CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. II

Excise Appeal No. 1561 of 2011

[Arising out of Order-in-Appeal No. 110/2011-CE dated 25.03.2011 passed by the Commissioner (Appeals), Central Excise, Bangalore]

Huhtamaki India Ltd **......Appellant**
Plot No. 155, 154, 32/Part 31,
Bommasandra Jigani Link Raod,
Anekal, Bangalore – 560 105

VERSUS

Commissioner of Central Excise, Bangalore-I **......Respondent**
PB N. 5400, C R Building,
Queens Road,
Bangalore – 560 001

WITH

Excise Appeal No. 2883 of 2012

[Arising out of Order-in-Appeal No. 190/2012-CE dated 25.07.2012 passed by the Commissioner (Appeals), Central Excise, Bangalore]

Huhtamaki India Ltd **......Appellant**
Plot No. 155, 154, 32/Part 31,
Bommasandra Jigani Link Raod,
Anekal, Bangalore – 560 105

VERSUS

Commissioner of Central Excise, Bangalore-I **......Respondent**
PB N. 5400, C R Building,
Queens Road,
Bangalore – 560 001

APPEARANCE:

Present for the Appellant: Sh. P. K. Shetty, Advocate

Present for the Respondent: Sh. Rajesh Shastry, A.R.

CORAM:

HON'BLE Dr. D. M. MISRA, MEMBER (JUDICIAL)

HON'BLE Mr. PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 20959-20960/2023

DATE OF HEARING: 20.09.2023
DATE OF DECISION: 20.09.2023

PER D. M. MISRA

These two appeals are filed against respective orders-in-appeal passed by Commissioner (Appeals), Central Excise, Bangalore.

2. Briefly stated facts of the case are that the appellant are engaged in re-engraving of Rotogravure Printing Cylinders using old cylinders base shells supplied free of cost by their customers. While determining the value of the final product after undertaking the process of re-engraving, they charge on the basis of the value shown in challans/ invoices received from the customers and in absence, they arrived at the value by adopting as Rs. 2/- per 1000 sq. mm to Rs. 8/- per 1000 sq. mm. Alleging that the assessable value arrived by the appellant is not correct, show cause notices were issued periodically demanding duty on differential value between the period from December, 2005 to March, 2009 in Appeal No. E/1561/2011 and for the period from April, 2009 to August, 2010 in Appeal No. E/2883/2012. On adjudication, the demand has been confirmed with interest and penalty. Aggrieved by the said orders, appeals were filed before the Commissioner (Appeals), who rejected their appeals; hence, present appeals.

3. At the outset, the ld. Advocate for the appellant has submitted that the process undertaken by the appellant, namely re-engraving of used cylinders, itself does not amount to manufacture, therefore, show cause notices issued demanding duty on differential value is incorrect, hence liable to be dropped. Further, he has submitted that the Tribunal at Mumbai in their own case vide *Final Order No. A/154-155/2010 dated 13.05.2010* following the judgment of Larger Bench of five members in the case of *J.S.S. Printing Industries Pvt Ltd vs. CCE, Calcutta – 2000 (122) ELT 309 (Tri. L.B.),* where it is held that re-engraving of Rotogravure Printing Cylinders falling under Chapter sub-heading 8442 of the schedule to the Central Excise Tariff Act, 1985 does not result into manufacture, allowed their appeal. It is his contention that even though the judgments have been cited before the ld. Commissioner (Appeals) in one of their appeals, the same was not taken into consideration while passing the impugned order. Further, he has submitted that accepting the judgment of the Tribunal, the Assistant Commissioner, Central Excise, Belapur Division, Navi Mumbai vide letter dated 18.08.2010 directed the assessee to discharge the service tax on the process of re-engraving of Rotogravure Printing Cylinders under the taxable entry of 'Business Auxiliary Service'. He has submitted that since then they have been discharging service tax on the process of re-engraving. Further, he fairly submits that all these facts have not been brought to the notice of the authorities below, hence, requests for a remand of the matter.

4. The ld. A.R. for the Revenue reiterates the findings of the ld. Commissioner (Appeals).

5. Heard both sides and perused the records.

6. We find that demands were issued to the appellant alleging that the assessable value arrived by the appellant on re-engraving of duty paid cylinders supplied by the customers free is not in accordance with the provisions of Central Excise Valuation (Determination Of Price Of Excisable Goods) Rules, 2000 and on adjudication, duty on the differential value have been confirmed by the authorities below. Now, the contention of the appellant is that the process of re-engraving of duty paid cylinders itself does not amount to manufacture and accordingly not leviable to duty. We find that this issue has been settled by the Larger Bench of this Tribunal in the case of *J.S.S. Printing Industries Pvt Ltd* (supra) and the same has been followed by the Mumbai Bench in appellant's own case for their Navi Mumbai unit. However, this issue has not been brought before the authorities below.

7. In the interest of justice, we are of the view that the appeals be remanded to the adjudicating authority to consider the judgment of the Larger Bench of this Tribunal followed by the Mumbai Bench in the appellant's own case and also the subsequent Communication of Belapur Commissionerate through letter dt. 18.08.2010 directing discharge of service tax on the activity of re-engraving of Rotogravure Printing Cylinders under

'Business Auxiliary Service'. All issues are kept open. Needless to mention that a reasonable opportunity of hearing be given to the appellant. Appeals are allowed by way of remand to the adjudicating authority.

(Dictated and pronounced in the open court)

(D. M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

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