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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.810 of 2012

(Arising out of OIO-60/COMMR/SURAT-II/2012 dated 24/09/2012 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-II)

Nemlaxmi Books India P Ltd **........Appellant**
Plot No. 45,
Gidc, Olpad, Surat, Gujarat

VERSUS

C.C.E. & S.T.-Surat-ii **.......Respondent**
New C.Ex Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat-395001

With

Excise Appeal No.811 of 2012

(Arising out of OIO-60/COMMR/SURAT-II/2012 dated 24/09/2012 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-II)

Vimal Kumar Sekhani **........Appellant**
Director Of M/S, Nemlaxmi Books India Pvt Ltd,
Plot No. 45, Gidc, Olpad, SURAT, GUJARAT

VERSUS

C.C.E. & S.T.-Surat-ii **.......Respondent**
New C.Ex Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat-395001

APPEARANCE:
Shri Mukund chouhan, Advocate for the Appellant
Shri. R P Parekh, Superintendent (AR) for the Respondent

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

Final Order No. A/ 10950-10951 /2022

DATE OF HEARING: 28.07.2022
DATE OF DECISION: 10.08.2022

RAMESH NAIR

The brief facts of the case are that the appellant among other activities involved in the activity of slitting of duty paid Jumbo paper Rolls and cutting to small size of sheets of paper and clearing the same from their factory by issuing a sales invoice, on which, they have declared the "Jumbo Rolls converted into small rolls and small Rolls to Sheet, does not amount to

Manufacture as per Section 2(f) of Central Excise Act, 1944 hence, no duty is leviable". The case of the department is that the appellant have converted Jumbo Rolls of paper into small sheet of paper, which is sold as copier paper and other paper. According to the department said activity is amount to manufacture, therefore, the show cause notice was issued proposing demand of excise duty on such paper sheet. The adjudicating authority has confirmed the proposal on the show cause notice and also imposed the personal penalty on director of the company. Therefore, the appellant filed the present appeals.

2. Shri. Mukund Chouhan, Learned Counsel appearing on behalf of the appellant submits that merely the activity of Cutting and slitting of jumbo paper rolls into small paper rolls and paper sheet does not amount to manufacture as the paper remains as the paper except slitting and cutting no any other process is carried. He submits that the Learned Commissioner has heavily relied on the judgment of M/s-Kores India Ltd, Chennai Vs. CCE reported at 2004 (174) ELT 7 (SC) and India Cine Agencies Vs. CCE Madras reported at 2009 (233) ELT 8 (SC). He submits that the facts of those case are entirely different from the facts of the present case, therefore, the reliance made on the above two judgments by the Learned Commissioner is erroneous. He submits that on the identical issue in the various judgments of Hon'ble Supreme Court, High Court and Larger Bench of this Tribunal has held but that similar activities are not amount to manufacture. He alternatively submits that the demand is hit by limitation for the period 2006-2007 to 2008-2009 since raised by show cause notice dated 28.01.2011. He submits that the appellant have categorically stated in the invoice as well in their return that the slitting, cutting of jumbo rolls of paper into smaller sheet does not amount to manufacture, therefore, there is no suppression of fact, accordingly, the demand is also hit by limitation He placed reliance on the following judgments:-

- M/s. FARIDABAD IRON & STEEL TRADERS ASSOCIATION Vs. UOI-2004 (178) ELT 1099 (DEL.)
- This judgment was also held up by Apex Court
- 2005 (181) ELT a68(S.C)
- C.C. Vs. POSCO INDIA DELHI STEEL PROCESSING CENTER-2014 (299) ELT 263 (GUJ.)
- M/s. WIN ENTERPRISES Vs. CCE-2014 (299) ELT 206 (Tri-LB.)
- MATCHWELL Vs. CCE, AHMEDABAD-2020 (371) ELT 840 (Tri)
- FRESH PAPERS INDIA PVT.LTD Vs. CCE, CHENNAI-2017 (347) ELT 604 (MAD.)

3. Shri. R.P. Parekh, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order. He placed reliance on the following judgments:-

- KORES INDIA LTD Vs. CCE, CHENNAI-2004 (174) ELT (SC)
- CCE, SURAT-II Vs. SOHUM INDUSTRIES P LTD-2006 (203) ELT 493 (Tri-MUM.)
- SANJAY VIMALBHAI DEORA Vs. CESTAT-2014 (309) ELT a131 (SC)
- SANJAY VIMALBHAI DEORA Vs. CESTAT-2014 (306) ELT 533 (GUJ.)

4. We have carefully considered the submission made by both the sides and perused the records. We find that the only issue to be decided is that the conversion of jumbo paper rolls into smaller sheet by the activity of slitting, cutting would amount to manufacture of distinct product. We find that the adjudicating authority has contended that the use of the paper sheet converted from jumbo rolls is different from the paper in the paper jumbo rolls. Further his finding is based on that chapter heading of jumbo paper rolls and smaller sheet are different. We find that the irrespective of activity of slitting, cutting of jumbo paper rolls to smaller sheets the paper remains the same product as there is no change in the product. It is only size of the paper which changes. Moreover, there is no chapter note in chapter 48 that such activity is amount to manufacture. We take a note of a

thermal paper for which there is a specific chapter note in the chapter 48 which is as under:-

> *"Chapter Notes 13 of Chapter 48. In relation to thermal paper falling under this Chapter, the process of slitting or cutting or both of these processes shall amount to 'manufacture'."*

4.1 From the above chapter note, it is clear that the process of slitting and cutting of thermal paper is amount to manufacture. However, the similar chapter note is not provided in respect of paper, which is the product in question. Therefore, in absence of the similar chapter note the slitting, cutting and conversion from bulk jumbo roll to sheet form of paper cannot be termed as manufacturing activity in terms of section 2(f) of Central Excise Act, 1944. Slitting, cutting of a already manufactured goods does not amount to manufacture as held in catena of judgments. Some of them are reproduced below:-

- M/S. HINDUSTAN PHOTO FILM MFG. CO. VS. CCE, COIMBATORE-2001 (136) ELT 619 (TRI.-CHENNAI)
- CCE, NEW DELHI Vs. M/S. S. R. TISSUES PVT. LTD.-2005 (186) ELT 385 (S.C)
- M/S. DELHI PAPER PRODUCTS CO. PVT. LTD Vs. CCE, DELHI-III-2006 (200) ELT 305 (Tri.-DELHI)
- CCE VAPI Vs. KNOWELL CONERTERS-2009 (238) ELT 156 (Tri.-AHMEDABAD)

4.2 In view of the above judgments, it is settled that slitting, cutting of jumbo paper rolls to smaller sheet of already manufactured goods does not amount to manufacture. Following the ratio of the above judgments, we are of the view that the activity of slitting, cutting in conversion of jumbo paper roll into paper sheet does not amount to manufacture.

5. As regard the limitation, we find that the appellant have been categorically declaring their activity in each and every invoices as "Jumbo Rolls converted into small rolls and small Rolls to Sheet, does not amount to Manufacture as per Section 2(f) of Central Excise Act, 1944 hence, no duty is leviable". The appellant had a bonafide belief that the activity of conversion from jumbo paper rolls to paper sheet is not amount to manufacture, therefore, the appellant have not suppressed the fact or mis-declared with intend to evade payment of duty. Therefore, the entire demand which is raised beyond the normal period is also hit by limitation.

6. As per our above discussion and finding, we are of the clear view that the demand raised by the adjudicating authority is not sustainable on merit as well as on limitation. Since, the demand itself is not sustainable the personal penalty imposed upon director shall also not sustain. Accordingly, the impugned order to the extent it holds that activity of slitting, cutting from jumbo paper rolls to paper sheet amount to manufacture is set aside. Appeals are allowed.

(Pronounced in the open court on 10.08.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Prachi