

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. III

EXCISE APPEAL No.41527 of 2013

(Arising out of Order-in-Appeal No.100/2013 (M-II) (CHENNAI) dated 26.03.2013 passed by Commissioner of Customs & Central Excise & Service Tax (Appeals), Chennai-1 Commissionerate, 26/1. Mahatma Gandhi Marg, Nungambakkam, Chennai 600 034)

M/s.Star Boxes India (P) Ltd.

Pollivakkam Village,
Tiruvallur 602 002.

... Appellant

Versus

The Commissioner of GST & Central Excise,

Chennai Outer Commissionerate,
Newry towers No.2054, I Block,
II Avenue, 12th Main Road,
Anna Nagar,
Chennai 600 040.

... Respondent

APPEARANCE:

Ms. Radhika Chandrasekar, Advocate
For the Appellant

Shri N. Sathya Narayanan, Assistant Commissioner (A.R)
For the Respondent

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

DATE OF HEARING : 12.04.2023

DATE OF PRONOUNCEMENT : 26.05.2023

FINAL ORDER NO.40345/2023

Order : [Per Hon'ble Ms. Sulekha Beevi C.S.]

Brief facts are that the appellants are engaged in manufacture of carton boxes falling under Chapter 48 of CETA, 1985. Based on the intelligence that the appellant was not adopting the correct assessable value in respect of their clearances made to M/s.Mira Textiles and Industries (I) Ltd., documents and records were verified. It was noticed that appellant was getting the kraft paper (raw material) under the cover of Central Excise invoices from M/s.Mira and after availing the credit of craft paper, the same was being converted into carton boxes (finished products).

2. The department was of the view that the appellant is manufacturing carton boxes as a job work for and on behalf of M/s.Mira Textiles. The price adopted by the appellant was only the cost of production at their hand as evidenced from the cost sheet prepared. The goods were sold by Mira to other customers. There was a difference in the sale price of the goods adopted by M/s.Mira Textiles when compared with the sale price of the appellant to M/s.Mira Textiles. The department was of the view that amount received by the appellant was only compensation of the expenditure incurred by them and received by them through the sale invoices raised.

3. It appeared to the department that the appellant had simply been acting as a job worker for M/s.Mira Textiles (who is the principal manufacturer) and the value adopted for payment of duty was not the sole consideration for sale as required under Section 4 (1) (a) of Central

Excise Act, 1944. Hence the valuation was required to be determined as per Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 under Section 4 (1) (b) of Central Excise Act, 1944. The appellant though was doing job work for Mira for the period May 2008 to September 2009 had failed to disclose these aspects and the correct value of their clearances in their monthly E.R.1 returns filed with the department. Show Cause Notice No.37/2010 dated 06.05.2010 was issued proposing to determine the differential duty along with interest and also for imposing penalties. After due process of law, the adjudicating authority confirmed the demand along with interest and also imposed penalty. Against such order, the appellant filed an appeal before the Commissioner (Appeals) who upheld the same. Hence this appeal.

4. Ld. Counsel Ms. Radhika Chandrasekar appeared and argued for the appellant. It is submitted by the Ld. Counsel that the appellant procured the raw material viz. kraft paper from M/s.Mira Textiles on payment of Excise Duty as well as Sales Tax / VAT. The ownership of such raw material is then transferred from Mira Textiles to the appellant. The finished products (carton boxes) was manufactured by the appellant using this raw material. There was no free supply of raw material by M/s.Mira Textiles. Further, the finished goods was sold by the appellant to Mira Textiles by raising an invoice and charging applicable excise duty and Sales Tax / VAT. The goods are delivered to M/s. Mira Textiles and sometimes as per the instructions the goods are delivered to customers of Mira Textiles viz. Mohan Breweries etc. The department alleges that the appellant is a job worker of Mira Textiles and the transaction value

adopted is incorrect. Ld. Counsel submitted that both the authorities below erred in holding that the appellant is a job worker of Mira Textiles. It is asserted by the counsel that appellant is an independent manufacturer.

5. It is explained that in any job work transaction, the job worker will be producing the goods using the raw material owned by the principal manufacturer and the ownership of such raw material will never be transferred to job worker. In the present case, the appellants have purchased kraft paper from M/s.Mira Textiles and the ownership of such raw materials vests with the appellant. The appellant manufacturers carton boxes on its own using the raw material purchased by the appellant. The appellant also availed cenvat credit on inputs and the finished goods are sold on the strength of commercial invoices after charging applicable Excise Duty and Sales Tax / VAT. Thus, M/s.Mira Textiles become the purchaser of carton boxes. It is urged that merely because the raw materials are supplied by Mira Textiles and the finished products are also sold to M/s.Mira Textiles, it cannot be considered that the appellant is a job worker to M/s.Mira Textiles.

6. Ld. Counsel adverted to Section 4 (1) (a) of Central Excise Act, 1944 and submitted that the appellant has satisfied all the conditions set out in the above section. The section specifies the following conditions to be satisfied for adopting the transaction value for payment of excise duty :

(a) the finished goods must be sold for delivery at the time and place of removal.

(b) seller and buyer should not be related and

(c) price must be the sole consideration for the sale.

In the present case, the department has invoked Rule 10A to determine the assessable value and the liability to pay duty. The said Rule 10A can be invoked only if Section 4 (1) (a) fails. Rule 10A (i) of the Valuation Rules 2000 has no application, since in the instant case, the goods manufactured and sold by the appellants are not on job work basis. The department alleges the appellant to be a job worker without any proper evidence to substantiate the allegation.

7. Ld. Counsel has also argued on the ground of limitation. The period involved is from May 2008 to September 2009 and the show cause notice has been issued invoking the extended period on 06.05.2010. It is alleged by the department that the appellant has suppressed facts with intent to evade payment of duty. Ld. Counsel submitted that there is no evidence to prove that the appellant has suppressed any facts with intent to evade payment of duty. Appellant has filed periodical returns showing clearances of the finished products. So also, the purchases of raw materials are on payment of excise duty which has also been accounted properly. The demand has been raised on the basis of documents which were produced before the department when called for; that there are no grounds for invoking extended period and the show cause notice is time-barred.

8. Ld. Counsel relied upon the decision of the Tribunal in the case of *Coromandel Paints Ltd. Vs CCE Visakhapatnam* -2010 (260) ELT 440 (Tri.-Bang.) and argued that in similar set of facts, the Tribunal has held that merely indicating that vendors of raw materials had paid some

advance money for procuring raw material, it cannot be said that the assessee is a job worker. The decision in the case of *Sujhan Instruments Vs CCE Chennai* – 2019 (368) ELT 135 (Tri.-Chennai) was also relied. Ld. Counsel prayed that the appeal may be allowed.

9. Ld. A.R Shri N. Sathya Narayanan appeared and argued the matter. Para-7 (i) of the impugned order was referred by Ld. A.R to argue that Shri G. Hari Hara Subramanian, General Manager of the appellant unit had admitted in his statement that M/s.Mira Textiles were supplying kraft paper and the conversion cost of the cartons will be added with the cost of production to arrive at the assessable value to discharge duty liability and the appellant is realizing only that value. It is clear that M/s.Mira Textiles exercises control on the appellant to adopt an artificial price for the purpose of assessment of duty which further indicate that the relationship between the appellant and M/s.Mira Textiles was one of job worker and Principal manufacturer. Hence duty on the goods cleared by the appellant requires to be determined in terms of provisions of Rule 10A of the Valuation Rules, 2000. Ld. A.R prayed that the appeal may be dismissed.

10. Heard both sides.

11. The issue that arises for consideration is whether value adopted by the appellant for the clearances made to M/s.Mira Textiles & Industries (I) Ltd. and M/s.Mohan Breweries under the instructions of M/s.Mira on the basis of transaction value as per Section 4 (1) (a) of Central Excise Act, 1944 is correct or whether Rule 10A of Valuation Rules, 2000 has to

be applied. For better appreciation Section 4 (1) (a) and 4 (1) (b) of Central Excise Act, 1944 are reproduced as under :

“SECTION 4. Valuation of excisable goods for purposes of charging of duty of excise. — (1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall

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(a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value;

(b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.

Explanation. — For the removal of doubts, it is hereby declared that the price-cum-duty of the excisable goods sold by the assessee shall be the price actually paid to him for the goods sold and the money value of the additional consideration, if any, flowing directly or indirectly from the buyer to the assessee in connection with the sale of such goods, and such price-cum-duty, excluding sales tax and other taxes, if any, actually paid, shall be deemed to include the duty payable on such goods.

12. Relevant portion of provisions of Rule 10A also is noticed as under :

RULE 10A. Where the excisable goods are produced or manufactured by a job-worker, on behalf of a person (hereinafter referred to as principal manufacturer), then,-

(i) in a case where the goods are sold by the principal manufacturer for delivery at the time of removal of goods from the factory of job worker, where the principal manufacturer and the buyer of the goods are not related and the price is the sole consideration for the sale, the value of the excisable goods shall be the transaction value of the said goods sold by the principal manufacturer;

(ii) in a case where the goods are not sold by the principal manufacturer at the time of removal of goods from the factory of the job-worker, but are transferred to some other place from where the said goods are to be sold after their clearance from the factory of job

worker and where the principal manufacturer and buyer of the goods are not related and the price is the sole consideration for the sale, the value of excisable goods shall be the normal transaction value of such goods sold from such other place at or about the same time and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of said goods from the factory of job-worker.

(iii) in a case not covered clause (i) or (ii) the provisions foregoing rules, wherever applicable, shall *mutatis mutandis* apply for determination of the value of the excisable goods.

Provided that the cost of transportation, if any, from the premises wherefrom the goods are sold, to the place of delivery shall not be included in the value of excisable goods.

Explanation. – for the purposes of this rule, job-worker means a person engaged in the manufacture or production of goods on behalf of a principal manufacturer, from an inputs or goods supplied by the said principal manufacturer or by any other person authorised by him.”

13. It can be seen from above that the provisions of Rule 10A can be brought into play when the excisable goods are produced or manufactured by a job-worker, on behalf of principal manufacturer. In the present case, the department alleges the appellant to be a job worker for the reason that the kraft paper (raw material) is supplied by M/s.Mira Textiles. It has to be noted that there is no free supply of raw materials to the appellant by M/s.Mira Textiles and it is actually purchased by raising invoices and paying the value of the raw material along with duty and applicable Sales Tax / VAT. The ownership of the raw material is therefore transferred from M/s.Mira Textiles to the appellant. Such kraft paper is used for manufacture of carton boxes which are finished product and cleared to M/s.Mira Textiles and M/s.Mohan Breweries under the instructions of M/s.Mira Textiles. The department has relied upon a

statement of Shri G. Hari Hara Subramanian, General Manager of appellant-company to allege that appellant is a job worker. The documentary evidence in the nature of invoices for purchase of raw materials, invoices for clearances of finished products indicate that the appellant is an independent manufacturer. Documentary evidence prevails over oral statement which is not put to the test of examination and cross-examination as required under Section 9D. There is no evidence to support the case of the department. It clearly shows that the appellant has purchased raw materials and used them for manufacture of carton boxes as an independent manufacturer.

14. Similar issue was considered by the Tribunal in the case of *Coromandel Paints Ltd. Vs CCE Visakhapatnam* -2010 (260) ELT 440 (Tri.-Bang.). Relevant paragraphs of the said decisions are reproduced as under :

“8. It can be noticed from the above reproduced clause that the appellant herein was willing to manufacture and supply paints to SIPL at a price i.e. mutually beneficial and reasonable. This would indicate that both the parties had an intention to enter into an agreement for purchase and sale of the paints, which are for specific application and are manufactured only on request of SIPL. All other clauses which have been referred to by the lower authorities are discussing about the commercial terms which have been brought into play in a normal agreement. It is also undisputed that the paint which was to be manufactured by the appellant is for specific applications i.e. for marine applications. If that be so, there is nothing wrong in SIPL putting the condition of selection of raw material suppliers from their side. We also do not find any irrationality in specifying vendors who would supply the specific raw materials for special kind of paints to be manufactured by the appellant.

9. Against this background, we find that the Id. Commissioner (Appeals) while dismissing the appeal filed by the appellant recorded the following findings :-

“6. I have carefully gone through the impugned order and the rival contentions. The issue to be decided by me is whether the transaction between the appellants and Sigmakalon falls under the category of job-worker or on principal to principal basis. The definition of job worker as could be seen from the Explanation to Rule 10A of Valuation Rules is : “job-worker means a person engaged in the manufacture or production of goods on behalf of a principal manufacturer, from any inputs or goods supplied by the principal manufacturer or by any other person authorized by him”. As seen from this, appellants clearly falls under the category of job-worker as discussed in the findings of the impugned order and I am in agreement with the findings of the Adjudicating Authority that the activity undertaken by the appellant is controlled by Sigmakalon from the stage of procurement of raw materials; that the equipment I supplied free of charge for the manufacture of the products, the installation of which will be done by Sigmakalon at the appellant’s premises while retaining the ownership and also the repair & maintenance for the same will be taken up by Sigmakalon; control over the inventory of inputs and process of manufacture and there is a finding in the impugned order to the extent that the raw material/packing material was to be obtained from the persons identified by Sigmakalon. Further, the whole process as to how the advances were paid and the suppliers of raw material/packing material were appointed by Sigmakalon to circumvent the actual transaction of supply of raw material; as to how the price shown in the invoices is not the sole consideration and there are various other considerations as per the terms of the agreement was explained in the impugned order. I do not find any infirmity in the impugned order to cause any disturbance of the decision.”

10. We find that the entire thrust of the findings of Id. Commissioner (Appeals) is the definition of job worker which has been relied upon. We find that the definition or the explanation to Rule 10A of the Valuation Rules which indicates who is a job worker specifically indicates that the job worker would be a person who manufactures or produces goods on behalf of principal manufacturer from any inputs or goods supplied by the principal manufacturer or other persons authorized by him. In the case before us, it is on record and as per the agreement entered between both the parties, that the appellant will purchase and procure the raw materials, packing materials and manufacture the paints as per the specification of the SIPL. The question of receiving advance money for payment towards the purchases of raw materials for is normal commercial terms. It is to be seen that there nothing on record to indicate that SIPL had supplied raw materials or inputs or goods to the appellant for manufacturing in order to bring the appellant into the category of job-worker and apply the provisions of Rule 10A of the Central Excise Rules, 2002 for the purpose of discharge of duty liability on the price of SIPL. It is also seen from the finding of the Id. Commissioner (Appeals), that the activity

undertaken by the appellant is controlled by SIPL is totally incorrect, inasmuch as that the equipments which have been supplied by SIPL are of general in nature. It is seen from the Appendix attached to the agreement that the said SIPL had supplied laptops, desk top computers, water cooler, pedestal fan, printers, scanners, files locker, tables, fax machine, ink jet printer, laboratory equipments and Gantry, Chain pulley, electronic balance, manual crimper, water jacket, Kreis Dissolver Control Board, Main switch cum control panel, changeover with panels and allied cables. It can be seen that the equipments which were supplied and as annexed to the agreement in appendix -1 were not disputed by both sides. On the contrary the counsel for the appellants submits that though these equipments were supplied, they were of general natures but they were never utilized and they were never installed in the factory premises as the appellant could manufacture the specific quantity of paint with their own installed equipments.”

15. After appreciating the facts of the case and following the decision (supra) we are of the opinion that the demand cannot sustain. Impugned order is set aside. Appeal is allowed with consequential relief, if any, as per law.

(Pronounced in open court on 26.05.2023)

Sd/-
(M. AJIT KUMAR)
MEMBER (TECHNICAL)

Sd/-
(SULEKHA BHEEVI C.S.)
MEMBER (JUDICIAL)