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

E/415/2010 & E/CO/54/2010

(Arising out of Order-in-Appeal No. 100/2010 dated 30.03.2010 passed by the Commissioner of Central Excise (Appeals), Madurai.

CCE, Tirunelveli — Appellant

Vs.

M/s. The Saffire Industries — Respondent

Appearance

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

Shri S. Ramachandran, Adv.,
for the Respondents

CORAM :

Hon'ble Smt. ARCHANA WADHWA, JUDICIAL MEMBER
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing/Decision: **24.10.2017**

FINAL ORDER No. 42418 /2017

Per: Madhu Mohan Damodhar,

Being aggrieved with the order passed by the Commissioner (Appeals), Revenue has filed the present appeal.

Customs, Excise & Service Tax Appellate Tribunal

2. After hearing both the sides and after going through the impugned order of the Commissioner (Appeals), we find that the appellate authority has granted relief to the respondents on the main legal issue of the activity undertaken by them being not a manufacturing activity, as also on the point of limitation. As per the facts on record, the respondents are engaged in fixing images in the Pre Sensitized Aluminum Litho Plates using CTP technique by adopting processes which include i) exposure to light and ii) development and thus convert the Pre Sensitized Aluminum Litho Plates into Lithographic plates with image developed and impregnated. Printing plates made by the traditional method is by negative/positive film process and in the case of TSI, the CTP process is a modern method. Such activity of converting the Pre Sensitized Aluminum plates into lithographic plates is done within the factory as per their clients requirements and sold to their clients. The pre sensitized plates cannot be put into printing directly. No further processing is required to be done on the CTP plates sold which are having distinct character and use from the pre sensitized aluminum plates. TSI manufactured both dutiable goods such as letter pads, diaries etc. and exempted goods such as calendars, books etc. and in respect of dutiable goods. TSI availed SSI exemption under Notification No. 8/2003-CE dated 01.03.2003.

2. After initiating investigation etc., and recording statements, proceedings were initiated against the respondent by way of issuance of SCN dated 25.02.2009 proposing demand of duty for

the period February, 2004 to December, 2007, on the ground that the activity undertaken by the respondent amounts to manufacture and the final product is liable to duty of excise. The said demands were confirmed by the original adjudicating authority. Further on appeal, the Commissioner (Appeals) held that the above conversion of Aluminum plates into CTP, by fixation of images cannot be held as a manufacturing activity. He also held that the demand raised by invoking larger period of limitation is not sustainable in as much as there was no malafide on the part of the assessees. For the above proposition he relied upon various decisions.

3.1 Revenue has challenged the said order on merits as also on limitation. We are of the view that the appeal of the Revenue can be disposed of on limitation aspect. Though the Revenue has contended in the memorandum of appeal that the Commissioner (Appeals) should not be considered the limitation aspect as the time bar plea raised for the first time before him. However, we find the above contention of the Revenue is factually incorrect in as much as the limitation plea was raised by the respondent before the original adjudicating authority, as mentioned by him in para-25 of his order.

3.2 Otherwise also, we find that there is no evidence raised by the Revenue as regards any suppression or mis-statement by the respondents, with an intention to evade payment of duty. If the department's own senior officer of the level of Commissioner

(Appeals) has held in favour of the assessee on the issue of manufacture, we cannot find any fault with the assessee for entertaining the same belief. The issue is a debatable issue of interpretation of law and no fault can be found with the assessee in entertaining the plea that the activity undertaken by them does not amount to manufacture. In the absence of any evidence to the contrary that such duty has not been paid by them with malafide intention, we are of the view that the extended period of limitation cannot be invoked by the Revenue and the appellate authority has rightly extended the benefit to the assessee. Revenue's appeal fails on the said point itself and is accordingly rejected.

4. The cross-objection filed by the respondent is in the nature of written submissions stands disposed of.

(Order dictated and pronounced in the open Court on)

26/10/17

(MADHU MOHAN DAMODHAR)
TECHNICAL MEMBER

(ARCHANA WADHWA)
JUDICIAL MEMBER

BB

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति / Certified True Copy
10/11
सहायक पंजीकार / Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर
अपील अधिकारी / (CESTAT)
चेन्नै / CHENNAI