CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 813 of 2010

(Arising out of order-in-appeal No. 302/CE/APPL/DII/09 dated 21.12.2009 passed by the Commissioner of Central Excise, Delhi-II)

DATE OF HEARING : 16.11.2016
DATE OF DECISION :14.02.2017

M/s Harmony Systems …. Appellants
(Rep by Sh. Rahul Tangri, Adv)

VERSUS

CCE, New Delhi …. Respondent
(Rep. by Sh. R.K. Manjhi, DR)

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

FINAL ORDER NO. 50851/2017

PER JUSTICE (Dr) SATISH CHANDRA:

The present appeal is filed by the assessee-Appellants against the order-in-appeal no. 32/CE/Appl/D-II/09 dated 21.12.2009 passed by the Commissioner (Appeals) Central Excise, New Delhi.

2. The brief facts of the case are that, the assessee-Appellants, during the period under consideration, were engaged in the manufacture of furniture and parts thereof falling under

Chapter 94 of the Central Excise Tariff Act, 1985. It is claimed that the assessee-Appellants undertook the job work. It is also claimed that the assessee-Appellants are 100% EOU. The assessee-Appellants were enjoying the SSI exemption during the financial year 2003-04 and 2004-05 without obtaining the registration certificate.

On the basis of classified information, a search was conducted at the business premises of the assessee-Appellants on 19.11.2005. In the factory, Shri Surya Kant, authorised signatory of the assessee-Appellants, was present. His statement was recorded under Section 14 of the Central Excise Act, 1944 wherein he *inter alia* stated that he was working in the capacity of Accountant and was authorised signatory in respect of the Central Excise matter. From the scrutiny of record, it was noticed that the party had been using the parallel invoice books and thus it appears that the party was suppressing their production and clearing the same without mentioning in their books of account. In the statement, the Accountant had admitted that they have cleared the goods on the invoices issued from the invoice book not having the printed serial numbers. Two sets of invoices were found; in the first set there was a serial number and in another set there was no serial number. He also admitted that they have cleared the goods on the invoices issued from invoice book not having printed serial numbers having total value of Rs. 40 lacs (approx.). The computation was also made on the parallel invoices during the period 2004-05 and 2005-06 respectively. Finally, after issuing the show cause notice dated 27.04.2006, a duty demand of Rs. 26,62,479/- with equal amount of penalty along with interest was raised. The same was confirmed by the impugned order-in-appeal. Being aggrieved, the assessee-Appellants have filed the present appeal.

3. With this background, we have heard Shri Rahul Tangri, learned counsel for the assessee-Appellants and Shri R.K. Manjhi, learned DR for the Department.

4. Shri Rahul Tangri, learned counsel, at the strength of the written submission, submits that the assessee-Appellants were doing the job work and the same is eligible for deduction. The total turnover during the year was not exceeding Rs. 1 crore. The SSI exemption was wrongly denied by the lower authorities. On the second leg of arguments, he submits that the assessee-Appellants are 100% EOU, so their sales were eligible for deduction from the threshold limit of SSI. Another argument of the learned counsel for the assessee-Appellants is pertaining to the wrong invocation of the extended period. According to him, in the instant case, the entire demand is time barred. Lastly, to support his arguments, he relied upon the number of case laws mentioned in his written submissions.

5. On the other hand, Shri R.K. Manjhi, learned DR for the Department, has relied on the impugned order.

6. After hearing both sides at length and on perusal of record, it appears that parallel invoice books were found during the course of search. The authorised signatory had admitted that

the goods were cleared on the basis of invoices which do not contain the printed serial number. Thus, it is established that it is a case of clandestine removal.

7. Regarding the 100% EOU sales, it appears that the assessee-Appellants have not followed the procedure and condition laid down in the Notification No. 22/2003-CE of procuring CT-3 certificate. Hence, the assessee-Appellants are not eligible for the deduction under EOU. Inasmuch as the assessee-Appellants did not follow the CT-3 procedure, the goods will have to be included in the threshold limit of SSI Exemption. In this regard, the case law cited by the learned counsel for the assessee-Appellants in the case of **CCE vs Indian Organic Chemicals Ltd.,** 2008 (222) ELT 559 (Tri-Chennai), which was affirmed by the Madras High Court reported at 2013 (298) ELT 517 (Mad.) wherein the benefit of exemption was allowed to the manufacturer who supplied the goods to the 100% EOU without obtaining the requisite certificate from the jurisdictional authorities of the 100% EOU, is distinguishable on facts. In the instant case, it appears that none of the conditions laid down in the Notification is fulfilled. The assessee-Appellants never informed the Department that it is a 100% EOU and that there was no registration certificate. On the other hand, in the case of **Indian Organic Chemicals Ltd.** (supra) the conditions were partly fulfilled and their transactions were found genuine. Therefore, we agree with the finding of the lower authorities that the assessee-Appellants are not entitled for the benefit of 100% EOU.

8. The second leg of argument of the learned counsel for the assessee-Appellants is pertaining to the inclusion of the job work turnover in the threshold limit for SSI exemption. The learned counsel submits that the assessee-Appellants were entrusted the jobs of painting, polishing, erecting false ceiling, erecting partitions, cubicles etc. at sites, which resulted in bringing into existence an immovable property at the site, which is not excisable. According to him, the assessee-Appellants did not include this turnover in the threshold value for SSI exemption. He also relied upon the ratio laid down in the following cases :

(i) **Craft Interiors Ltd. vs CCE, Bangalore,** 2005 (187) ELT 113 (Tri.-Bang);

(ii) **Craft Interiors Pvt. Ltd. vs CCE, Bangalore,** 2006 (203) ELT 529 (SC); and

(iii) **Interscape vs CCE, Bangalore-III,** 2009 (235) ELT 257 (Tri.-Bang)

By considering the case law cited by the learned counsel for the assessee-Appellants, it appears that they had failed to show that the goods claimed to be cleared by them for job work have not been further used in the manufacture of dutiable goods. Hence, the lower authorities have rightly denied the benefit of exemption under the Notification No. 214/86.

9. From the record, it appears that Shri Surya Kant, authorised signatory of the assessee-Appellants, in his statement dated 19.11.2015 had clearly stated that raw-material for job work was purchased by them and goods were manufactured at the site of the clients. Thus, the job work was nothing but the

assessee-Appellants' own taxable sale of the goods. In the instant case, the assessee-Appellants had failed to show that the goods claimed to be cleared by them was on job work basis and it was not the manufacturing of the dutiable items. The substantial bills were raised by them for the consolidated value for the raw material, service, labour etc. By considering the totality of the facts and circumstances of the case, we are of the view that the lower authority has rightly considered the same as assessee-Appellants' own taxable sale of the goods.

10. As far as the issue of clandestine clearance is concerned, the learned counsel for the assessee-Appellants submits that there was no instance of clandestine clearance of any finished goods. The parallel invoices, which the Department has solely relied upon, are not the documents used to clandestinely clear the finished goods by them. These were the additional copies of the invoices which had already been raised. It may be on account of the original copy being lost/mis-placed or for any other reason. He also submits that the entire case of the clandestine clearance on the basis of the invoices is not supported by corroborative evidence. The Department has not verified any purchase and receipt of raw material, excess/shortage in stock, electricity consumption etc.

11. Considering the totality of the facts and circumstances of the case, it appears that Shri Surya Kant, authorised signatory of the assessee-Appellants, in his statement has stated that the goods were cleared on the basis of parallel invoices which did not

contain the serial numbers. Thus, it is clear that these were not the rough papers. When it is so, we find no reason to interfere with the impugned order where the clandestine sale was computed.

12. Lastly, the submission of the learned counsel is that the entire demand is barred by limitation. He submits that the extended period of limitation, in the present case, was rightly invoked. The assessee-Appellants were under the bonafide belief that for the SSI exemption, EOU and job work components will have to be excluded. So, he submits that the entire demand needs to be set aside along with penalty.

13. After hearing the parties, it appears that during the search, the Accountant – authorised signatory of the assessee-Appellants, has clearly admitted that the said documents were nothing but the parallel invoices used by the assessee-Appellants for clearance in a clandestine manner. It is only after the recovery of incriminating documents, the extended period was invoked. The assessee-Appellants did not disclose to the Department that their clearances have crossed the exemption limit and also used the parallel invoices for the clandestine clearance to keep the turnover within the prescribed limit. Under these circumstances, we are of the view that the extended period of limitation was rightly invoked and penalties were correctly imposed.

14. In view of the above discussion and after considering the totality of the facts and circumstances of the case, we find that

the appeal filed by the assessee-Appellants has no merit. Hence, we uphold the impugned order along with the reasons mentioned therein.

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

(Pronounced in the open court on 14.02.2017)

(ASHOK K. ARYA)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT

Golay