IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Excise Appeal No.40260 of 2015

(Arising out of Order-in-Appeal No. 40/2014 (P) dated 18.2.2014 passed by the Commissioner of Central Excise (Appeals), Chennai)

M/s. Sree Mookambikai Polymers **Appellant**
Plot No. A-26, Industrial Estate
Mettupalayam, Puducherry – 605 009.

Vs.

Commissioner of GST & Central Excise **Respondent**
No. 1, Goubert Avenue
Beach Road, Puducherry – 605 001.

APPEARANCE:

Shri G. Krishnamoorthy, Advocate for the Appellant
Shri N. Satyanarayanan, AC (AR) for the Respondent

CORAM

Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No. 40502/2024

Date of Hearing : 23.04.2024
Date of Decision: 30.04.2024

Per M. Ajit Kumar,

This appeal is filed against Order in Appeal No. 40/2014 dated 18.2.2014 passed by the Commissioner of Central Excise (Appeals), Chennai.

2. Brief facts of the case are that the appellant during the period from April 2010 to March 2011 were receiving goods from their principal manufacturer namely M/s. Marico Industries and carrying out job work on the goods. The processed goods were sent back to M/s. Marico Industries for use by them in further manufacture. The appellant adopted cost plus job work charges for valuation of goods at the time of clearing the subject goods back to the principal manufacturer. A Show Cause Notice dated 20.6.2011 was issued to the

appellant demanding Rs.1,68,387/- along with interest alleging that the appellant should have adopted the provisions of Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 instead of the cost plus job work charges method adopted by them at the time of clearance. After due process of law, the adjudicating authority confirmed the demand along with interest and imposed penalty of Rs.20,000/- under Rule 25(1) of the Central Excise Rules, 2002. In appeal, Commissioner (Appeals) upheld the same. Hence the appellant is before this Tribunal.

3. Shri G. Krishnamoorthy, learned counsel appeared for the appellant and Shri N. Satyanarayanan appeared for the respondent-department.

4. The learned Advocate for the appellant submitted that the appellant is engaged in the manufacture of HDPE bottles falling under Chapter heading 3923.30.90 on job work basis out of the raw materials supplied by Marico Ltd. The goods received on job work basis were valued and cleared on the basis of formula laid down by the Hon'ble Supreme Court in the case of Ujagar Prints Ltd. reported in 1989 (39) ELT 493 (SC) i.e. on cost of raw material plus conversion charges including the job workers' profit. The learned counsel submitted that their case was governed by Rule 10A(iii) of Valuation Rules, 2000 which states that in a case not covered under Clause (i) or clause (ii), provisions of the foregoing rules wherever applicable, will mutatis mutandis apply for determination of the value of the excisable goods. In their case, since Rule 4 to Rule 8 were clearly inapplicable, the value will have to be determined as per the residuary Rule 11 of the Central Excise Valuation Rules, 2000 which states that 'if the value of any excisable goods cannot be determined under the foregoing rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and sub-section (1) of section 4 of the Act". Since none of the Rules 1 to 10 were applicable in their case, the value was required to be determined on the basis of the formula laid down by the Hon'ble Supreme Court in the Ujagar

Print's case cited supra i.e. on cost of raw material plus conversion cost. The Ld. Counsel submitted that this Tribunal in M/s. Bhavani Enterprises, Shree Mukambikai Polymers, M/s. Smith Enterprises Vs. CCE, Puducherry reported in 2018 (2) TMI 139 – CESTAT, Chennai has decided this very same issue in the case of the appellants relying on the decision of the CESTAT in the case of Advance Surfactants India Ltd. Vs. Commissioner reported in 2011-TIOL-757-CESTAT-Bangalore holding that Rule 8 will not apply and the valuation adopted in line with Ujagar Prints case and Ruel 10A(iii) of the Valuation Rules, 2000 is legally unassailable. The appellants have reliably learnt that the department has not filed any appeal against this order of this Tribunal.

5. The learned AR Shri N. Satyanarayanan reiterated the findings in the impugned order.

6. We have heard both sides and perused the records carefully. We find that a Coordinate Bench of this Tribunal in M/s. Bhavani Enterprises, Shree Mukambikai Polymers (supra) has examined an identical matter, wherein they have observed as under;

> "6. The issue posing for consideration is whether the appellants have correctly arrived at the assessable value of the job worked goods. The appellants have paid duty on the assessable value worked out by taking into account the cost of materials plus conversion cost as laid down in the case of Ujagar Prints. The principal manufacturer (M/s.Marico) used the bottles in its factory for filling coconut oil. The department therefore contends that assessable value has to be arrived as per Rule 8 of Valuation Rules, 2000. It is also contended that after 1.4.2007 the valuation should be done applying Rule 10A(iii) r/w Rule 8 of Central Excise Valuation Rules. It needs to be mentioned that Rule 8 applies when goods are not sold. The goods (HDPE bottles) are sold by appellant to M/s. Marico. The appellant does not captively consume the goods nor does M/s.Marico consume it on behalf of appellant. The very same issue has been considered by the Tribunal in the case of Advance Surfactants India Ltd. (supra) relied by the appellant. The Tribunal in the said case considered the Board circular F.No. 6/15/2009 dated 31.3.2010. The relevant portion of the order is reproduced for ready reference:-
>
> "6. The undisputed fact in these cases is the appellant herein is a job worker manufacturing LABSA for M/s. HUL. It is also undisputed that HUL gives LAB and the appellant uses other consumables in the manufacture of LABSA. It is also undisputed that the appellant has been valuing the said LABSA cleared from factory premises, based upon the cost of material plus processing charges prior to 1-4- 2007

when the provisions of Rule 10A were inserted into the Central Excise Valuation Rules, 2000. It is also undisputed that the said LABSA is returned back to M/s. HUL for further consumption in their factory premises for manufacturing of soaps and detergents. It is nobody s case that LABSA consumed by HUL is on behalf of the appellant herein.

7. On these factual matrix we need to appreciate the provisions under Rule 10A, which is reproduced herein 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 the 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:

(ii) in a case not covered under clause (i) or (iI), the provisions of 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 any inputs or goods supplied by the said principal manufacturer or by any other person authorised by him."

7.1 It can be seen from the above reproduced provisions that provisions of Rule 10A can be brought into play only when there is a situation where excisable goods are produced or manufactured by a job worker on behalf of a person and cleared to the buyer of the principal and/or cleared to a depot or a consignment agent. The intention of the Legislature was to capture the tax on the goods, on the value of the said goods when cleared to the ultimate consumers. In the case in hand, we find that provisions of Rule 10A(1) and (ii) does not arise as has been recorded by us in the earlier paragraphs.

> Provisions of rule 10A(ii) gets attracted which talks about a situation where 10A(i) or (ii) does not apply. The said provision (illi) very clearly mandate that in a case not covered under clause (1) or (ii), the provisions of foregoing rules, wherever applicable shall mutatis and mutandis apply for determination of value of the excisable goods. This would Indicate that the provisions of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 has to be gone through serially. It is not the Revenue a case that provisions of Rules 3, 4, 5, 6 and 7 would also apply in this case. Revenue is of the view that provisions of Rule 8 will apply. In order to understand the Revenue s case, we reproduce the provisions of Rule 8.
>
> "RULE 8. Where the excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in the production or manufacture of other articles, the value shall be [one hundred and ten per cent] of the cost of production or manufacture of such goods."

The ratio of above decision is also applicable to the present matter. Judicial discipline requires us to abide by the same.

8. In the light of the above discussions we are of the view that the impugned orders are not sustainable and merits to be set aside. We order accordingly. The appeal is allowed with consequential relief if any, as per law.

(Pronounced in open court on 30.04.2024)

(**M. AJIT KUMAR**)
Member (Technical)

(**P. DINESHA**)
Member (Judicial)

Rex