture was involved at all in the process undertaken by the appellant it should have brought out cogent reasons for holding so. Therefore, there is no basis for the allegation in the show cause notice that the appellant was rendering an exemption service when it was manufacturing dutiable goods.

11. Further, we find that the demand has been made under Rule 6 (3) of CCR, 2004. It has been held by the Hon'ble High Court of Andhra Pradesh and Telangana in the case of **Tiara Advertising versus Union of India**[10] that the various options under Rule 6 are options given to the assessee and the Revenue cannot choose one of the options and force it upon the assessee. Even if the assessee is rendering exempted services or manufacturing exempted goods and using common input services no demand can be sustained under Rule 6 (3) as this is only one of its options available to assessee to fulfill its objection. Relevant portion of the judgment of Hon'ble High Court are reproduced below :-

> **"7. Rule 6 of the Cenvat Credit Rules, 2004 deals with the obligations of a provider of taxable and exempted services. Rule 6(1) states that Cenvat Credit shall not be allowed on inputs/input services exclusively used for providing exempted services. Rule 6(2) provides that if inputs or input services are used for provision of output services which are chargeable to duty or tax as well as exempted services, then separate accounts are to be maintained for receipt, consumption and inventory of inputs and receipt and use of input services and the provider shall take credit only on inputs used for dutiable output services. Rule 6(3) of the Cenvat Credit Rules, 2004 is relevant for the purpose of this case and states to the effect that a provider of output services who opts not to maintain separate accounts, as required under Rule 6(2), should follow any one of the options provided under Clauses (i) to (iii) thereunder, as applicable to him. Clause (i) provides for the option of paying an amount equal to 5% of the value of the exempted services. Pursuant to Notification No. 18/2012, dated 17-3-2012, the amount to be paid under Clause (i) was increased to 6% with effect from 1-4-2012.**
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> **9.** It may be noted that there is no controversy with regard to the entitlement of the petitioner to avail Cenvat Credit but for this disputed amount of Rs. 17,15,489/- out of the total extent of Rs.

[10] **2019 (30) G.S.T.L. 474 (Telangana)**

1,41,51,903/-. While so, the second respondent issued show cause notice dated 19-4-2016 to the petitioner proposing to choose the option under the aforestated Rule 6(3)(i) on its behalf and calling upon it to explain as to why it should not be directed to pay an amount of 5%, upto 31-3-2012, and 6%, from 1-4-2012, of the value of the exempted services, aggregating to Rs. 3,52,65,241/-. In its reply dated 16-5-2016, the petitioner contended that it was wholly unreasonable on the part of the authorities to expect it to pay over Rs. 3.50 Crore when the total Cenvat Credit availed by it was less than Rs. 1.50 Crore and the actual dispute boiled down to a mere Rs. 17,15,489/-. It relied on case law to support its contention that such an unreasonable result could not be allowed to follow by application of the law. The impugned Order-in-Original however reflects that the second respondent did not even advert to the case law cited before him.

14. Further, we may reiterate that Rule 6(3) of the Cenvat Credit Rules, 2004, merely offers options to an output service provider who does not maintain separate accounts in relation to receipt, consumption and inventory of inputs/input services used for provision of output services which are chargeable to duty/tax as well as exempted services. If such options are not exercised by the service provider, the provision does not contemplate that the Service Tax authorities can choose one of the options on behalf of the service provider. As rightly pointed out by Sri S. Ravi, Learned Senior Counsel, if the petitioner did not abide by the provisions of Rule 6(3) of the Cenvat Credit Rules, 2004, it was open to the authorities to reject its claim as regards the disputed Cenvat Credit of Rs. 17,15,489/-.

15. We may also note that in the event the petitioner was found to have availed Cenvat Credit wrongly, Rule 14 of the Cenvat Credit Rules, 2004 empowered the authorities to recover such credit which had been taken or utilised wrongly along with interest. However, the second respondent did not choose to exercise power under this Rule but relied upon Rule 6(3)(i) and made the choice of the option thereunder for the petitioner, viz., to pay 5%/6% of the value of the exempted services. The statutory scheme did not vest the second respondent with the power of making such a choice on behalf of the petitioner. The Order-in-Original, to the extent that it proceeded on these lines, therefore cannot be countenanced".

12. Thus, the demand of an amount under Rule 6(3) of CCR cannot be sustained even if the appellant was rendering exempted services and had taken CENVAT credit on common inputs/input services. The impugned order, therefore, cannot be sustained and is liable to set aside.

13. The impugned order is, accordingly set aside and the appeal is allowed with consequential relief, if any.

(Order pronounced in open court on 19/07/2022.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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