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

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 946 of 2011

(Arising out of OIO-5-VDR-II-OA-MP-MUTUAL-ADJ-COMMR-2011-12 dated 21/04/2011 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-II)

Symphony Limited ....**Appellant**
SAUMYA, BAKERI CIRCLE, NAVRANGPURA,
AHMEDABAD-GUJARAT

VERSUS

C.C.E. Vadodara-ii ....**Respondent**
1ST FLOOR... ROOM NO.101,
NEW CENTRAL EXCISE BUILDING,
VADODARA, GUJARAT-390023

APPEARANCE:
Shri. Uday Joshi, Advocate for the Appellant
Shri Dharmendra kanjani, Authorised Representative for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

FINAL ORDER No. A/ 12300 /2021

DATE OF HEARING:03.08.2021
DATE OF DECISION:06.08.2021

RAJU

This appeal has been filed by M/s Symphony Limited against an order imposing penalty under Rule 26 of the Central Excise Act, 2002.

2. The Learned Counsel pointed out that the case was booked against M/s Mutual industries who is manufacture of air coolers. The appellant purchases air coolers from M/s Mutual industries. The dispute has arisen regarding valuation of the air coolers supplied by M/s Mutual industries to the appellant. The demand was confirmed by the Commissioner and the appellant were imposed penalty of Rs. 2,50,000/- under Rule 26 of Central Excise Rules, 2002. He pointed out that the main noticee namely, Mutual industries, has settled the issue with Revenue under SVLDR Scheme.

2.1 Learned Counsel further pointed out that a similar controversy relating to valuation of goods purchased by the same appellant from various manufacturers with whom also the appellant had purchased goods came before the Tribunal. After considering legal position, the Tribunal held in the favour of said manufacturers. The demand and penalty imposed were set aside. He listed the following cases in this regard.

(a) Ravi Kiran Plastics Pvt. Ltd. Vs. CCE 2014 (303) ELT 144

(b) Symphony Comfort System Ltd. vs CCE 2014 (313) ELT 467

(c) Symphony Comfort System Ltd. vs CCE 2016 (334) ELT 82

2.2 He argued that the fact that in similar circumstances favourable decisions have been received by the appellant, and therefore, in this case also which involves similar controversy, no penalty should be imposed. He pointed out that the investigation in all these cases was common. The agreement of the appellant with various vendors including Mutual Industry was same as other. The allegation in the Show Cause Notice are also same.

3. Learned Authorized Representative relied on the impugned order.

4. We have considered the rival submissions. We find that the penalty under Rule 26 of Central Excise 2002 was imposed on the appellant. The demand confirmed against the supplier Mutual Industry has been settled under SVLDR Scheme. We find that the Show Cause Notice issued to Mutual Industry and appellant alleged that the appellant had helped in undervaluation of goods. The impugned order admits in para 4.1.2.3(b) that the purchase agreement entered by M/s Symphony with various other OEM reveals that content of all the agreement are same. The Show Cause Notice examine the evidence recovered from M/s Symphony and records the statement of various employees of M/s Symphony to allege that the sale price of symphony

is much higher than the price at which they purchasing coolers. Learned Counsel assert that the investigation in all these cases was common. The agreement of the appellant with various vendors including Mutual Industry was same as other. The allegations in the Show Cause Notice are also same. From the above facts, it is evident that the charges and the allegations are similar. The evidence relied upon by the Revenue is also similar in the circumstances. The ratio of decision of Tribunal in the case of other similar place manufacturer would be applicable to the instant case as well.

5. In the case of Ravi Kiran Plastics Pvt. Ltd. 2014 (303) ELT 144, a similarly place manufacturer, the Tribunal has examined the facts and came to the conclusion that the charges levelled against the manufacturers are not sustained. Consequently, no penalty was imposed on the appellant in that case. The Tribunal in the said case has examined the following issue.

> *(i) That M/s. Symphony employed its own employees at factory of appellant who are supervising and monitoring the production of Coolers on random basis and reporting to M/s. Symphony.*
>
> *(ii) That the purchase agreement does not provide the price of Air Cooler, however it is brought on records by investigation that apart from processing charges, cost of raw materials including that of bought out items and any other cost is charged on actual basis.*
>
> *(iii) That the appellant is not an independent manufacturer and does not have the right to decide the suppliers, rate and quantity of inputs.*
>
> *(iv) That the value indicated in invoice of appellant was influenced by the cost of manufacture which were controlled by M/s. Symphony as all the raw material/component were procured on the basis of terms and conditions including price, quality, quantity, etc. as agreed upon by both.*
>
> *(v) That the Moulds used for manufacture of coolers were supplied by M/s. Symphony which were essential for manufacture.*
>
> *(vi) That Rule 4(5) is not applicable as Rule 10A is applicable as moulds and dies were supplied.*

And after examining the said issue relying on the decision of the Tribunal in the case of M/s Innocorp Limited reported in 2013 (289) ELT 172 (Tri.) came to the following conclusion.

> *"It can be seen from the above reproduced finding that the issue involved in this case is squarely covered by the decision of the Tribunal in the case of Innocorp Limited (supra). We would hasten to hold that in the case of Innocorp Limited, the agreement clauses as reproduced in paragraph 2.1 of the said order are more stringent than the clauses of agreement in the case in hand, inasmuch as the Tupperware had strict quality control procedure set up, were also controlling and directing M/s. Innocorp Limited for control of the cost of the production, M/s. Innocorp Limited were also required to return the balance goods back to M/s. Tupperware immediately. We find that despite such terms and conditions, Tribunal had held in favour of assessee M/s. Innocorp as per the reasoning reproduced herein above, which would squarely apply in the case in hand. In our considered view, the ratio of the order of the Tribunal is that, if any assessee manufacture final products, independently procuring inputs, paying for the same, utilizing his own manpower and sells the finished products to a purchaser based upon the price agreed between them, the said transaction will be covered by Section 4(1)(a) of the Central Excise Act, 1944. Trying to bring such type of transactions under provisions of Rule 10A of Valuation Rules, is not in consonance with the settled law, even if the finished products are sold at higher price by the buyer."*

Consequently, the demand on manufacturer and penalty imposed on the appellant in the said case was set aside. We find that in the instant case the facts and dispute involved are similar to the case of Ravi Kiran Plastics (Supra). Even the investigation and the statements recorded are common.

6. Relying on the aforesaid decision of the Tribunal passed in similar facts the appeal is allowed and the penalty imposed is set aside.

(Pronounced in the open court on 06.08.2021)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha