CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal Nos. 1214 to 1217 of 2010

(Arising out of order-in-appeal No. 77 to 80/CE/D-II/2010 dated 26.02.2010 passed by the Commissioner (Appeals) Central Excise, Delhi-II)

DATE OF HEARING : 02.02.2017
DATE OF DECISION : 09.02.2017

M/s PDOP Pile Sales P. Ltd. …. Appellants
Shri Rajesh Agarwal (Rep by Sh. Rajesh Chibber, Adv)
M/s Prabh Dayal Om Prakash
Shri Bharat Agarwal

VERSUS

CCE, New Delhi …. 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. _50721-50724/2017__

PER JUSTICE (Dr) SATISH CHANDRA:

All the present appeals are filed by the assessee-Appellants against the order-in-appeal no. 77 to 80/D-II/2010 dated 26.07.2010 passed by the Commissioner (Appeals) Central Excise, New Delhi.

2. The brief facts of the case are that, the factory of the assessee-Appellants was searched on 10.08.2007. During the

course of search, officers found adequate plant & machinery installed therein with deployment of sufficient work force therein to manufacture various types of Dustbins. A sizeable amount of raw material, such as, MS Sheets, wheels, Rickshaw frames, Dustbin Covers, PVC Resin, Plastic Dustins, Trolley Wheels, Welding Electrodes, Nut Bolts, Assembled Rickshaw Mounted and Plastic Scrap of Dustbins etc. valued at Rs. 33,54,495/- were also found. It was found that the assessee-Appellants are using brand name of **'SHEETAL'** which belongs to M/s Aquaplast Industries Pvt. Ltd. After issuing the show cause notice, the lower authorities opined that fabrication of steel frames and fitting of plastic container in the same amounted to manufacture of goods falling under Heading No. 7309 of CETA. The use of brand name 'SHEETAL' on Dustbins amounts to using the brand name of another person and hence, the assessee-Appellants are not entitled for SSI benefit. As no excise registration was obtained, the same amounted to suppression of facts and hence, extended period was invoked. Finally, the Commissioner (Appeals) in his impugned order has reduced the duty demand as well as penalty to Rs. 30,87,296/- as against Rs. 35,93,815/-. Penalty of Rs. 2,00,000/- on Shri Rajesh Aggarwal and Shri Bharat Aggarwal was also reduced to Rs. 1,50,000/- under the provisions of Rule 26 of the Central Excise Rules, 2002. Not being satisfied, the assessee-Appellants have filed the present appeals.

3. With this background, we have heard Shri Rajesh Chibber, learned counsel for the assessee-Appellants and Shri G.R.

Singh, learned DR for the Department. We have also perused their written submissions.

4. After hearing both sides and on perusal of record, it appears that assessee-Appellant are engaged in the fabrication of steel frames and fitting of plastic container in the same. The containers were purchased from another group company, namely, M/s Aquaplast Industries Pvt. Ltd., who has the trade mark of 'SHEETAL'. The assessee-Appellants are putting the said plastic Dustbin as it is, into the iron frame by fixing handles, lid, wheel, frame etc. The assessee-Appellants were merely fabricating the frames for fixing the Dustbin which was always procured by them from outside. For manufacturing the frame, the turnover always remained below the exempted limit.

5. From the record, it appears that the statements of Shri Rajesh Agarwal, Director of assessee-Appellant No. 1; Shri Sunil Jain, Vice-President of M/s Prabh Dayal Om Prakash, assessee-Appellant No. 3, and Shri Bharat Agarwal, Controller of assessee-Appellant No. 1, were recorded on various dates. The Dustbin under the brand name of 'SHEETAL' was manufactured by M/s Aquaplast Industries Pvt. Ltd. But since their factory is at Paonta Sahib, Himachal Pradesh, search was also conducted there, but no incriminating documents or contraband goods were found. In the instant case, the seized goods were released after making some payment. After procuring plastic pot, containers, dustbins, the assessee-Appellants used to make them more convenient for their use by manufacturing/fabricating them as Dustbin, Mobile Bin,

Trolley Bin, Rickshaw Bin etc. It appears that neither the containers nor the frames were manufactured by the assessee-Appellants in such case and, therefore, the value of such bought out items should not be added. Entire supply of the goods by the assessee-Appellants is to various civic authorities like NDMC, Municipal Corporation, Municipal Boards of various cities including Bombay, Delhi for handling the municipal waste. So, the assessee-Appellants were under the bonafide belief that the same were exempted from the excise duty, so no registration was taken; but later, registration was also obtained. It is alleged that 100% supply of the goods was for the Government Agencies i.e. civic bodies. No clandestine activity/sale was undertaken as the entire sale of the goods was for managing municipal waste and the goods were supplied for non-commercial purpose.

6. In the instant case, we are of the view that when the brand 'SHEETAL' was owned by M/s Aquaplast Industries Pvt. Ltd. and its products along with the embossed/label of 'SHEETAL' were put in the frame manufactured by the assessee-Appellants, then the cost of the borrowed item cannot be included. In the instant case, 100% supply of the goods of the assessee-Appellants is for the civic agencies of the State Governments which are making valuable contribution towards the 'Clean India' campaign.

7. In view of the above discussion and by following the ratio laid down in the case of **Trimurty Weldmesh P. Ltd.,** 1993 (64) ELT 419 (T), which was upheld by the Hon'ble Supreme Court as reported in 1996 (82) ELT A-168 (SC), we are of the view that

the brand name ‘SHEETAL’ was already there on the plastic container purchased from M/s Aquaplast Industries Pvt. Ltd. Hence, the assessee-Appellants cannot be considered as using the brand name of another person. M/s Aquaplast Industries Pvt. Ltd. has also given the ‘No Objection Certificate’ to use the containers in the original form with the label.

8. In view of the above discussion and by considering the totality of the facts and circumstances of the case, we find no merit in the impugned order and the same is hereby set aside in toto. The assessee-Appellants will get the relief accordingly.

9. In the result, the appeals filed by the assessee-Appellants are allowed with consequential relief.

(Pronounced in the open court on 09.02.2017)

(ASHOK K. ARYA)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT

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