CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, ALLAHABAD

REGIONAL BENCH : COURT NO.I

Excise Appeal No.71159 of 2016

(Arising out of Order-in-Original No.18/Pr.Comm./Noida-I/2016-17 dated 26.09.2016 passed by Principal Commr., Central Excise, Noida.)

M/s. Fashion Dezire
(B-53, Sector-6,
Noida, Uttar Pradesh)

...Appellant

VERSUS

Commr. of Customs, Central Excise & Service Tax, Noida
.....Respondent
(C-56/42, Renu Tower Sector 62,
Noida-210301 (U.P.))

WITH

Excise Appeal No.71160 of 2016

(Arising out of Order-in-Original No.18/Pr.Comm./Noida-I/2016-17 dated 26.09.2016 passed by Principal Commr., Central Excise, Noida.)

Sanjiv Khanna, Partner
M/s.Fashion Dezire,
(B-53, Sector-6,
Noida, Uttar Pradesh)

...Appellant

VERSUS

Commr. of Customs, Central Excise & Service Tax, Noida
.....Respondent
(C-56/42, Renu Tower Sector 62,
Noida-210301 (U.P.))

APPEARANCE

Shri Prakash Shah (Advocate) for the Appellant (s)
Shri Shiv Pratap Singh (Dy.Commr.) (A.R.) for the Revenue

CORAM:

MRS. ARCHANA WADHWA, HON'BLE MEMBER(JUDICIAL)
SHRI ANIL G. SHAKKARWAR, HON'BLE MEMBER(TECHNICAL)

FINAL ORDER NO. 70946-70947 / 2019

DATE OF HEARING : 27.02.2019
DATE OF DECISION : 15.05.2019

MRS. ARCHANA WADHWA :

Both the appeals are being disposed of by a common order as they arise out of the same impugned order passed by the Commissioner vide which he has confirmed the demand of duty of excise to the extent of Rs.80,75,632/- against M/s.Fashion Dezire along with imposition of penalty of identical amount under section 11AC. In addition penalty of Rs.20.00 Lakhs stand imposed upon Shri Sanjiv Khanna, Partner of M/s.Fashion Dezire in terms of rule 26 of Central Excise Rules.

2. As per facts on record the appellant is a partnership firm dealing with readymade garments, leather belts and PU belts etc.. Their premises were visited by the Anti-Evasion officers of the Central Excise on 24.10.2013 and various goods found in the said premises were put under seizure on the ground that the appellants have manufactured the same with the trade name of the buyers and have not taken any registration for payment of Central Excise duty. Based upon the investigations conducted, proceedings were initiated against them by way of show cause notice dated 22.04.2014 proposing confirmation of demands, confiscation of the seized goods and imposition of penalties. The said proceedings stand culminated into the impugned order passed by the adjudicating authority.

3. Shri Prakash Shah, learned Advocate appearing for the appellant submits that the adjudicating authority has confirmed the demand in respect of leather belts on the findings that the appellant has manufactured the same under the brand name 'Reebok' to M/s.Adigear International and M/s.Veenee Leathers Pvt.Ltd.. For the above proposition he has relied upon the 16(sixteen) invoices issued to M/s.Adigear International showing the value of the goods as Rs.49.58 Lakhs. It is his contention that the description given by the learned

Commissioner is distorted whereas the actual description given in the invoice is different. He submits that the actual description given invoices issued by Appellants do not described the goods as "Leather Belt-Reebok". The description reads thus: "Leather Patta" & "Belt Semi-Finished Product". The word "Reebok" is added in the description by the learned Commissioner in his impugned order to justify his purported findings that the goods bore the brand name "Reebok".

4. He also submits that the Commissioner erred in relying upon statements of Mr.Sanjay Singh, Director of Vee Nee Leather Private Limited dated 22.12.2014 and Mr.Sanjeev Khanna Partner of the Appellant dated 5th January 2015 to hold that the Appellants cleared to M/s.Adigear International and Vee Nee Leather Private Limited Reebok brand unpolished leather belts. He submits that the reliance on the said statements was neither justified nor proper inasmuch as the said statements were not made before a Gazetted Officer, neither the said deponents were offered for cross-examination. As per the appellants they have purchased finished leather from market and supplied the same to Skyving Centre (Mumbai) for manufacture of leather belt on job work basis who in turn supplied leather belts to M/s.Vee Nee Leather Private Limited and M/s.Adigear Private Limited. There is no machinery to manufacture the belt. No inquiry is made at the end of Skyving Centre. The Appellants have produced the invoices of Skyving Centre (Mumbai) and corresponding invoices of the said two buyers. This would show that the Appellants only traded in the goods and did not manufacture them. Even, in the Panchnama dated 24.10.2013, Mr.Khanna of the Appellants had said that except neck ties all other goods are manufactured by job workers and belt is manufactured by Messers. Mir Organi on job work for the Appellant. It is submitted that no machinery was found by the visiting officer for embossing the brand name "Reebok". The department has relied upon what is called Production Register to claim that the Appellants cleared the belts under the brand name Reebok. An inference is drawn from "embossing reebok" on 3rd page of the said document that the Appellant embossed

the said brand. A bare perusal of the said document will show that words "embossing reebok" are incorporated later on. They are written in totally different hand writing. In any event, the said document does not prove that the Appellants had embossed any brand on the belt and the learned Commissioner has not relied upon the said document.

Identical pleas stand raised in respect of other items allegedly cleared under brand name of others.

5. The main contention of the appellant is that they are only traders and not manufacturer of goods in question. For the said purpose they have produced documents on record showing the manufacture of the goods by the job-workers. We note that the said evidences produced by the appellant have not been dealt effectively and in detail by the adjudicating authority. As such we are of the view that the matter needs to be remanded to the adjudicating authority for fresh decision with directions to deal with each and every evidence raised by the appellants in support of their plea that they are only the traders of the goods and not the manufactures.

Both the appeals are thus allowed by way of remand.

(Order pronounced in the open court on 15/05/2019.)

SD/

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

SD/

(ANIL G. SHAKKARWAR)
MEMBER(TECHNICAL)

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