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

E/117 & 118/2008

(Arising out of Order-in-Original No. 34/2007 (C) dated 30.11.2007 passed by the Commissioner of Central Excise, Pondicherry)

M/s. Hindustan Unilever Ltd.
M/s. R.K. Industries Appellants

Vs.

Commissioner of Central Excise, Pondicherry Respondent

Appearance

Shri T. Chandran Nair, Advocate for the Appellant
Shri R. Subramaniyam, 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: **23.08.2017**

Final Order No. 41867- 41870/2017

Per Bench

The appellant, M/s. R.K. Industries, are manufacturers of Mixed Odoriferous Substances (perfumes) and also undertakes job work to M/s. Hindustan Lever Limited (herein after referred to as M/s. HLL). They received raw materials from M/s. HLL for the manufacture of Mixed Odoriferous Substances which is the main ingredient for manufacture of soaps. On the basis of

Customs, Excise & Service Tax Appellate Tribunal intelligence that the appellant after job work have undervalued the goods, a surprise visit was conducted at the premises of the appellant and documents were recovered. It was revealed that for the manufacture of Mixed Odoriferous Substances, M/s. HLL MOS Unit gives the formulation to the appellant. The raw materials are supplied by M/s. HLL MOS Unit to the appellant. The Mixed Odoriferous Substances manufactured as per the formulation provided by M/s. HLL MOS unit are cleared on stock transfer basis to various HLL Units and to some other job workers of HLL situated at various places in the country as identified by M/s. HLL MOS unit for using in further manufacture of detergent powder/soaps under the brand name owned by M/s. HLL. Besides such clearances by stock transfer, the appellant also cleared the said products to buyers as identified by M/s. HLL by adopting lesser assessable value where the sale proceeds are directly received by M/s. HLL MOS unit. These buyers identified as third parties by HLLMOS unit are M/s. Aquagel Chemicals (P) Ltd., Gujarat, M/s. DCW Limited, Gujarat, M/s. Cyrus Surfactant (P) Ltd., Jammu, M/s. Guru Detergents & Chemicals (P) Ltd., Guwahati and M/s. Chemax Detergents (P) Ltd. West Bengal etc. The assessable value adopted by appellants for both the clearances that is stock transfer as well as sales to third parties, after job work, is as per the directions of M/s. HLL MOS unit who are their principal raw material suppliers. The appellant received Rs.4.75 per kg as conversion charges from M/s. HLL MOS Unit since 1998 till date without any change. Though there is a frequent fluctuation in the cost of various raw materials supplied by M/s. HLL MOS Unit, the assessable value had not been revised in accordance with Rule 11 r/w Rule 6 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. Subsequently, the premises of M/s. HLL MOS Unit was also visited by the officers. It was found that the value adopted by M/s. HLL MOS unit for the clearance to the appellant is nothing but the value of raw materials received by M/s. HLL MOS Unit. It was found that the value adopted for the clearances of Wheel Green and Wheel Blue Lime by appellant, after job work, were undervalued and the assessable value adopted was not in terms of Rule 11 r/w Rule 6 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, for the period January 2003 to December 2006, by not including the correct costs in the value as required by law. Thus, it appeared that the appellant had contravened the provisions of Rule 4(1) and Rule 6 of the Central Excise Rules, 2002 and a show cause notice was issued raising the above allegations and demanding differential duty of Rs.63,57,209/- along with interest and also for imposing penalties. After due process of law, the adjudicating Commissioner confirmed the demand along with interest and imposed equal penalty besides separate penalty of Rs. 6,00,000/- on M/s. HLL. It was also ordered to appropriate the duty and interest paid by the appellant before issuance of show cause notice. Being aggrieved, the appellants are now before the Tribunal.

2. On behalf of the appellants, ld. Counsel Shri T. Chandran Nair submitted that the appellant is not contesting the liability to pay the demand of duty or interest and is confining the challenge on the penalties imposed. He submits that there is no sale of the Mixed Odoriferous Substances (perfumes) to any outside parties. The vendors are manufacturing soaps and detergents for and on behalf of the HLL under the brand name. Due to some inadvertent error, certain elements of costs were not included by M/s. HLL while providing the costing to the appellant. The appellant continued to clear the goods based on the cost provided by M/s. HLL. After being pointed out by the Central Excise officers, entire duty along with interest was paid by M/s. HLL. When duty and interest has been paid on being pointed out, no show cause notice ought to have been issued as provided under section 11A(2B) of Central Excise Act, 1944. He added that there was no intention on the part of the appellant to evade or avoid payment of duty as whatever duty is paid is admissible as credit to HLL/job workers / vendors and

the whole issue gives rise to a revenue neutral situation. That on this ground alone, the demand is not sustainable.

3. Further, out of the 15 products, value of 13 products was higher than the actual value arrived at by M/s. HLL based on actual costing and the allegation is only with respect of two products. This itself shows the bonafides of the appellants as well as HLL. Again the final products are cleared on the basis of MRP and therefore all element of costing is included in such MRP.

4. The ld. Counsel also argued on the ground of limitation and submitted that when the credit is admissible to own/sister unit and are job workers who manufacture goods for HLL, and pay duty on HLL's MRP, the demand raised is unsustainable. That there is no ground for imposing penalty and may be set aside. The ld. Counsel also relied on the decision of the Tribunal in the case of Commissioner of Central Excise, Raipur Vs. Prakash Industries Ltd. – 2013 (290) ELT 693.

5. Against this, ld. AR Shri R. Subramaniyam reiterated the findings in the impugned order. It is clearly brought out in the show cause notice as well as in the impugned order that the appellant had undervalued two products and therefore the demand raised is legal and proper.

6. Heard both sides.

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7. The learned counsel has submitted that the appellant is not contesting the demand of duty or the interest thereon and has confined his arguments on the penalties imposed. He has submitted that out of the 15 products of Mixed Odoriferous Substances (perfumes) manufactured by appellant, the allegation of undervaluation is only with respect of two products. It is also brought out from the facts that M/s. HLL was providing the costing to the appellant based on which the goods were cleared by the appellant. That immediately, after being pointed out by the audit, the appellants have paid the duty along with interest. In such a case, the show cause notice ought not to have issued. So also the intention to evade payment of duty cannot be alleged when the job worker / vendors/ HLL is eligible to take CENVAT credit on the duty paid. Thus, the situation would give rise to revenue neutral and therefore, in our opinion, as laid down in the case of Prakash Industries Ltd. (supra), the demand is unsustainable. Since the demand and interest are paid by the appellant and the ld. Counsel for the appellant has not challenged the duty demand and interest and has confined his arguments only to the penalty, we hold that the differential demand and interest appropriated are sustainable. However, we set aside the penalties imposed on both the appellants.

8. In the result, Appeal No. E/117/2008 is allowed and Appeal No. E/118/2008 is partly allowed in the above terms.

(Operative portion of the order was pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

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Customs, Excise & Service Tax Appellate Tribunal

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अपील अधिकारी / (CESTAT)
चेन्नै / CHENNAI