IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

Appeal Nos. E/00223 & 00224/2011

(Arising out of Order-in-Original No. 02/2011 (C) dated 21.01.2011 passed by the Commissioner of Central Excise, Puducherry)

Meenakshi Soap Works & : Appellants
M/s. Aruna Industry

Vs.

Commissioner of Central Excise, Puducherry : Respondent

Appearance:-

Shri S. Venkatachalam, Advocate
for the Appellant

Shri S. Govindarajan, AC (AR)
for the Respondent

CORAM:

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P Dinesha, Member (Judicial)

Date of Hearing/Decision:**21.06.2018**

Final Order No. 41865 & 41866 / 2018

Per Shri Madhu Mohan Damodhar,

Both these appeals relate to the same impugned order and, hence, they are taken up together for common disposal.

1. The facts of the case are that Sri Meenakshi Soap Works (hereinafter referred to as 'Meenakshi') are manufacturers of detergent

and detergent soaps. Pursuant to investigation carried out by the Directorate General of Anti-Evasion, Chennai a Show Cause Notice dt. 20.11.1992 was issued to the petitioners. Initially, the Commissioner had demanded duty of Rs. 4,68,92,035/- and on appeal, the Hon'ble Tribunal has remanded the matter for fresh adjudication. The Commissioner of Central Excise vide his Order-In-Original No. 16/2000 dt. 30.05.2000 has demanded a sum of Rs. 14,90,706/- and imposed penalty of Rs. 5,00,000/-. He has also confiscated detergent cakes valued at Rs. 32,000/- and Van and gave an option to redeem the same on payment of fine of Rs. 20,000/- and Rs. 50,000/-.

2. Today when the matter came up for hearing, on behalf of the appellants, Ld. Advocate Shri S. Venkatachalam submits that the adjudicating authority has not considered their plea for reduction in the duty liability on account of some quantities of the LAB having been used for manufacture of cleaning powder without the aid of power, which is exempted from central excise duty. He also submits that the penalties imposed on the appellants are very much on the higher side compared to the duty liability arrived at and prayed that these penalties may be set aside.

3. On the other hand, Ld. AR, Shri S. Govindarajan, supports the impugned order.

4. Heard both sides. Both sides have gone through the facts.

5.1 We note that the only plea in respect of the duty liability is that the quantities of LAB used for making exempted products have not been taken into cognizance by the adjudicating authority.

5.2 We, however, find that this aspect has been thoroughly analyzed by the Ld. Commissioner in para 10 of the impugned order, as under:

> *"a) The statement of Sri. A. Senthoorpandian, Managing partner of Shakthi Chemical, wherein he has given the formula for manufacture of cleaning and scouring powder: The Commissioner in his OIO No. 16/2000 vide page 184 thereof has held "…..All the above persons have retracted their statements. They submitted that the statements were recorded under duress." Accordingly, "their statements cannot be relied upon…..". SMSW maintains silence regarding this imputation. Hence his reliance on a retracted statement is ill founded and therefore unacceptable.*
>
> *b) SMSW has produced a Licence dated 8th January 1988, issued by the Commissioner, Ariankuppam Commune Panchayat, Pondicheery 605 007. On scrutiny, it is seen that the same was issued for "Manufacture of Detergent, Washing powder, cleaning powder, Detergent powder with 11.5 H.P" which goes to show that SMSW has been issued with a licence for manufacture of cleaning powder (scouring powder) with the aid of power only.*
>
> *(c) SMSW relies heavily on the letter dated 17.11.1992 issued by the Superintendent of Central Excise, Pondicherry Range II directing them to discharge duty on scouring powder on provisional basis under Rule 9B of the Central Excise Rules, 1944 by executing a B-13 bond with security pending final order passed on sample powder. The samples were drawn by the Department vide the Test Memo mentioned therein to verify the correctness of the claim as this should have been the first time that such a declaration was made to the Department that they are manufacturing scouring powder. Anyway, the demand on SMSW is upto the period 31.03.1992 whereas the letter dated 17.11.92 is beyond the period of demand.*
>
> *(d) SMSW has also produced the Registration Certificate Sl. No. 23/92 dated 19.08.1992 showing that he is registered for the manufacture of*

scouring powder. This RC was also issued after 31.3.1992 and is beyond the period of demand raised on SMSW and beyond the pale of consideration.

(e) SMSW has produced a GP1 02 dated 04.02.1989, which indicates the clearance of cleaning powder. However, there was no corresponding entry in RG 1. In the said GP1, its total value including the value of the cleaning powder has been added to the previous balance for computation of SSI exemption limit. If the cleaning powder was to have been manufactured without the aid of power, then such value would not have been so included for such computation."

5.3 Thus, the evidence relied upon by the appellants, which was produced to the adjudicating authority in respect of the impugned adjudication proceedings, were beyond the period of demand.

5.4 We also find that this dispute is of 1992 vintage and in the last 25 years that have passed by, the matter has come up to the Tribunal on three earlier occasions which has resulted in the proceedings having been adjudicated on four occasions. The fact that the appellants could not produce satisfactory evidence of their claim in respect of the exempted clearances in all these proceedings leads us to the obvious conclusion that no such clearances would have taken place during the period of dispute. For this reason, we do not find any infirmity in the aforesaid conclusions of the adjudicating authority. In the event, the plea made by the appellants on this score does not pass muster and is, therefore, rejected.

5.5. In the case of Aruna Industry, the appellant has contended that the LAB procured by trader, namely, M/s. Rama Balaji Traders, have also been added to the account of Aruna Industry and, hence, duty liability has been wrongly worked out on the higher side. The said appellant has contended that purchases made by the trader are not includible. We find that even this contention has been more adequately addressed by the adjudicating authority in para 11 of the impugned order as under:

> *"The only issue to be decided is with regard to the includibility of the LAB procured by M/s. Rama Balaji Traders for working out the duty liability of M/s. Aruna Industry.*
> *From the work-sheet appended to the confirmed demand, it is clear that the quantity of LAB consumed by M/s. Aruna Industries has been worked out by taking into consideration the LAB procured by AI, as well as those of the traders namely M/s. Rama Balaji Traders, Shanmuga Chemical and Moogambigai Chemicals. It is true that the Commissioner has excluded the purchases of LAB by the 15 units which have been held to be independent ones, and SMSW from computation of the total purchase by Aruna Industries. The notice fervently pleads that therefore the purchases by the traders are also not includible. It has to be noted in fairness here that the Commissioner during the course of discussion in Para 181 of the Order In Original No. 16/2000 dated 30.05.2000 refers to Annexure II to the said order as containing the recomputed demand. Hence this is not a case of inadvertence or imprudence. Moreover the traders are different from and other than the 15 units and SMSW. It is worth quoting para 62 of the SCN at this juncture.*
> *"62. "In addition to the above, M/s Aruna Industry had purchased LAB in the account of their Sales Depot at Cuddallore and also in the name of M/s Rama Balaji Traders, a trading unit owned by Shri M. Chocklingam which is reported to have ceased its operations. Details of total purchase of LAB made by these units are furnished in Annexure XVII. Since this is only a trading unit dealing in detergent soaps, LAB was purchased by M/s Aruna Industry for*

> *manufacture of Acid Slurry. This method is adopted by M/s Aruna Industry to suppress the production of Acid Slurry and clear the same clandestinely to M/s SMSW for manufacture of detergent soaps."*
> *The point to be borne in mind is that all said and done the traders under reference are traders only. There is no proof or evidence adduced by the notice that such LAB was not procured by him from the said traders. Interestingly, the notice did not plead for exclusion of Shanmuga Chemical and Moogambigai Chemicals before the Hon'ble Tribunal, which he is doing now before this forum.*
> *Therefore, I hold that inclusion of LAB purchased by the traders to arrive at the quantity of Acid Slurry manufactured and clandestinely removed by AI for the demand of duty requires no interference. I treat the value as cum duty price and consequently arrive at the assessable value of the same as Rs. 13,18,470/- and duty payable thereon as Rs. 2,09,973/- as detailed in Annexure 2 to this order."*

In view thereof, we do not find any merit in this plea made by Aruna Industry and, hence, this plea is also rejected.

5.6 We do not find any justifiable reasons or grounds to interfere with the demand of duty of Rs. 12,70,154/- and Rs. 2,09,973 /- respectively in the impugned order.

5.7 However, coming to the submissions with respect to penalty, we find that the original Show Cause Notice dated 20.11.1992 and 31.08.1993 had alleged differential duty liability of Rs. 4.69 crores and Rs. 89.51 lakhs respectively. In the course of the four adjudications which have resulted in the last 25 years, these amounts have now been whittled down to Rs. 12.70 lakhs and Rs. 2.09 lakhs respectively. We also take note that both the appellants were proprietary concerns who may well have unwittingly indulged in this *modus operandi,* possibly due to wrong advice.

5.8 Taking all these factors into account and also considering that the matter has prolonged for so many years, we find it proper to reduce the penalty imposed on Meenakshi Soap Works under Rule 173(q) of the erstwhile Central Excise Rules, 1944 from Rs. 5 lakhs to Rs. 1 lakh. Similarly, the penalty of Rs. 1 lakh imposed on Aruna Industry under Rule 173(q) ibid. is reduced to Rs. 20,000/- . So ordered.

6. The appeals are partly allowed on above terms.

(Dictated and pronounced in open Court)

(P Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

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