

DINESH TEXTILES

A

v.

COMMISSIONER OF CENTRAL EXCISE,
CUSTOMS AND SERVICE TAX, CALICUT

(Civil Appeal Nos. 9740–9741 of 2018)

FEBRUARY 28, 2019

B

[UDAY UMESH LALIT AND INDU MALHOTRA, JJ.]

Central Excise Rules, 2002:

*r. 12B – Liability of dealer/trader of textiles and textile articles
– To pay duty for the goods manufactured through job workers – Appellants-traders supplied raw material to more than 70 job workers and cleared cotton fabrics and cotton made-ups to the tune of more than Rs. 1.45 crores without paying any duty – Show cause notices demanding duty from the appellants – Stand of appellants that job workers were the manufacturers and hence there was no liability on the traders – Adjudicating authority held that appellants were not liable – However, in appeal, appellate authority as well as appellate Tribunal held that the appellants were liable to pay the duty – In appeal, held: Section 12B introduces a legal fiction that in case conditions stipulated therein are satisfied, the person concerned is to be treated as an assessee – If the person is an assessee, all the clearances by him so long as they come within parameters of r. 12B, would make him liable – The Exemption Notification also does not put the matter at individual clearances of job workers and what is to be considered is an aggregate value of the clearances – Therefore, it was not the individual clearance of one single job worker alone, exceeding the limit of Rs. 25 lakhs, but the aggregate of all clearances made by the appellant-trader, was liable to duty – Central Excise Act, 1944 – Central Excise Tariff Act, 1985 – Chapters 52 and 53.*

C

D

E

F

Dismissing the appeals, the Court

HELD: 1.1. According to Rule 12B of Central Excise Rules, 2002 dealing with “job work in textiles and textiles articles”, any person who gets yarn or fabrics; or readymade garments or made up textile articles falling under Chapters mentioned in Rule

G

H

- A 12B produced or manufactured on his account on job work shall obtain registration, maintain accounts and pay duty leviable on such goods as if he is an assessee. If the conditions in Rule 12B are satisfied, the liability on such person gets fixed “as if he is an assessee”. [Para 14][788-G, H]
 - B 2. The Exemption Notification dated 30.04.2003 exempts “first clearances for home consumption, upto an aggregate value not exceeding twenty lakh rupees...”. The emphasis is on the aggregate value and what is exempted is, “...upto an aggregate value”. The conditions stipulated in Para 2 of said Exemption Notification, specially clauses (i) and (ii) again emphasize the applicability in respect of “aggregate value of clearances for home consumption and not separately regarding individual clearances”. The extent of limits was raised by subsequent Notification dated 17.05.2003. The language of the exemption Notification as amended, is quite clear. However, certain doubts
 - C D arose which were clarified by Circular dated 30.10.2003. [Paras 14 and 15][789-A-C]
 - 3. If Rule 12B introduces a premise that if the conditions in said Rule are satisfied, the person concerned is an assessee for all purposes, it does not stand to reason how third illustration
 - E F G H in Circular dated 30.10.2003 fits in the scheme of Rule 12B as well as the Exemption Notification. What Rule 12B introduces is nothing but a legal fiction that in case the conditions stipulated therein are satisfied, the person concerned is to be treated as an assessee. If he is an assessee, all the clearances by him so long as they come within the parameters of Rule 12B, would make him liable. The Exemption Notification again does not put the matter at individual clearances of job workers and what is to be considered is an aggregate value of the clearances. It is well settled that if a legal fiction is introduced, that legal fiction must be taken to the logical end. [Para 16][789-F-H; 790-A]
 - 4. For the present purposes, second illustration in the Circular dated 30.10.2003 is more appropriate. According to said illustration, the moment the clearances go beyond the limit, the liability gets fastened in respect of the aggregate value of

clearances. If the submission made by the Appellant is accepted to be correct, the second illustration would have exempted all the clearances in respect of 'A', 'B' and 'C'. Again, if the contention of the Appellant is accepted, a dealer may get the goods referred to in Rule 12B manufactured from several job workers to ensure that the value of the clearances from each job worker is less than the limit prescribed for individual clearances. In such a case the emphasis in the Rule regarding aggregate clearances would be rendered meaningless. [Para 17][790-C-D]

A

5. The assessment made by the Appellate Authority and the Tribunal was, therefore, correct. Consequently, it was not the individual clearance of one single job worker alone exceeding the limit of Rs.25 lakhs but the aggregate of all clearances made by the Appellant, was liable to duty. [Para 18][790-E]

B

Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum and others (1978) 3 SCC 383 : [1978] 3 SCR 761 – relied on.

C

East End Dwelling Co. Ltd. v. Finsbury Borough Council (1952) AC 109, 132 = (1951) 2 ALL ER 587 – referred to.

D

Case Law Reference

[1978] 3 SCR 761	relied on	Para 16	E
(1951) 2 ALL ER 587	referred to	Para 16	

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9740-9741 of 2018

E

From the Judgment and Order No. 20115 of 2018 dated 06.02.2018 and Misc. Order No. 20697 of 2018 dated 15.06.2018 of the Customs Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore in Central Excise Appeal No. E/370/2008-DB

F

S. Durai Raj, S. Sukumar, Bhupesh Kr. Pathak and Ms. Meera Mathur, Advs., for the Appellant.

V. Shekhar, Sr. Advocate, Ms. Sunita Rani Singh, D. N. Goburdhun, B. Krishna Prasad, N. P. Rakeesh Panikar, Nishad L. S., Anuj K. Verkey and Ms. Manju Jetly, Advs., for the Respondents.

G

H

- A The Judgment of the Court was delivered by
UDAY UMESH LALIT, J.
- B 1. These appeals filed under Section 35L of the Central Excise Act, 1944 (hereinafter referred to as “the Excise Act”) question the correctness of the Final Order dated 06.02.2018 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore (hereinafter referred to as “the Tribunal) in Central Excise Appeal No.E/ 370/2008-DB and Misc. Order No.20697 of 2018 dated 15.06.2018 passed by the Tribunal rejecting application seeking rectification of mistake.
- C 2. The Appellants are traders who get cotton fabrics and made-ups mentioned in Chapters 52 and 53 of the Central Excise Tariff Act, 1985 (the ‘Tariff Act’, for short) manufactured through job workers.
- D 3. On 25.03.2003 Rule 12B was inserted in Central Excise Rules, 2002 to deal with “Job work in textiles and textile articles”. The relevant portion of Rule 12B is as under:
- “RULE 1¹[12B. Job work in textiles and textile articles. –**
- E (1) Notwithstanding any thing contained in these rules, every person (not being an export-oriented unit or a unit located in special economic zone) who gets ²[yarns or fabrics falling under Chapter 50, 51, 52, 53, 54, 55, 58 or 60, readymade garments falling under Chapter 61 or 62 or made up textile articles falling under Chapter 63 of First Schedule to the Tariff Act] produced or manufactured on his account, on job work (herein after referred to as “the said person”) shall obtain registration, maintain accounts, pay duty leviable on such goods and comply with all the relevant provisions of these rules, as if he is an assessee :
- Provided that the job worker may, at his option, agree to obtain registration, maintain accounts, pay the duty leviable on such goods, prepare the invoice and comply with the other provisions of these
- G

¹ Inserted by M.F. & C.A. (D.R.) Notification No.24/2003-C.E. (N.T.), dated 25-03-2003

² Substituted by M.F. & C.A. (D.R.) Notification No.27/2003-C.E. (N.T.), dated 1-4-2003.

rules. In such a case the provisions of these rules shall not apply to the said person. The job worker, may, at his option, authorize the said person to, on his behalf as his agent, maintain accounts, pay duty, prepare invoice and comply with any of the provisions of these rule except that of rule 9 : A

Provided further that the job worker may make an option to undertake the activities mentioned in this sub-rule as an agent or person authorized by the said person and in such a case, the said job worker shall be deemed to be the said person.....” B

4. Soon thereafter Exemption Notification was issued by the Government of India on 30.04.2003 wherein exemption was granted for clearances upto Rs.20 lakhs in respect of processes falling under Chapters 51, 52, 54, 55, 58 or 60 of the First Schedule to the Tariff Act. The substantive part of the Notification was as under: C

“In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts first clearances for home consumption, upto an aggregate value not exceeding twenty lakh rupees made on or after the 1st day of April in any financial year, of fabrics, not subjected to any process falling under Chapter 51, 52, 54, 55, 58 or 60 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (herein after referred to as the specified goods), from the whole of the duty of excise specified thereon in the First Schedule to the said Central Excise Tariff Act and the First Schedule to the said Additional Duties of Excise (Goods of Special Importance) Act : D

Provided that during the financial year 2003-2004, the exemption contained in this notification shall apply to the first clearances for home consumption of the specified goods, upto an aggregate value not exceeding twenty lakh rupees made on or after the 30th day of April 2003. E F G

H

- A 2. The exemption contained in this notification shall apply subject to the following conditions, namely,-
- (i) where a manufacturer clears the specified goods from one or more factories, the exemption in his case shall apply to the said aggregate value of clearances for home consumption and not separately for each factory;
- B (ii) where the specified goods are cleared by one or more manufacturers from a factory, the exemption shall apply to the said aggregate value of clearances for home consumption and not separately for each manufacturer;
- C (iii) the aggregate value of clearances for home consumption of specified goods, by the said manufacturer from one or more factories, or from a factory by one or more manufacturers, does not exceed twenty five lakh rupees in a financial year :
- D Provided that in the financial year 2003-2004, the exemption shall apply only if the aggregate value of clearances of specified goods, by a manufacturer from one or more factories, or from a factory by one or more manufacturers, does not exceed twenty five lakh rupees during the period beginning from the 30th day of April, 2003:
- E Provided further that in any financial year, if the aggregate value of clearances for home consumption of specified goods exceeds twenty five lakh rupees, or as the case may be, in the financial year 2003-2004, if the aggregate value of clearances for home consumption of specified goods during the period beginning from the 30th day of April, 2003 exceeds twenty five lakh rupees, the said manufacturer shall pay the amount of duty as payable, on the said first clearances of the specified goods of twenty lakh rupees, but for the exemption contained in this notification, within thirty days of the day when such clearance exceeds the said twenty five lakh rupees;
- F (iv) the manufacturer shall keep all documents relating to purchase of yarns;"
- G 5. By further Notification No.47/2003-CE dated 17.05.2003 the earlier notification dated 30.04.2003 was amended as under:

H

S. No.	Notification No. and date	Amendments
(1)	(2)	(3)
1.	34/2003- Central Excise, dated the 30 th April, 2003	In the said notification, - (i) for the words "thirty lakh rupees" wherever they occur, the words "forty lakh rupees" shall be substituted; (ii) for the words "twenty five lakh rupees" wherever they occur, the words "thirty lakh rupees" shall be substituted.
2.	35/2003- Central Excise, dated the 30 th April, 2003	In the said notification – (i) for the words "twenty five lakh rupees" wherever they occur, the words "thirty five lakh rupees" shall be substituted; (ii) for the words "twenty lakh rupees" wherever they occur, the words "twenty five lakh rupees" shall be substituted.
3.	36/2003- Central Excise, dated the 30 th April, 2003	In the said notification, - (a) in the opening paragraph, after item number (iv), the following shall be inserted namely.- "(v) terry towels falling under Chapter 63; vi) woollen blankets, of yarn of shoddy, falling under Chapter 63"; b) in paragraph 2, for the words "thirty lakh rupees" wherever they occur, the words "thirty five lakh rupees" shall be substituted.

A

B

C

D

E

F

G

6. Since there were doubts regarding extent of applicability of the aforesaid Exemption Notifications, a Clarification was issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise & Customs, New Delhi vide circular dated 30.10.2003. The relevant portion of the Circular dated 30.10.2003 stating three illustrations is as under:

H

- A “(f) the following illustrations are given to explain the above, -
- Three traders A, B and C get grey fabrics manufactured from job worker ‘X’. The value (raw material cost + job charges) of the goods made on job work for each of the trader is Rs.20 lakhs. Since total clearance value of the job worker is Rs.60 lakhs, he is not eligible to claim any benefit under Notification 35/2003-C.E. Duty is payable on his entire clearance.
- B • Three traders A, B and C get grey fabrics manufactured from job worker ‘X’. In addition, X also clears grey fabrics manufactured by him as independent weaver. His clearance as independent weaver is Rs.15 lakhs. Thereafter, he undertakes job work for A, B and C in a sequential manner. The value of clearances for A is, say, Rs.5 lakhs, that for B is, 7 lakhs and for C is, Rs.7 lakhs. For clearances made as independent weaver and on job work for ‘A’, there is no duty as the total clearance till then is below Rs.25 lakhs. The first clearances of Rs.5 lakhs for ‘B’ are also exempted. Thus, till then, ‘B’ need not follow Rule 12B procedure. However, the balance Rs.2 lakhs clearances for ‘B’ become dutiable, as the total clearances of ‘X’ have now crossed the limit of Rs.25 lakhs. Thus, now ‘B’ has to take registration and pay duty on clearances of Rs.2 lakhs. As for ‘C’ his entire clearances of Rs.7 lakhs are dutiable and he has to follow Rule 12B procedure for his entire clearances. It may be mentioned that in case the clearances value for ‘C’ increases beyond Rs.8 lakhs, the total clearance value of ‘X’ exceeds Rs.35 lakhs eligibility limit. Consequently, the entire clearance of ‘X’ would become dutiable and duty demand would arise against all i.e. ‘A’, ‘B’, ‘C’ and ‘X’ on their respective clearances.
- C
- D
- E
- F
- G • A trader ‘A’ gets grey fabrics manufactured by job workers ‘X’, ‘Y’ and ‘Z’ and the total clearance value of each of these job workers is below Rs.25 lakhs. All the clearances from the job workers are within the exemption limit for individual units. The trader has no obligation to register himself or pay duty in terms of Rule 12B. In other words, he is out of the scope of the provisions of Rule 12B.”
- H 7. During the period from April 2003 to January 2004 the Appellants had cleared cotton fabrics to the tune of Rs.1,70,12,745/- and cotton made-ups to the tune of Rs.7,82,635/- without paying any

duty as according to them the liability was only on the job workers who were the actual manufacturers and that there was no liability on the trader. Two show cause notices were issued on 07.07.2004 and 14.01.2005 by the Department demanding duty of Rs.12,28,801/- (BED) and Rs.3,07,201/- (AED) vide the first notice and Rs.1,94,828/- (BED) and Rs.48,707/- vide the second notice.

8. The Appellants submitted before the Adjudicating Authority that the job workers were the manufacturers and that no liability could be fixed on the traders. The submission was accepted by the Joint Commissioner of Central Excise at Calicut vide Order dated 28.11.2005. It was held that in a situation where raw materials were supplied by a unit to the job worker, the duty liability would be on the job worker.

9. The Revenue filed appeal before the Appellate Authority. After considering rival contentions, the Appellate Authority by Order dated 31.01.2008 held the Appellants liable. Relying on the Circular dated 30.10.2003, it was observed,

“As per clarification under clause A(e) and the Illustrations under clause A(f), the duty liability is on the Trader once any of the job worker had crossed the exemption limit of Rs.25 lakhs. The total clearance from the dealer in respect of all the goods cleared by him from all job workers would be chargeable to duty. In the instant case, though the respondents had submitted that they had not availed Cenvat, they had around seventy job workers etc., they have also conceded that the total value of clearances from one of the job worker M/s. Dinesh Weaving Mills had exceeded Rs.25 Lakhs. As per clause A(d) for the value limit of Rs.25 lakhs, value of all clearances is to be taken. Thus in terms of clause A(e) of Board Circular duty would be payable and trader would have to be registered and pay the duty. So also all past clearances become dutiable and the trader/traders/ weavers, would be required to discharge the duty on earlier clearances.”

Confirming the demand as raised in the Show Cause Notices, the Appellate Authority also imposed penalty of Rs.10,000/-.

10. The Appellants being aggrieved, filed Central Excise Appeal No.E/370/2008-DB before the Tribunal. The Tribunal found no infirmity in the order of the Appellate Authority and dismissed said Appeal on 06.02.2018. It was held,

A

B

C

D

E

F

G

H

- A "In the instant case, appellant's job worker M/s Dinesh Weaving Mills has crossed the limit of Rs.25 lakhs. When it is so, then the appellant is not entitled to the benefit of exemption under the Notification No.35/2003 dated 30.04.2003, where in para 2(i), has discussed the aggregate value of the clearances. In the instant case, the aggregate value is more than Rs.57 lakhs in the case of job worker M/s Dinesh weaving Mills. Thus, the statutory limit of Rs.25 lakhs has been crossed. When it is so, then the appellant is not entitled for the exemption."
- B 11. A Rectification Application was thereafter filed by the Appellants which was also dismissed by the Tribunal on 15.06.2018.
- C 12. The Appellants have challenged the aforesaid Orders dated 06.02.2018 and 15.06.2018 passed by the Tribunal, in this appeal. We heard Mr. S. Durai Raj, learned Advocate for the Appellants and Mr. V. Shekhar learned Senior Advocate for the Respondent. It was submitted by the Appellants that in terms of the Circular dated 30.10.2003, the duty
- D could not be demanded if the value of clearance of job workers was less than Rs.25 lakhs individually and the Revenue could raise demand only in respect of the clearance value of that job worker, where the value was in excess of Rs.25 lakhs. The Revenue on the other hand submitted that in terms of said Circular, if the clearance value of even one job worker were to be in excess of Rs.25 lakhs, the dealer would be liable in respect of the clearances of all the job workers and aggregate value thereof.
- E 13. In the present case the Appellants had supplied raw material to more than 70 job workers and the total clearances were more than Rs.1.45 crore. Only one out of said job workers had crossed the limit of
- F Rs.25 lakhs while the individual clearances of rest of the job workers were less than Rs.25 lakhs. The question that arises is whether the Appellants' liability is only in respect of the clearance of that job worker whose clearance was greater than the limit of Rs.25 lakhs or in respect of the entire aggregate value of clearances.
- G 14. According to Rule 12B³ dealing with "job work in textiles and textiles articles", any person who gets yarn or fabrics; or readymade garments or made up textile articles falling under Chapters mentioned in said Rule 12B produced or manufactured on his account on job work shall obtain registration, maintain accounts and pay duty leviable on such goods as if he is an assessee. If the conditions in Rule 12B are satisfied,
- H ³ Introduced on 25.03.2003

the liability on such person gets fixed “as if he is an assessee”. The Exemption Notification dated 30.04.2003 exempts “first clearances for home consumption, upto an aggregate value not exceeding twenty lakh rupees...”. The emphasis is on the aggregate value and what is exempted is, “...upto an aggregate value”. The conditions stipulated in Para 2 of said Exemption Notification, specially clauses (i) and (ii) again emphasize the applicability in respect of “aggregate value of clearances for home consumption and not separately regarding individual clearances”. The extent of limits was raised by subsequent Notification dated 17.05.2003.

15. In our considered view, the language of the exemption Notification as amended, is quite clear. However, certain doubts arose which were clarified by Circular dated 30.10.2003. This Circular gives three illustrations. According to the First illustration, even though the clearances of the job worker qua each of three traders was Rs.20 lakhs since the aggregate value of clearance was Rs.60 lakhs, he would not be eligible to claim any benefit and must pay due in respect of entire clearance. According to the second illustration so long as the clearances of the job worker were within the aggregate limit, no liability would get fixed but the moment clearances went beyond the limit, the illustration makes it clear that the entire clearances of the job worker would become dutiable. The third illustration however strikes a slightly different note and says that if a trader got grey fabrics manufactured by three job workers and the clearance value of each of those job workers was below Rs.25 lakhs, the trader had no obligation and would be out of the scope of the provisions of Rule 12B.

16. We find it difficult to accept how the emphasis in the Exemption Notification on the aggregate value could be diluted and the trader would not be liable on the aggregate value in the third illustration. If Rule 12B introduces a premise that if the conditions in said Rule are satisfied, the person concerned is an assessee for all purposes, it does not stand to reason how third illustration fits in the scheme of Rule 12B as well as the Exemption Notification. What Rule 12B introduces is nothing but a legal fiction that in case the conditions stipulated therein are satisfied, the person concerned is to be treated as an assessee. If he is an assessee, all the clearances by him so long as they come within the parameters of Rule 12B, would make him liable. The Exemption Notification again does not put the matter at individual clearances of job workers and what is to be considered is an aggregate value of the clearances. It is well

A

B

C

D

E

F

G

H

- A settled that if a legal fiction is introduced that legal fiction must be taken to the logical end. In *Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum and others*⁴, while dealing with legal fiction introduced in Section 6 of the Hindu Succession Act, this Court quoted with approval passage in *East End Dwelling Co. Ltd. vs. Finsbury Borough Council*⁵ and held that once the statute requires an assumption to be made, such assumption is irrevocable and all consequences which flow from the assumption must permeate the process of ascertainment thereafter.

- 17. Be that as it may, for the present purposes second illustration in the Circular dated 30.10.2003 is more appropriate. According to said
 - C illustration, the moment the clearances go beyond the limit, the liability gets fastened in respect of the aggregate value of clearances. If the submission made by the Appellant is accepted to be correct, the second illustration would have exempted all the clearances in respect of 'A', 'B' and 'C'. Again, if the contention of the Appellant is accepted, a dealer
 - D may get the goods referred to in Rule 12B manufactured from several job workers to ensure that the value of the clearances from each job worker is less than the limit prescribed for individual clearances. In such a case the emphasis in the Rule regarding aggregate clearances would be rendered meaningless.
- E 18. The assessment made by the Appellate Authority and the Tribunal was, therefore, correct. Consequently, it was not the individual clearance of one single job worker alone exceeding the limit of Rs.25 lakhs but the aggregate of all clearances made by the Appellant, was liable to duty. We have no hesitation in affirming the view taken by the Tribunal.
- F 19. We, therefore, dismiss the present appeals. No orders as to costs.

Kalpana K. Tripathy

Appeals dismissed.

⁴ (1978) 3 SCC 383

⁵ (1952) AC 109, 132 = (1951) 2 ALL ER 587