CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>ALLAHABAD</u>

REGIONAL BENCH – COURT NO.I

Excise Appeal No.57149 of 2013-EX[DB]

(Arising out of Order-in-Original No.03/Commr./MRT-I/2013 dated 24/01/2012 passed by Commissioner, Customs & Central Excise, Meerut)

M/s Padma Flashlights Pvt. Ltd. .....Appellant

Khasra No.996

Industrial Estate

Salempur Rajputana

Roorkee.

Dist.Haridwar (Uttrakhand)

VERSUS

Commissioner of Central Excise, Meerut-I .....Respondent

Opp. Chaudhary Charan Singh University.

Mangal Pandey Nagar.

Meerut-250005

WITH

Excise Appeal No.57150 of 2013-EX[DB]

(Arising out of Order-in-Original No.03/Commr./MRT-I/2013 dated 24/01/2012 passed by Commissioner, Customs & Central Excise, Meerut)

M/s Mahalaxmi Industries .....Appellant

Khasra No.990

Industrial Estate

Salempur Rajputana

Roorkee.

Dist.Haridwar (Uttrakhand)

VERSUS

Commissioner of Central Excise, Meerut-I .....Respondent

Opp. Chaudhary Charan Singh University.

Mangal Pandey Nagar.

Meerut-250005

AND

Excise Appeal No.57151 of 2013-EX[DB]

(Arising out of Order-in-Original No.03/Commr./MRT-I/2013 dated 24/01/2012 passed by Commissioner, Customs & Central Excise, Meerut)

Shri T.V. Pradeep, Director, ...Appellant

M/s Padma Flashlights Pvt. Ltd.

Khasra No.996

Industrial Estate

Salempur Rajputana

Roorkee.

Dist.Haridwar (Uttrakhand)

VERSUS

Commissioner of Central Excise, Meerut-I .....Respondent

Opp. Chaudhary Charan Singh University.

Mangal Pandey Nagar.

Meerut-250005

AND

Excise Appeal No.57152 of 2013-EX[DB]

(Arising out of Order-in-Original No.03/Commr./MRT-I/2013 dated 24/01/2012 passed by Commissioner, Customs & Central Excise, Meerut)

Shri Prakash S. Kahadane, Director, ...Appellant

M/s Padma Flashlights Pvt. Ltd.

Khasra No.996

Industrial Estate

Salempur Rajputana

Roorkee.

Dist.Haridwar (Uttrakhand)

VERSUS

Commissioner of Central Excise, Meerut-I .....Respondent

Opp. Chaudhary Charan Singh University.

Mangal Pandey Nagar.

Meerut-250005

APPEARANCE:

Shri M.H. Patil (Adv.) & Shri Nitin N. Mehta (Consultant) for Appellant
Shri Mohd. Altaf, Authorized Representative for Respondent

CORAM :
Hon'ble Mrs. ARCHANA WADHWA, MEMBER (JUDICIAL)
Hon'ble Mr. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING : 10/01/2019
DATE OF DECISION : 16/05/2019

FINAL ORDER NO. **71028-71031 / 2019**

ARCHANA WADHWA

All the four 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 Central Excise duty of Rs,1,63,26,036/- against M/s Padma Flashlights Pvt. Ltd. located at Roorkee, district Haridwar Uttrakhand along with imposition of penalty of identical amount. Further duty of Rs.9,22,520 stands confirmed against M/s Mahalaxmi Industries located at Roorkee, district Haridwar, Uttrakhand along with imposition of penalty of identical amount. In addition penalty of Rs.1 lakhs stand imposed on Shri T V Pradeep, Director as also on Shri Prakash S Kahadane, Director of the company. The seizures made at the said manufacturing unit also stand confiscated with an option to the appellant to redeem the same on payment of redemption fine.

2. As per facts on record M/s Padma Flashlights Pvt. Ltd. and M/s Mahalaxmi Industries are located in Roorkee area of Uttrakhand, where Notification No.50/2003-CE dated 10.06.2003, granting area based exemption to the manufacturing units was in existence. The said two units, who are engaged in the manufacture of torches were availing the benefit of the said Notification, which grants exemption in respect of manufactured excisable goods

subject to the conditions enumerated therein, to the units located in that area.

3. M/s Padma Flashlights Pvt. Ltd. also has a unit in Bombay, where various parts of torches and lighting products were being manufactured by them and were being cleared on payment of duty leviable on the parts of the torches. The parts cleared from the Bombay factory were being received by the said two manufacturing units located at Roorkee, who, according to them were manufacturing torches out of the same by assembling the various parts of the torches and after attaching the switches and putting dry-cells in the same. The said fully manufactured complete torches were being cleared by the Roorkee units by availing area based notification, under the cover of the invoices.

4. Revenue undertook investigation against the Bombay unit and recorded the statements of various persons and entertained a belief that entire torches were being manufactured by the Bombay Unit of M/s Padma Flashlights Pvt. Ltd. and it is only thereafter the same were disassembled and packed separately and cleared to Roorkee Units. The assembling by the Roorkee unit was nothing but eyewash inasmuch as the torches were fully manufactured in Bombay. The said movement of fully manufactured torches (though in unassembled condition) to Roorkee unit was with an intention to avail area based exemption. Accordingly, proceedings were initiated against the Roorkee Unit for confirmation of duty on the ground that the benefit of the notification stands wrongly availed by them. The proceeding initiated against them resulted in passing of present impugned order confirming demand of duty of Rs.1.63 crores against M/s Padma Flashlights Pvt. Ltd. and of Rs.9 lakhs against M/s Mahalaxmi Industries along with imposition of penalties as detailed in the preceding

paragraphs. The said order of the Commissioner is impugned before us.

5. We have heard Shri M. H. Patil, learned Advocate and Shri Nitin N. Mehta, learned Consultant appearing for the appellant and Shri Mohd. Altaf, Authorized Representative appearing for the Revenue.

6. It is seen that Notification No.50/2003-CE dated 10.06.2003 was amended vide Notification No. 1/2008-CE dated 18.01.2008 vide which Para 4 was inserted in the original notification. The said Para 4 reads as under:-

> *"4. The exemption contained in this notification shall not apply to such goods which have been subjected to only one or more of the following processes, namely, preservation during storage, cleaning operations, packing or repacking of such goods in a unit container or labeling or relabelling of containers, sorting, declaration or alteration of retail sale price and have not been subjected to any other process or processes amounting to manufacture in the State of Uttarakhand or Himachal Pradesh."*

In terms of the said para introduced vide Amending Notification No.01/2008-CE dated 18.01.2008 the benefit of the exemption Notification No.50/2003-CE dated 10.06.2003 was not available to the goods which had been subjected to only one or more of the processes enumerated therein. The said processes are as under:-

> *a. Preservation during storage.*
> *b. Cleaning operations.*
> *c. Packing or repacking of goods in a unit container or labelling or relabeling of containers.*
> *d. Sorting.*
> *e. Declaration or alteration of retail sale price.*
> <u>*and have not been subjected to any other process or processes amounting to manufacture.*</u>

7. The Revenue's contention is that the said amendment carried out in Notification No.50/2003 made the Roorkee units unavailable to the exemption Notification inasmuch as

the process undertaken by them, do not amount to manufacture. However, it is seen that even as per the Revenue's own case, as a result of investigations conducted by them, is that the Bombay factory is only clearing the head and body assembly of the torches which are being assembled at Roorkee. None of the processes detailed above stand undertaken at the Roorkee Units. The said amendment denies the benefit of the Notification only when the processes undertaken by a unit do not amount to manufacture.

As per the appellant the process undertaken by them at their Roorkee unit which included processes of assembling of various components received from their Mumbai factory and moulding of switches at Roorkee factory and putting the battery cells received directly from the manufacturer are the processes which amount to manufacture in terms of the provisions of Section 2 (f) of the Central Excise Act as incidental or ancillary processes to completion of a manufactured product are covered by the definition of manufacture. Learned advocate has contended that the various parts received by them from their Mumbai unit were not in matching quantity inasmuch as it is the Revenue's own case that head assembly were packed 750 pcs. per carton and body assembly were packed 250 pcs. per carton. The Roorkee were manufacturing the switches and complete torch emerged at Roorkee unit where the Head and body parts were assembled, fixed with switches and loaded with dry cells. He has drawn our attention to various decisions laying down that assembling of various product is a process of manufacture and relied upon the Tribunal decision in the case of M/s Majestic Auto Ltd. V/s C.C.E. reported at 2001 (130) ELT 551 (Tri.-Delhi), as also on the Supreme Court decision in the case M/s BPL India

Ltd. V/s C.C.E. reported 2002 (143) ELT 3 (S.C.). Battery Cells are integral components of the torch without which it cannot be held that torch is complete. Reliance stand placed on Tribunal decision in the case of M/s Jayshree Industries V/s C.C.E. reported at 1993 (63) ELT 492 (Tribunal).

8. Learned Advocate has further pleaded that in terms of Note 6 of Section XVI, appearing in Chapter 84 & 85 there is a deeming fiction of manufacture, which stands prescribed as under:-

> *"6. In respect of goods covered by this Section, conversion of an article which is incomplete or unfinished but having the essential character of the complete or finished article (including 'blank', that is an article, not ready for direct use, having the approximate shape or outline of the finished article or part, and which can only be used, other than in exceptional cases, for completion into a finished article or a part), into complete or finished article shall amount to 'manufacture'."*

As such he submits that even according to the said note the activity undertaken by them account to manufacture and satisfies Clause (iii) of Section 2(f), which defines manufacture, any case in relation to which packing or repacking is undertaken in a unit container or labeling or re-labeling of the containers is done including the declaration or alteration of retail sale price or adoption of any other treatment on the goods to render the product marketable to the consumers. Inasmuch as they were assembling various parts into a product so as to make the same marketable, the definition of manufacture is satisfied. The amendment carried out vide notification No.1/2008-CE only ousts the products when no manufacturing is involved. He also emphasized that they are manufacturing switches in their Roorkee factory without which a torch cannot be held to be compete. In this scenario he prays for setting aside the impugned order.

9. Learned A.R. appearing for the Revenue retreated the reasoning of the Adjudicating Authority. He submits that as per the investigations conducted by the Revenue and the statements of various persons including the statements of the director of the company. It is established beyond doubt that troches were fully manufactured at Bombay unit and were transported to Roorkee unit with an intention to avail the benefit of the exemption notification.

10. After carefully considering the submissions made by both the sides as also on going through the impugned orders we find that the Revenue's entire case is based upon the fact that Mumbai unit of the appellant had manufactured head units and body unit of the torch which was assembled in Mumbai and it is only thereafter the same were again disassembled and transported to Roorkee. Roorkee units have only assembled the fully manufactured parts and have cleared the torches after claiming the benefit of the notification. The two units located at Roorkee were only manufacturing switches in question and were not in a position to manufacture the full torch. As against the above allegation the appellant has drawn our attention to the correspondence between them and Revenue establishing that their factory were visited by the Central Excise Officers on various dates and were found to be an a working condition.

11. It is Revenue's own case that what was transported by Mumbai unit was not full torch but various components of torches which were assembled to manufacture a torch. Without going into the detailed evidences produced by the Revenue on record, we note that Bombay unit was actually paying duty on the parts being cleared by them. According

to the learned advocate the duty so paid by them was to the extent of Rs.55 lakhs. The assessments made at Bombay unit were finalized and the present impugned order has not sought to reopen the same. Though the Adjudicating Authority has observed that complete torch attract duty in terms of the provisions of Section 4 (A) of the Central Excise Act on MRP basis but it is seen that there is no demand of duty against Mumbai unit. If as per the Revenue Mumbai unit has cleared the complete torch but has paid duty on the parts of the torch in terms of the Section 4 of the Act, we really fail to understand as to why there is no demand of duty against Mumbai unit. It is well settled law that once the assessments are finalized at the suppliers end, they cannot be reopened and reassessed at the recipient's end. As such, once it is finalized that Mumbai unit had cleared parts under final assessment, the goods received by the Roorkee unit are also required to be assessed as parts. On this ground, the Revenue's claim that Roorkee unit received complete torches and no manufacturing was done at their end, cannot be appreciated.

12. Apart from above, we also note that the assembling of various parts amounts to manufacture in terms of the provisions of Section 2(f) of Central Excise Act inasmuch as the same encompasses any incidental or ancillary activity. Even as per Note 6 of Section XVI the conversion of an incomplete article into a complete article would amounts to deemed manufacture. The Amending Notification No.01/2008-CE is applicable only in those cases where the processes undertaken does not amount to manufacture. Inasmuch as we have held that the activity at Roorkee was of manufacturing nature, the benefit of the Notification stands correctly availed by them.

13. In view of the fore going, we find no justifiable reason to uphold the impugned orders. Accordingly, the same are set aside and all the four appeals are allowed with consequential relief to the appellant.

(Order Pronounced in the open Court on 16/05/2019)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

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