21

OFFICE OF THE COMMISSIONER (AUTHORISED REPRESENTATIVE) CESTAT
24 AUG 2017
SHASTRI BHAVAN ★ CHENNAI-6 ★

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NO.26,Sashtri Bhavan Annexe Building, Haddows Road,Chennai-600006

Order Forwarding Letter

Final Order No. 41415-41416 / 2017

STAY Application No. : E/Stay/40575/2013, E/Stay/41545/2014
Appeal No. : E/40810/2013-DB, E/41273/2014-DB

Appellant :
Glovis India Pvt Ltd

Respondent :
Commissioner of Central Excise Chennai-IV

I am directed to send herewith a certified copy of the **Final Order No. 41415-41416 / 2017** dated **02/08/2017** ,passed by the Tribunal under Section 129 B of the Customs Act 1962/Section 35C of the Central Excise Act 1944/Section 86 (7) of the Finance Act 1994.

Dated: 07/08/17

Assistant Registrar
CESTAT - Chennai

To:

Glovis India Pvt Ltd (2 Copies)
F-98,8th Main Road,sipcot
Industrial Park
Irungattukottai,sriperumbudur
Kanchipuram - 602105

VMJ Associates
Old No. 4, New No. 7
Skandalaya, Justice Sundaram Road, Mylapore
Chennai - 600004

Copy forwarded to :

Commissioner of Central Excise Chennai-IV (2 Copies)

The Commissioner (AR) , CESTAT Chennai.

Indirect Tax Bar Association CESTAT, Chennai

1) M/s. Centax Publications (P) Ltd.

2) M/s. Company Law Institute of India (P) Ltd.

3) M/s. Taxindiaonline.com (P) Ltd. Chennai.

4) M/s. Tax Man Allied Services Ltd New Delhi.

5) M/s. Easy Services Tax Online.Com (P) Ltd Ahmedabad.

6) M/s. Lawcrux Advisors (P) Ltd. Faridabad.

7) M/s. Mark Professional Services (P) Ltd.

8) M/s. The ICFAI Society, Hyderabad

9) M/s. Knowledge Processing Pvt Ltd., Delhi

10) M/s. Taxongo Pvt Ltd.

11) Guard File.

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI

Appeal No. E/Stay/40575/2013 & E/40810/2013

[Arising out of Order-in-Original No.1/2013 dt. 31.01.2013 passed by the Commissioner of Central Excise, Chennai-IV]

Appeal No. E/Stay/41545/2014 & E/41273/2014

[Arising out of Order-in-Original No.2/2014 dt. 27.02.2014 passed by the Commissioner of Central Excise, Chennai-IV]

Glovis India Pvt. Ltd. — Appellant

Versus

Commissioner of Central Excise,
Chennai-IV — Respondent

Appearance:

Shri S. Muthuvenkatraman, Advocate
For the Appellant

Shri K.P.Muralidharan, AC (AR)
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / decision : 02.08.2017

FINAL ORDER No. 41415-41416/2017

Per Bench

The appellants are registered with the Central Excise Department for manufacture of Computer Bracket Assembly and in

Customs, Excise & Service Tax Appellate Tribunal
सत्यमेव जयते

addition, they are also engaged in the export of parts / components of motor vehicles to M/s. Hyundai Assan Otomotive Sanayi, Turkey and other countries. For the purpose of export of goods they procured inputs as well as input services and availed the facility of CENVAT credit on such inputs and input services. The appellant also claimed rebate under Rule 18 of the Central Excise Rules, 2002 in respect of the duties paid on the goods exported by them. On processing the rebate claim filed by the appellant, they were called upon to explain whether the process undertaken by them in respect of goods exported on payment of duty amounted to the process of manufacture. Show cause notices were thereafter issued alleging that the activity undertaken by the appellants do not amount to manufacture in terms of Section 2(f)(iii) of Central Excise Act, 1944 and proposed to recover the CENVAT credit of Rs.17,81,03,695/- (Appeal E/40810/2013) availed along with interest and Rs.3,70,25,191/- (Appeal E/41273/2014) and also proposing to impose penalties under Rule 15 of CENVAT Credit Rules, 2004 After due process of law, the adjudicating Commissioner confirmed the recovery of CENVAT credit along with interest and imposed penalties of Rs.2 crores (E/40810/2013) and Rs.40 lakhs (E/41273/2014) respectively under Rule 15 (1) of Cenvat Credit Rules, 2004. Being aggrieved, the appellants are before this forum.

Customs, Excise & Service Tax Appellate Tribunal

2. After hearing both sides, we find that the identical matter has already been decided by this Bench in appellant's own case vide Final Order No.40787/2017 dt. 15.7.2017. The relevant part of the order is reproduced herein below for ready reference :

> "13. Three types of packing are undertaken depending on the type of automobile parts. They are: (a) carton box packing, (b) wooden box packing and (c) metal pallet packing. The packed carton box is stuffed inside the container for export.
>
> 14. The above process of labeling and packing explained by the learned Senior Advocate, in our view would satisfy the ingredients of deemed manufacture under Section 2(f)(iii) of Central Excise Act, 1944. The submission of learned AR that such packing is only for the purpose of transportation and that the labeling is only for the purpose of identification are too flimsy and not backed by any legal basis. It appears that the learned AR is confused with the mention of the words 'retail sale price' and 'labeling' in section 2(f)(iii) of the definition of manufacture. It is contended by the learned AR that since the label affixed does not give any information to a consumer and is only to facilitate assembly of vehicle at Hyundai, Turkey, the activity of labeling does not amount to manufacture. This argument does not find favour with us. The Standard of Weights and Measures Act, 1987 though provides for affixing the Retail Sale Price on packaged commodities, the said legislation has nothing to do with the question whether the activity undertaken by the assessee amounts to manufacture or not. As per sub-clause (iii) of the said definition, packing / repacking or labeling or re-labelling would amount to the process of manufacture and the appellants have been able to successfully establish that such activities have been undertaken by them after purchase of the goods from various vendors till the goods are exported. For these reasons, we hold that the activities undertaken by the appellant amounts to manufacture and they are liable to avail CENVAT credit on the inputs / input services used in the export of goods. The impugned order demanding to

recover/reversal of the credit is unjustified and requires to be set aside which we hereby do accordingly.

15. The learned Senior Advocate has also argued the issue of limitation. It is seen that the appellants have disclosed the credit availed in the returns filed by them. Further, the goods are exported and in any case, they would be eligible to claim rebate on the inputs / input services. Therefore, the show cause notice issued invoking the extended period is unsustainable. The appellant succeeds on merits and on the ground of limitation.

16. In the result, the impugned order is set aside and the appeal is allowed with consequential reliefs if any, as per law."

3. Following the ratio of the above decision, the present appeals are allowed on the same lines. Stay applications are also disposed of accordingly.

(dictated and pronounced in court)

(Madhu Mohan Damodhar)
Member (Technical)

Sulekha Beevi

(Sulekha Beevi C.S)
Member (Judicial)

gs

Customs, Excise & Service Tax Appellate Tribunal

सत्यमेव जयते

प्रमाणित प्रति / Certified True Copy
23/8
सहायक पंजीकार / Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (CESTAT)
चेन्नै / Chennai