IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:17.01.2017

Excise Appeal No.1920/2010

[Arising out of Order-in-Appeal No.137(KKG)CE/JPR-II/2010 dated 09.03.2010 passed by the Commissioner of Central Excise, Jaipur-I]

M/s.Sona Processors (India) Ltd. Appellants

Vs.

CCE, Jaipur-I Respondent

Appearance:

Rep. by Ms. Rinki Arora, Advocate for the appellant.
Rep. by Shri G.R. Singh, DR for the respondent.

Coram: Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No.50455/2017

Per B. Ravichandran:

The appeal is against order-in-appeal dated 9.3.2010 of Commissioner of Central Excise, Jaipur-I. The appellants are engaged in the manufacture of processed fabrics on job work basis. They were paying central excise duty based on the value arrived at on cost construction basis.

2. The dispute in the present case is relating to inclusion of credit of AED availed and lying in the books of accounts of the principal manufacturer, who supplied grey fabrics for the appellant to undertake job work in the dutiable value. The Revenue proceeded against the appellant alleging incorrect computation of duty and the demand of Rs.1,31,089/- was confirmed along with equivalent amount of penalty under Section 11 AC of the Central Excise Act, 1944. On appeal, vide the impugned order, the Commissioner confirmed the original order.

3. Ld. Counsel for the appellant submitted that the principal manufacturer, who supplied the grey fabrics, has paid AE duty and shown the same as expenses in

their accounts. The AE duty paid and taken as credit was lying un-utilised in the accounts of the principal manufacturer. It is further submitted that the appellant is not aware of the expenditure shown in the accounts towards AE duty, by the supplier of grey fabrics. Even the department came to know much later after verifying the records of the supplier. There is no allegation that the appellant knowingly did not add the AE duty component in their cost construction to discharge central excise duty. As such, the demand cannot be issued invoking extended period of time.

4. Ld. AR reiterated the findings of the lower authorities and submitted that it is the responsibility of the appellant to arrive at the correct cost of processed fabrics by applying all the components.

5. We have heard both the sides and perused the appeal records.

6. Admittedly, the only dispute in the present appeal is non-inclusion of AE duty component shown as expenses in the accounts of the supplier. We find no evidence in the appeal records to indicate that the appellant was ever aware of AE Account lying un-utilized with the supplier of goods. They arrived at on the cost construction based on the invoices/details received. In such situation, we find allegation of fraud, willful mis-statement, etc., without supporting evidence is not sustainable. Accordingly, the demand of differential duty, if any, shall be restricted to the normal period. No penalty also is imposable on the appellant. The appeal is accordingly allowed.

[Order dictated & pronounced in open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.