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REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 04/09/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70817/2017-SM[BR] dated 17/07/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/1300/2008	C.C.E, NOIDA C-56/42, Sector-62, Noida-201307
		Name and Address of Respondent
2		MIT CORPORATION LTD B-58,Sector-4, Noida,,

Copy To

3Advocate(s) / Consultant(s):

Kartikeya Narain, (Amicus Curiae)
Advocates
21 b/1/17,tashkand Marg,Civil Lines,Allahabad,U.P.

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. : E/1300/2008 - EX[SM]

(Arising out of Order-in-Appeal No. 44-45/CE/Appeal/Noida/2008 dated 10/03/2008 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Meerut-II/Noida)

C. C. E. NOIDA **Appellant**

Vs.

MIT Corporation Ltd. **Respondent**

Appearance:

Shri Gyanendra Kumar Tripathi (AC) AR for Appellant
Shri Kartikeya Narain (Amicus Curiae) Adv. for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing : 17/07/2017
Date of Decision : 17/07/2017

FINAL ORDER NO.: 70817/2017

Per: Anil Choudhary

The issue in this appeal by Revenue is whether the Learned Commissioner (Appeals) have rightly allowed the appeal of the respondent against Order-in-Original passed by the Additional Commissioner, ordering for confiscation of goods valued at Rs. 31,49,742/- under Rule 25 of CER, 2002 with option to redeem and also imposed penalty Rs. 5 lakhs on the appellant along with personal penalty of Rs. 1 lakh on Shri Subhash Lalwani, Vice-President of the respondent Company.

2. The brief facts are that MIT Corporation Ltd. is engaged

in the manufacture of DVD/VCD players, Home theatre at the unit at Parwanoo (Himachal Pradesh). Officers of Central Excise Headquarters Preventive Branch, Noida visited the factory premises of respondent – MIT on 28/07/2005. Shri shyam Narayan, supervisor who was present in the factory at the time of visit stated that they are engaged in the trading of DVD/VCD players etc. They are receiving goods from their unit at Parwanoo(H.P.). After receiving the items in their factory premises at Noida. They were repacking the sets, and putting a sticker of running Sl. No., sticker bearing imprint "Manufactured & Marketed by MIT Corporation, Parwanoo". It appeared to Revenue that the process of testing, labeling/relabeling and repacking etc. of the product amounts to deemed manufacture in terms of Section 2(f) (iii) of Central Excise Act, 1944. Accordingly, the respondent as required under Rule 9 read with Section 6 of the Act was required to obtain registration, which they have failed to do and have violated law by clearing the goods without payment of duty. Accordingly, the goods found in the factory at that time valued at Rs. 31,49,742/- were seized. Thereafter, show cause notice dated 23rd of January, 2006 was issued alleging that on close scrutiny of activities being undertaken in the factory. It was observed that DVD/VCD players were lying in different stages as follows : –

Stage-I: DVD player Model No. 7272A – some pieces were found packed in cartons packets on which no sticker of any kind were found pasted. The Brand, Photograph etc. including name of MIT Corporation was printed on the body of the carton. The carton didn't have any MRP either printed on the body of DVD/VCD players or found any sticker pasted on the packages. On opening the carton, it was observed that on the body of the DVD players there was no prominent sticker pasted except Q.C. sticker, Hi Pot Test passed sticker.

Stage-II: some cartons of the aforesaid model contained a sticker of running, "SI. No" "Accessories Inside", sticker containing the imprint "Marketed by MIT Corporation, Parwanoo" and the MRP of the product. 'The accessories inside' stickers were pasted in such a way that none of the sets could be opened without tearing it off which indicated that it was ready for marketing. On opening the cartons, two additional stickers of SI. No of the set and "Ok Passed" were found pasted on the body of the DVDs. The sticker of 'SI. No.' on the body of DVD set and on its carton was same.

3. On further opening of both type of sets, described at Stage-I and Stage-II, above, by unscrewing the top cover it was found that in the set bearing "Ok Passed" sticker and "SI. No." sticker, Small stickers with some code No. "MIT 0105" were found pasted on the major components, whereas in the set detailed at Stage-I above, no such stickers were seized. On query, it was revealed that this code denotes the month and year.

4. Further, in the testing room some DVD players were

found lying in SKD condition fitted with power points, said to be in process of testing and repairing, if needed. All the stickers appearing on the finished sets as detailed in Stage-II above were recovered in the premises in abundance. Description of the stickers is detailed as below: -

A. Sticker on major parts: Sticker bearing code viz. "MIT 0105" indicative of month & year.

B. On the body of the product: Sticker of running SI. No. and sticker bearing "Q.C. Passed".

C. On the outer body of products: Sticker of running SI. No. sticker bearing imprint "Manufactured & Marketed by M/s MIT Corporation Parwanoo, item, Model No. and MRP" and a sticker bearing 'Accessories Inside'.

6. On further scrutiny it appeared that respondent were importing DVD/VCD players without any MRP stickers. After receiving the product in the unit these were checked for quality control. Each package of DVD/VCD is opened in the unit and testing of the product is carried out in separate room situated in rear part of the building. After, testing and quality check the stickers were pasted inside the product on major parts, body of the product, as well as its outer packing. Representative samples of DVD player Model DMS 7272A and DMS 4545M were drawn. It further appeared to Revenue that after importing the goods. The respondent is undertaking quality check of the goods so imported, by opening each set by removing the top cover of set and pasting the sticker on

major parts which appear to denote, month and year of manufacture/Q.C. check. After Q.C. check and pasting sticker on major parts inside the set, top cover is refitted. Then the stickers of Q.C. Passed and Running SI. No. is pasted on the body of DVD/VCD players. After repacking of the set, sticker of running SI. No., sticker bearing imprint "Manufactured and Marketed by MIT Corporation, Parwanoo", item, Model No. and MRP, Accessories Inside etc. have been pasted on the cartons of DVD/VCD players. Accordingly, it appeared to Revenue that the respondent was engaged in the detailed process of testing/labeling/relabeling/repacking and putting MRP stickers on the products and the same amounts to deemed manufacture as per the amended Section 2f (III) of Central Excise Act, with effect from 01/03/2003. The statement of Shri Subhash Lalwani, Vice-President of MIT was also recorded on the spot under Section 14 of the Central Excise Act, 1994 wherein he admitted that the Quality Control activities are being carried out in the unit, which includes affixing various kinds of stickers viz. MRP sticker, Accessories inside sticker, Ok sticker, Running SI. No. sticker, Warranty stickers. It was also observed that respondent have been clearing DVD/VCD players in combination of speakers as "combi" by including the value of speakers and accordingly the MRP was fixed.

7. Further enquiry was conducted from Shri Vinay Kakkar, inspection engineer, who in his statement under Section 14 of

the Central Excise Act, 1994 has categorically stated that they packed the DVD/VCD player after testing. He also admitted that they put a Sticker of Sl. No. and Sticker of month and year. He also admitted that sticker of month and year was pasted on lens, exterior backside, MPEG card IC inside the set. Further statement of Shri Subhash Lalwani was recorded on 09/09/2005, wherein he was asked to explain whether the DVD/VCD players and music systems in combi form were sold as a unit and also whether the same is packed in a single packing. Shri Lalwani stated that they are importing DVD/VCD players/multimedia speakers/home theatres speaker and also selling the same separately. He also stated that on specific demand from the market only few units are sold in combo form as the unit and packed in a single unit.

8. Accordingly, it appeared to Revenue that respondent is importing DVD/VCD the player separately (not in combo form) and packing the same as single unit for selling the same in combo form and also putting the sticker showing MRP of combo form as stated in the statement. Further, it was seen that MRP of DVD/VCD player/Home Theatre speaker/Multimedia speakers sold separately are different from the sets sold in combi form which also established that respondent is altering the MRP, if any, declared to the Customs at Port of import, while selling the goods in Combi form.

9. The SCN was adjudicated on contest and the proposed demands were confirmed along with seizure of the goods valued at Rs. 31,49,742/- (assessable value) with an option to redeem the same on payment of redemption fine of Rs. 8,00,000/- in lieu of confiscation along with penalties as aforesaid. Being aggrieved the appellant preferred appeal before Learned Commissioner (Appeals) who have been pleased to allow the appeals both of the respondent Company and its Vice-President Shri Subhash Lalwani.

10. The Learned Amicus curiae for the respondent urges that the respondent was having two units, one at Delhi and the other at Noida doing similar activity of receiving the goods from the Parwanoo unit and after checking the goods and refreshing of missing stickers were clearing the same. The Delhi Commissioner read after verification of facts at Parwanoo by the Central Excise Officers at Parwanoo, vacated the seizure against them and there cannot be a different ground or treatment at Noida. The inquiries carried out by the Central Excise Officers of Parwanoo, as well as the registration by Director of Industries of H.P., certifying that the goods were manufactured at Parwanoo, not at Noida. The Learned Counsel further states that even for argument sake, if it is taken that the activity undertaken by them amounts to manufacture, in that case they are entitled for SSI exemption as their turnover or sales was within the SSI limit. The conclusion by the Adjudicating Authority that the

investigation conducted by Noida preventive that the goods were exported by the respondent at Noida is without any basis. It is further urged that the adjudicating authority in its order has clearly observed that – as the entire goods has been transferred to the Noida unit as stock transfer, from where manufacturing and marketing is being done". The Learned Counsel further states that the whole case of the Revenue is made on assumptions and presumptions without any adverse material on record. Accordingly, he stated that the Learned Commissioner (Appeals) have rightly allowed the appeals and as such prays for dismissing the appeal by Revenue.

11. The Learned AR, for Revenue relies on the Order-in-Original and further reiterates the grounds of appeal urging among others that the Learned Commissioner (Appeals) have carned in observing that there was no evidence to show that the VCD/DVD players were imported by respondent directly at Noida. These findings seem to be not proper in view of the statement dated 18/08/2005 of Shri Subhash Lalwani, wherein answer to question No. 2 is stated. He categorically admitted that they were importing goods directly at the Noida address. Further, during the course of inspection it was found that very effectively stage testing, labeling/relabeling, repacking and affixing of MRP stickers was being carried out. Such fact was admitted by Shri Shyam Narayan, supervisor who was present at the time of inspection. Although the respondent claimed that the entire stock of DVD/VCD was

imported by them at Parwanoo, but they did not submit the related bills of entry in respect of the entire stock of VCD/DVD found at Noida premises at the time of checking. As per the two bills of entry, the DVDs were imported at Parwanoo, account for only 1414 DVDs whereas seizure of 2743 DVDs have been made together at Delhi and Noida. Further the goods received at Noida unit were subjected to various stage testing, labeling/relabeling, repacking and affixing of MRP stickers which fall under the definition of manufacture, in terms of Section 2f (III) of the Act. Further, Shri Lalwani in his statement dated 29/07/2005 have also admitted that "quality control activity" have been carried out by them in the Noida unit, which includes affixing various kinds of stickers namely MRP sticker, Accessories inside sticker, Ok sticker. Further, Shri Vinay Kakkar, the inspection engineer in his statement dated 23/08/2005 have categorically stated that they pack the DVD/VCD players after testing. He also admitted that the putting sticker of SI. No. and sticker of month and year. He also agreed that sticker of month and year was pasted on lens, exterior backside, MPEG card and IC inside the set.

12. Having considered rival contentions I find that there is no evidence that the VCD/DVD players were imported by the respondent MIT Corporation, directly at Noida. There is no evidence that the goods transferred from Parwanoo, to Noida

were not manufactured at Parwanoo. The allegation in the show cause notice that some goods were found in testing room where some stickers were not fixed is not sufficient evidence to establish that manufacturing was carried out on the goods seized at Noida, especially when there is contrary report of the investigation carried out at Parwanoo unit. The Department has failed to put forth even a single bill of entry to sustain its claim that there was direct import at Noida. Accordingly, I hold that the allegations leveled in the SCN are not proved against the respondents. Moreover, I take judicial notice of the fact that under similar facts and circumstances goods seized at Delhi unit of the respondent have been released and no case is made out there. Thus, for the sake of consistency also there cannot be a different treatment for the same goods at Noida as Revenue failed to build out a case that goods were not manufactured or transferred to Noida in semi-manufactured or SKD condition. Even the number of cartons found where some stickers were not affixed has neither been disclosed in the SCN nor in the Order-in-Original. Only on the basis of one or two cartons found without stickers, the inference cannot be drawn that all the goods seized, which were found in complete form, could be regarded as manufactured at Noida, more so in view of the contrary report of investigation carried out at Parwanoo unit. Moreover, I find that the evidence on record have been relied upon selectively in view of the statement of Shri Lalwani which is relied upon, who categorically stated that no activity other than inspection is carried out at Noida. It has to be treated as valid evidence in favour of the respondent as evidence in the whole has to be read and not relied on in part, which is suitable to Revenue. Similarly the statement of Shri Vinay Kakkar have also been relied upon selectively so as to omit important point like the goods arrive from Parwanoo, with MRP, name and address labels fixed/printed on boxes.

13. Accordingly, in view of the aforesaid finding and observations, I confirm the impugned order in appeal and dismiss appeal by Revenue. The respondent assessee shall be entitled to consequential benefits, if any. This Tribunal also appreciates the assistant provided by Shri Kartikeya Narain(Adv.) as amicus curiae.

(Dictated & Pronounced in Court)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Lks

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