CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 1311 of 2010

(Arising out of order-in-appeal No. 31 & 32/CE/D-II/2010 dated 02.02.2010 passed by the Commissioner (Appeals) Central Excise, New Delhi)

DATE OF HEARING : 04.01.2017
DATE OF DECISION : .01.2017

M/s Coach Classic …. **Appellant**
(Rep by Sh. N.K. Sharma, Adv.)

VERSUS

CCE, Delhi-II …. **Respondent**
(Rep. by Sh. G.R. Singh, DR)

CORAM : HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. ASHOK K. ARYA, MEMBER (TECHNICAL)

FINAL ORDER NO. 50214/2017

PER JUSTICE (Dr) SATISH CHANDRA:

The present appeal is filed by the assessee-Appellants against the order-in-appeal no. 31 & 32/CE/D-II/2010 dated 02.02.2010 passed by the Commissioner (Appeals) Central Excise, New Delhi.

2. The brief facts of the case are that Shri Puneet Singh Seehra was a Proprietor of M/s Coach Classic and also a Director of M/s Shearling Skins Pvt. Ltd. M/s Coach Classic, a proprietorary

concern was engaged in the manufacturing and trading of leather seat covers for cars, upholstery leather and furniture. It is claimed that M/s Shearling Skins Pvt. Ltd., during the period under consideration, was engaged in the manufacturing & trading of office furniture. It was shown that M/s Coach Classic was working from 17, DSIDC Industrial Sheds, Scheme II, Okhla Industrial Area, Phase-II, New Delhi. On the other hand, address of M/s Shearling Skins Pvt. Ltd. was shown working from RZ 2679/28 Tughalkabad Extension, New Delhi. On 10.03.2008, a team of Anti Evasion Branch had visited the factory address at RZ 2679/28 Tughalkabad Extension, New Delhi, where it was found that the property belongs to Ms. Geeta Oberoi, who had given a shop on rent, having its opening towards Gali No. 28, to Shri Puneet Singh Seehra. The said shop, where it was claimed that the Company was working, was in the size of 8x6 sq. ft. It was noticed that this shop was not opened since long and no activity was carried out from the said premises. When the lady, Ms. Geeta Oberoi, called them, the shop was opened by one Shri Sarabjeet Singh @ Mannu, an employee of M/s Coach Classic, who was accompanied with Shri Gulshan Bindra, General Manager (Works) of M/s Coach Classic. Their statements were recorded and they stated that the keys were given to them by Shri Puneet Singh Seehra to open the premises. In Okhla Industrial Area, from where M/s Coach Classic was working, it was found that it was having four big halls at ground floor where manufacturing process of furniture was taking place with the help of 14 stitching machines along with other tools.

3. In the above scenario, the adjudicating authority has clubbed the clearance of both the business entities and denied the SSI exemption to the assessee-Appellants. The same was upheld by the appellate authority by passing the impugned order where some partial relief was given. The assessee-Appellants, still not being satisfied, filed the present appeal.

4. With this background, we have heard Shri N.K. Sharma, learned counsel for the assessee-Appellants and Shri G.R. Shigh, learned DR for the Revenue. The learned counsel for the assessee-Appellants submits that the premises at RZ 2679/28 Tughalkabad Extension, New Delhi, was taken on rent in the year 2007. It was intended to set up a Unit at Baddi (Himachal Pradesh) to avail the incentives offered by the Government, but due to certain initial problems the setting up of the Unit at Baddi was delayed so all the machines were shifted to the premises of M/s Coach Classic. He also submits that the show cause notice was issued to M/s Shearling Skins Pvt. Ltd. It was also the submission of the learned counsel for the assessee-Appellants that both the business entities have separate Income Tax and Sales Tax registrations. While M/s Coach Classic is a proprietary firm of Shri Puneet Singh Seehra and M/s Shearling Skins Pvt. Ltd. is a Private Limited Company with its own premises, machines and finances, thus both have separate legal entity. Therefore, their clearance cannot be clubbed. On the other hand, Shri G.R. Singh, learned DR for the Revenue, relied upon the order of the lower authorities.

5. After hearing both the sides and on perusal of record, it appears that in the instant case the demand of Rs. 35,89,284/- was confirmed by the adjudicating authority which was reduced by the appellate authority i.e. Commissioner (Appeals) to the extent of Rs. 30,81,900/-. The penalty imposed under Section 11AC on the proprietor of M/s Coach Classic has also been reduced to the equal amount of duty and also waived the additional penalty amounting to Rs 2,00,000/- imposed on Shri Puneet Singh Sheera by the impugned order. Thus, the assessee-Appellants have got the partial relief in the impugned order. Against it, the Department is not in appeal.

6. From the record, it appears that M/s Shearling Skins Pvt. Ltd. was engaged in the manufacturing and trading of the office furniture which requires lot of space. All the machines for the purpose were found in the premises of M/s Coach Classic. The address for M/s Shearling Skins Pvt. Ltd. was shown at RZ 2679/28 Tughalkabad Extension, New Delhi, a rented shop having size of 8x6 sq.ft. No factory or office can run from this premises/shop especially when it was not used since long. The statement of the employees of M/s Coach Classic i.e. S/Shri Sarabjeet Singh @ Mannu and Gulshan Bindra were recorded. They said that both the business entities are, in fact, run by Shri Puneet Singh Sheera.

7. By considering the totality of the facts and circumstances of the case, we are of the view that the actual business entity is M/s Coach Classic and its proprietor has formed a dummy company in the name and style of M/s Shearling Skins Pvt. Ltd. by showing its

manufacturing unit just to have SSI Exemption. In the premises of this Company, no manufacturing activity was undertaken, as discussed above. Hence, we are of the view that the clearances are correctly liable to be clubbed for both the business entities as per para (vi) and (vii) of the SSI Exemption Notification No. 8/2003-CE dated 01.03.2003. Further, when M/s Shearling Skins Pvt. Ltd. is a dummy company, then no separate notice is required. Hence, we are of the view that the assessee-Appellants, M/s Coach Classic, being a proprietary firm, in the instant case, has been found evading the Central Excise Duty by forming a dummy unit in the name and style of M/s Shearling Skins Pvt. Ltd. In the instant case, the assessee-Appellants have already got the partial relief and there is no further scope to any other relief.

8. In view of the above, we have no reason to interfere with the impugned order and the same is hereby sustained along with the reasons mentioned therein.

9. In the result, the appeal filed by the assessee-Appellants is dismissed.

(Pronounced in the open court on .01.2017)

(ASHOK K. ARYA)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT

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