Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO. 1

CUSTOMS Appeal No. 10160 of 2019-DB
(Arising out of OIA-CCESA-SRT-APPEAL-PS-454-2018-19 Dated-16.10.2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

K V AROCHEM PVT LTD **....Appellant**
(NOW KEVA FRAGRANCES PVT. LTD.),
PLOT NO. 170 TO 175, GIDC INDUSTRIAL ESTATE, VAPI,
VALSAD, GUJARAT

VERSUS

COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX-SURAT-I **....Respondent**
NEW BUILDING...OPP. GANDHI BAUG,
CHOWK BAZAR,
SURAT, GUJARAT-395001

APPEARANCE:
Shri Yogesh S. Patki, Advocate appeared for the Appellant
Shri Anand Kumar, Superintendent (Authorized Representative) for the Respondent

CORAM: HON'BLE MR. RAJU, MEMBER (TECHNICAL)
HON'BLE MR. SOMESH ARORA (JUDICIAL)

Final Order No. A/ 11725 /2023

DATE OF HEARING:18.08.2023
DATE OF DECISION:18.08.2023

SOMESH ARORA

In the instant case the appellant were subjected to allegation of not having used their own plant, machinery, equipment and labor for the raw material received by them for job work. Further they were also subjected to violation of condition of proviso to para 5 of Notification 32/1997-Cus dated 01.04.1997 requiring that in case of jobbing done to cottage industries, the condition was not confining to any specific premises has been granted subject to execution of bond with surety and security. It was department's case that in the instant case jobbing was not through cottage industry thus the relaxation of getting raw material processed at third party was not suo-moto available to the assessee thus, they have violated the condition of Notification and job work agreement dated 12.03.2015 by sending raw material duty free for further job work. Apart from this, the department also found that exemption is not available as there is violation of the condition because 10% incremental value required to be obtained by them was not done in the instant case. The appellants however are at labor to point out how they have categorically produced some evidences which indicate that they have received remittances from abroad which justified that 10% incremental valuation was received. The lower authorities dealt with the issue on the point of valuation by requiring the assessee to do the correlation which it claimed that in case evidences were available to them. However, we find that there is lack of communication in the order as to whether there was sufficient reconciliation of the incremental value received them or not. The documents produced by the party have been dismissed as being only an afterthought. We find that there was a requirement of natural justice that once the party had produced some evidences indicating that the incremental value by debit and credit notes was received, the same needed to be examined by the departmental authorities. The party has claimed that they have produced bank realization certificate and further denied having been afforded sufficient opportunity to indicate that incremental value was actually received by them.

2. Considered.

3. Due to the lack of discussion on the above point, we find that the matter needs to be relooked by the authority including the BRC Certificate or any other evidence which party had produced during the course of the reply indicating that they have capacity to correlate with the import made and the value addition obtained as is required under the Notification. On the point of violation of other conditions, we find that it is not clearly coming out from the order as to what other conditions were violated. As far as point sought to be raised by the appellant is concerned, that the department is interpreting that the goods can never

be sent for cottage industries, we find that the jobbing is permitted both to cottage industries as well as other job workers by the Notification. However all this is subject to the various condition and procedures including in Customs Import of Goods Concessional Rate of Duty Rules, 1996. Thus this aspect needs examination by clearly bringing out allegation and by adducing relevant evidences by both sides. We are only confining ourselves to pronounce that the jobbing could be done even under the provisions of the Notification from a job work other then cottage industries also, but are refraining regarding other observations made by the party. Both these issues are therefore kept open for original authority to have a look into and clearly bringing out as to what violations, if any have been done by the appellant. The appellant is also at liberty to convince on both the issues regarding incremental value as well as non-compliance of the condition justifying the jobbing from outside jobber. The impugned order is accordingly, set aside. Matter is remanded.

4. Appeal Allowed by remand in above terms.

(Dictated and Pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

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