CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Central Excise Appeal No. 20233 of 2016

(Arising out of Order-in-Original No. BLR-EXCUS-003-COM-17-15-16 dated 30.11.2015 passed by the Commissioner of Central Excise, Bangalore-III Commissionerate, Bangalore.)

M/s. Balaji Bag Manufacturers
No. 42-70-21/1, 1st Main 'S' Street,
Kuvempunagar Mysore Road,
Bangalore – 560 025. **....Appellant(s)**

VERSUS

Commissioner of Central Excise, Bengaluru West
BMTC Building, Banashankari II Stage,
Bengaluru Rural,
Karnataka – 560 070. **....Respondent(s)**

Appearance:

Mr. Pradyumna. G. H, Advocate for the Appellant
Mr. Rajashekar B. N. N, Superintendent (AR) for the Respondent

CORAM:

HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MR. PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

Final Order No. 20081 /2026

Date of Hearing: 15.09.2025
Date of Decision: 15.01.2026

PER : P.A. AUGUSTIAN

This appeal was filed against Order-in-Original No. BLR-EXCUS-003-COM-17-15-16 dated 30.11.2015 passed by the Commissioner of Central Excise, Bangalore-III Commissionerate, Bangalore.

2. The issue in the present appeal is regarding demand of excise duty against school bags which are allegedly manufactured and sold by the Appellant without payment of duty.

3. Briefly stated M/s. Balaji Bag Manufacturers, the Appellant is a proprietary concern engaged in manufacture and trading of various kinds of school bags, packing bags, travelling bags, laptops bags, etc. Alleging that the Appellant have manufactured and cleared school bags without payment of Central excise duty to Directorate of Elementary Education, Government of Tamil Nadu on behalf of M/s. Silvertones Impex Pvt. Ltd., New Delhi, proceedings were initiated. During investigation, eight number of representative samples of bag were found at the factory premises of the Appellant and the same were recovered vide Mahazar dated 02.09.2013. Further, statements from various persons were recorded and on conclusion of the investigation, show cause notice was issued on 17.06.2015. Thereafter, as per the impugned order, Adjudication authority held that the school bags are manufactured and cleared by Appellant without payment of central excise duty and confirmed the duty demand with interest and also imposed penalties under various provisions of Finance Act, 1994. Aggrieved by said order, present appeal is filed.

4. When the appeal came up for hearing, the Learned Counsel for the Appellant submits that the entire allegation is prima facie unsustainable; though it is admitted that Appellant is manufacturing and trading various kinds of school bags, M/s. Silvertone Impex Pvt., Ltd., Delhi had received order for four lakh school bags from Director General of Elementary education for supply of school bags and who in turn placed order on the Appellant for manufacture and supply of the same; on receipt of such order, appellant engaged job workers to undertake the manufacturing activities including M/s. Max Trading Company and M/s. Mahalaxmi Trading. Learned counsel further submits that as per the impugned order, liability is fastened only on the Appellant whereas the excisable goods were also manufactured and cleared by M/s. Max Trading Company and M/s. Mahalaxmi Trading Company; however as per the impugned order, without conducting any investigation, it is held that they were only trading the goods and not manufacturing; it is also alleged that said firm M/s. Max Trading Company and M/s. Mahalaxmi Trading Company, who had

manufactured the bags were fictious units floated by the Appellant. The Learned Counsel further submits that from the proceedings, during the period from April 2013 to June 2013, goods valued at Rs. 4.56 Crores had been cleared. The value of clearances in April was Rs. 1,99,33,057/-. Taking the average value per bag as Rs.140/- (from the tender document) 1,42,378 bags ought to have been manufactured in April 2013, which works out to 4746 bags per day. Similarly, in May and June, 3427 and 2699 bags per day ought to have been manufactured by the appellants; if the value as per the order placed on M/s. Silvertone Impex order is taken, the number of bags per day would be still more.

5. Learned Counsel further submits that; there is no evidence whatsoever in the show cause notice (SCN) or findings in the impugned order to prove that the appellants had possessed the infrastructure and financial means to manufacture so many bags in a day; assuming that one worker was able to make 50 bags in a day, nearly 90 workers would be needed; besides, people are required to perform allied jobs such as cutting, stitching etc., are also required; neither the Mahazar nor any other evidence or any statement relied in impugned order provide any evidence as to the availability of sufficient infrastructure, labour force with the appellants to manufacture such quantity of bags in a day or in a month; similarly, there is no indication of procurement of raw materials required to manufacture this quantity; on a rough estimate, assuming that one bag may need 2(two) meters of cloth, nearly 2.84 lakh meters of cloth would be required per month; following other items like zip fasteners, buckles, etc., will be needed; the show cause notice (SCN) / impugned order is totally silent on these issues; even if one were to assume that the appellant was the manufacturer, the allegation that the subject goods had been manufactured by them is not sustainable in the absence of any evidence regarding purchase of raw materials such as fabrics, zip fasteners, buckles, etc.; it need not be overemphasized that to manufacture the quantity allegedly manufactured by the appellant, corresponding raw materials,

employment of labour, investment of capital etc., are required. However, in the impugned order there is no findings on the following:

(i) Purchase of raw materials to manufacture such huge quantity as alleged in the Show cause notice(SCN);

(ii) Source and investment of capital to procure the required materials for the manufacture of the alleged quantity;

(iii) Evidence of transport and receipt of raw materials into the factory and their use in manufacture of the excisable goods i.e. bags;

(iv) Evidence for payment for the purchase of the raw materials;

(v) Deployment of labour and payment of wages required for production of the alleged quantity;

(vi) Evidence on number of shifts worked;

(vii) Evidence of power consumption;

(viii) Evidence of clearance without accountal;

(ix) Evidence of realization of sale proceeds of the alleged quantity cleared without payment of duty.

6. The Learned Counsel further submits that when an allegation of clandestine removal, production, clearance is made, onus is on Revenue to prove evidence to that effect to corroborate the evidence such as procurement of excess raw material, inputs, consumption of excess electricity, inculpability statements, enquiry with regard to purchase of the goods, etc. In this regard, Learned Counsel relied on the following decisions:-

a) **Arch Pharmalabs Ltd. Vs. Commissioner of Central Excise [2005 (182) E.L.T 413 (Tri. – Bang.)**
b) **Rina Dyeing and Printing Works Vs. Commissioner of Central Excise, Surat – I [2007 (209) E.L.T 190 (Tri. – Mumbai)**
c) **Kedarnath Silk Mills Vs. Commissioner of Central Excise [2006 (195) ELT 58 (Tri. – Bang.)**
d) **R.A. Castings Pvt. Ltd Versus Commissioner of C.Ex, Meerut-I [2009 (237) E.L.T 674 (Tri-Del)] affirmed by the**

High Court as reported in [2012 (26) S.T.R 262 (All)] and later maintained by the Supreme Court as reported in [2011 (269) A 108 (S.C)]

e) Commr. Of Cus, C.E & S.T, Ghaziabad Versus Auto Gollon Industries [2018 (36) E.L.T 29 (All)]

f) Patidar Products Versus Commissioner of Central Excise & Service Tax, Bhavnagar [(2023) 9 Centax 231 (Tri-Ahmd)]

g). Prinik Steels Pvt. Ltd Versus Commissioner of Central Excise, Customs & Service Tax [(2024) 15 Centax 313 (Tri-Cal)]

h). Commissioner of Central Excise, Jammu Verus FIL Industries Pvt. Ltd [(2024) 15 Centax 326 (Tri-Chan)]

i). Commissioner of Central Excise Versus Kuber Tobacco Products Pvt. Ltd [(2024) 18 Centax 417 (Del)]

7. The Learned Counsel further submits that during investigation, Proprietor of the Appellant Shri. Uday Kishan Sutar had specifically stated that the Proprietor of M/s. Max Trading Company is Shri. Bhawarlal and Proprietor of M/s. Sri Mahalaxmi Trading Co., is Shri. Govind Kumar. The payment towards the supply of goods had been admittedly made by M/s. Silvertone directly to these two firms M/s. Max Trading Company and M/s. Sri Mahalaxmi Trading Co. It is also on record that they had opened Bank account and also given their address. Shri. Bhawarlal was introduced by M/s. NDS & Company, Chartered Accountant, Bangalore. Similarly, Mr. Govind Kumar who opened an account as Proprietor of M/s. Sri Mahalaxmi Trading Company was introduced by Ashish Kumar Choudary, Chartered Accountant (CA). Learned Counsel submits that before concluding that these firms are fictitious, DGCI deemed it proper not to conduct any investigations with the Bank or Chartered Accountant who had admittedly introduced Shri. Bhawarlal and Shri. Govind Kumar to the bank. Further no attempt was made to locate the person from the addresses given in the application and no attempt was made to find out

the details of the person who had operated the account before concluding that these are fictitious firms.

8. The Learned Counsel also drew our attention to the statement of Shri. Jayakumar, Proprietor of M/s Inter State Logistics where it is stated that they have transported school bags from February 2013 to June 2013 whereas duty is demanded from April 2013 only. It shows that such school bags were transported which only confirm that the appellant only cannot be held to be the manufacturer of the goods.

9. The Learned Counsel further submits that the entire demand is also barred by limitation. However, Adjudication authority by concluding that Appellant had floated fictitious units which never existed and transacted in their name and on that ground alone, finding is given that Appellant had suppressed the facts and confirmed the demand by invoking the extended period of limitation. In this regard Learned Counsel has relied on the judgment of the Hon'ble Supreme Court in the case of Collector of **Central Excise Versus H.M.M. Ltd [1995 (76) E.L.T 497 (S.C)]** wherein it was held that limitation of extended period was not invokable unless the show cause notice puts the assessee to notice specifically as to which of the various commissions or omissions stated in proviso to Section 11A (1) of the Central Excise Act, 1944 had been committed. Further Hon'ble Supreme Court in the case of **Larsen & Toubro Ltd Vs. Commissioner of Central Excise, Pune [2007 (211) E.L.T 513 (S.C)]** held that allegations with regard to suppression of facts must be clear and explicit so as to enable the noticee to reply thereto effectively since extension of period of limitation entails both civil and criminal consequences.

10. The Learned Counsel also draws our attention to the certificate dated 24.07.2012 issued by the Chartered Accountant certifying that Mr. Govind is carrying on Proprietor business under the name and style of M/s. Sri Mahalaxmi Trading Company. The Learned Counsel also draws our attention to the Service Tax Registration No. BCQPG8415ASD001 dated 15.02.2012 issued by the Central Board of Excise & Customs to M/s. Sree Mahalaxmi Trading Company showing

the Proprietor as Mr. Govind. When the investigations were conducted, and the statements of various people were recorded including the statement of Shri. Uday Kishan Suthar dated 19.11.2015, it is categorically stated that the exact quantity of bags supplied had not arrived in the investigation and from the documents available in records.

11. Learned Authorized Representative (AR) reiterated the finding in the impugned order and submits that M/s. Silvertones Impex Pvt. Ltd., New Delhi placed order for supply of school bags. Investigation at the premises and with the owner of the said premises established that M/s. Max Trading Co., Bangalore never existed in the said address and that since 1980 no bag manufacturer or trader has occupied any premises in the building situated at No. 20, Murali Market, M.T. Street, Bangalore - 560 053. Further investigation was conducted with the bank where M/s. Max Trading Co., Bangalore had their account and it was further established that they had no other address. All reasonable efforts made by the investigating officers did not result in bringing to light the whereabouts of the company or any person associated with it. It is also stated by Shri. Uday Kishan Suthar, that he had no clue about the company or its owners, though earlier he was supposedly in contact with them and with whom he had placed large orders. Thus, Adjudication Authority rightly reached to the conclusion that M/s. Max Trading Co., Bangalore never existed as a company and Shri. Uday Kishan Suthar has engineered the creation of the fictitious unit with an intention to mis-guide the tax authorities to evade payment of Central Excise Duty and other statutory taxes.

12. As regards, the contention of the Learned Counsel that no investigation was conducted with the Bank and the Chartered Accountants, Learned AR submits that officers of Bangalore Zonal Unit (BZU) have done sufficient verification in respect of M/s. Max Trading Co., and M/s. Sri Mahalaxmi Trading Co. and it is not to be expected that all the averments in all records have to be completely verified when it is clearly established from the available records that the said

two companies were fictitious and never existed. Further considering the statement of Shri. Jayakumar B. P, proprietor of M/s. Interstate Cargo & Logistics establishes that they have undertaken transportation of school bags. Thus Shri. Uday Kishan Suthar had devised a mechanism so that all the documents / records pertaining to manufacture and supply of school bags to the Directorate of Elementary Education as done in the name of M/s. Max Trading Co. and M/s. Sri Mahalaxmi Trading Co. and had obtained Sales Tax registration and Bank Accounts in the name of these fictitious firms, that he had given instruction to M/s. Silvertones Impex Pvt. Ltd., New Delhi to issue purchase orders to these fictitious firms which never existed.

13. Heard both sides and perused the records.

14. We find that it is an admitted fact that the Government of Tamil Nadu has placed order for supply of school bags to M/s Silvertone, New Delhi. On completion of manufacturing, payment for the supply were made directly into the bank accounts of the two said firms M/s. Max Trading and M/s. Mahalaxmi Trading Co. Further there is no evidence on record to show that the Appellant had the facility to manufacture such a large number of quantities by way of procuring raw material or manufacturing. Further, as per the impugned order the said two entities who had supplied the goods were held as non-existence since they were not traceable in the given address and due to that reason, it is held that they belonged to Appellant only. We find that there is no evidence that the Appellant had procured the raw material, no evidence to prove that the Appellant had the capacity to manufacture such huge quantity of bags and no evidence that the requisite number of persons were available to manufacture the said quantity of bags. We further find that during the investigation, though the Appellant had furnished the details of the names of job workers, who had conducted the manufacturing activities as directed by the Appellant, no investigation was done with them. Further no attempt was made to find out the beneficiary of the accounts to which the supplier had deposited the amount with banks also. Law is well settled that when an allegation of clandestine removal,

production, clearance is made, onus is on Revenue to prove with evidence to that effect to corroborate the evidence such as procurement of excess raw material, inputs, consumption of excess electricity inculpability statement, enquiry with purchase of the goods, etc. Thus, Appellant cannot be held as manufacturer of the goods and cannot be fastened with duty liability. In view of the above the impugned order is unsustainable and liable to be set aside.

15. Accordingly, impugned order is set aside, and the appeal is allowed with consequential relief, if any, in accordance with law.

(Order pronounced in open court on 15.01.2026)

(P.A.Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

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