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

Date of Hearing:09/02/2017
Date of Decision:17/02/2017

Excise Appeal Nos.987, 1092 and 1211/2009-EX(DB)

[Arising out of Order-in-Original No.05-06/2009 dated 28.01.2009 passed by the Commissioner of Central Excise, Delhi-I]

Shri Vinod Kumar Arora, Prop.of
M/s.Veekay Auto Accessories — Appellants
M/s.Vibhor Enterprises
Smt. Jeevan Lata, Prop. of
M/s.Newon Seat Covers

Vs.

CCE,Delhi — Respondent

Appearance:

Rep by S/Shri Amit Jain, Vipul Agarwal, Somesh Arora, Ms.Rinky Arora.
Rep. by Shri R.K. Manjhi, DR for the respondent.

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

Final Order Nos. 51850-51852/2017

Per B. Ravichandran:

These three appeals are against common impugned order dated 28.01.2009 of Commissioner of Central Excise, Delhi-I. M/s.Veekay Auto Accessories, a proprietary concern owned by Shri Vinod Kumar Arora are engaged in trading of "AVON" branded two wheeler accessories like side box, helmets, locks, side bags, leg guards, etc. Certain investigations were conducted by the officers of central excise in various premises. On completion of the inquiry, proceedings were initiated against M/s.Veekay Auto Accessories and various others. The gist of the allegation against these parties is that M/s. Veekay Auto Accessories floated various fictitious firms and got the 'AVON' brand items manufactured and thereby evaded central excise duty. It was further alleged that the seized goods valued at

Rs.45,51,129/- in the premises of M/s.Veekay Auto Accessories are liable to be confiscated as they were branded goods manufactured and cleared without payment of duty. Proceedings were also initiated against various other manufacturers, who in collaboration with the brand owner manufactured and cleared excisable goods without payment of proper central excise duty. Two of such parties viz. M/s.Vibhor Enterprises and M/s.Newon Seat Covers also filed appeals against the impugned order. All these three appeals are taken up together for decision.

2. Ld. Counsel appearing for M/s.Veekay Auto Accessories submitted that the appellants have their brand name "AVON" registered under Trade Mark Act for two wheeler accessories. They do not manufacture the aforementioned branded goods as they had no facility of manufacture. They procured these items and sold them under the brand name "AVON". When the search was conducted in their premises, the authorities seized goods valued at Rs.45,51,129/- from the premises of the appellant and also packing materials and stickers with "AVON " brand name were also seized. Ld.Counsel submitted that the proceedings against the appellant is in gross violation of the principles of natural justice. A notice issued to them proposed to rely on various statements given by the individuals. Even after repeated requests of the appellant, the Original Authority did not permit cross examination of the persons, whose statements were relied upon. No reason for such denial has been recorded. Further, there is an inordinate delay in issuing the impugned order. Personal hearing was conducted on 19.09.2007, whereas the order was passed on 28.01.2009, after a delay of over 16 months. On these two grounds alone, the order is liable to be set aside.

3. Ld. Counsel further submitted that the impugned order records contradictory observation and findings. The appellant is only a trader of goods in question, which

were manufactured by the independent manufacturer. It is clear from the proceedings that individual manufacturers did file their defence and the same was examined by the Original Authority. These manufacturers even if they acted as job workers, the liability for central excise duty, if any, is upon them only. The Original Authority has concluded that the demand has to be against respective manufacturers. However, it was also recorded in the impugned order that M/s.Veekay Auto Accessories are responsible for creating fictitious firms to manufacture goods and for possessing/keeping/clearing of excisable goods valued at Rs.5,19,06,839/- with central excise duty liability of Rs.83,83,814/-. It is not clear as to who is the actual manufacturer in terms of the impugned order. The impugned order further records that M/s.Veekay Auto Accessories cannot be penalized under Section 11 AC. However, the Original Authority proceeded to impose a heavy penalty of Rs.1 Crores on the proprietor of the firm under Rule 26 of the Central Excise Rules, 2002. Such contradictory findings are legally untenable and the order suffers from lack of clarity and application of mind.

4. More importantly, ld. Counsel strongly contested the appropriation order by the Original Authority, of Rs.50 lakhs deposited by Shri Vinod Kumar Arora, against the duty liability confirmed against the individual manufacturers. Such appropriation is without any legal support and indicates that the ambiguity in the final findings by the Original Authority as to the identity of the actual manufacturer(s), who is liable to central excise duty. Ld. Counsel also strongly contested the imposition of penalty under Rule 26 of the Central Excise Rules as the ingredients mentioned therein are not at all fulfilled for penal action.

5. Ld. Counsel appearing for M/s.Newon Seat Covers submitted that the appellant did not manufacture any goods with brand name. The finished goods available in their premises during the inquiry by the officers had no brand name.

The whole demand is based on the statement of proprietor, who is not much educated. There is no evidence on record to indicate that they manufactured excisable products with the brand name of “AVON” belonging to M/s.Veekay Auto Accessories.

6. Ld. Counsel appearing for M/s.Vibhor Enterprises submitted that they are a very small scale manufacturer and were supplying the goods to M/s. Veekay Auto Accessories and till October, 2005 with no brand was affixed. They have got the die for affixing the brand name in September, 2005 and the clearance of September is without brand name and the same should be excluded from the duty calculation. They did not know the requirements of excise with reference to branded goods and as such, they did not pay duty and believed that M/s.Veekay Auto Accessories will take care of the requirement, if any.

7. Ld. AR reiterated the findings of the lower authorities and submitted that the branded goods manufactured and cleared by various small scale units are liable to central excise duty as this brand is owned by another person viz. M/s. Veekay Auto Accessories. He reiterated in general the findings recorded by the Original Authority.

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

9. We take up the appeal filed by M/s.Veekay Auto Accessories first. The allegation against the said appellant is that they have fraudulently floated fictitious firms to suppress the actual manufacturing activity. We find the impugned order is self-contradictory in more than one aspect. It is clearly recorded, in more than one place that Shri Veekay Auto Accessories was controlling the day to day activities of the fictitious firms floated by the owner, to suppress the manufacture and thereby to evade payment of central excise duty. However, in the conclusion,

no duty has been confirmed against the said appellant. We notice that central excise duty has been confirmed against various individual units viz. M/s. Laxmi Enterprises, M/s.Sagar Auto Centre, M/s.Irfan Seat Covers, M/s. Vibhor Enterprises, M/s. Do Bhai Auto Products and M/s. Newon Seat Covers. However, the Original Authority ordered appropriation of the amount deposited by M/s. Veekay Auto Accessories against the demands confirmed against these individual units. If these are fictitious firms, the question of confirming demand against them does not arise. The actual manufacturer has to be identified and the duty has to be confirmed on such persons. If the actual manufacturer is found to be M/s.Veekay Auto Accessories, then the duty demand also has to be held against such manufacturer. We find the dual approach of holding individual units as liable to central excise duty and at the same time holding these units as fictitious firms created by Shri V.K. Arora, as held by Original Authority is legally unsustainable. Apparently, there is ambiguity and confusion in the findings recorded by the Original Authority. Further, substantial reliance has been placed on various statements given by the individuals. The cross examination sought for by the appellants have not been commented upon and discussed in the impugned order. This itself will make the order legally unsustainable due to violation of principles of natural justice and legal provisions of Section 9 D of the Central Excise Act, 1944. We rely on the following decisions in support of our view:-

(1) **Ambika International Vs. UOI 2016-TIOL-1238-HC-P&H-CX**

(2) **Jindal Drugs Pvt. Ltd.& Another Vs.UOI-2016(340) ELT 67 (P&H)**

(3) **J&K Cigarettes Ltd. Vs.CCE- 2009(242) ELT 189 (Delhi)**

(4) **Kurele Fragrance Pvt. Ltd.Vs.UOI-2016(334) ELT 391(All.)**

10. The confiscation of the finished goods seized from the premises of M/s.Veekay Auto Accessories is found to be legally unsustainable. Admittedly,

these goods were seized from the trading premises of the appellant and the goods should be established to have been cleared by the manufacturer in contravention of any provisions of Central Excise Rules, 2002 or was not properly accounted for. Rule 24 will apply to any producer, manufacturer, registered person of a warehouse or a registered dealer. It is not clear under what category M/s. Veekay Auto Accessories have been put, to order for confiscation of the seized goods. As already noted, the duty confirmation has been ordered against individual manufacturers as listed in the impugned order. Then, it follows that M/s.Veekay Auto Accessories with owners of brand name are only trading in these items and have no duty liability as a manufacturer. No duty has been confirmed against them. In such situation, the goods lying in the trader premises is not liable for confiscation. Even otherwise, sub-rule (2) of Rule 25 makes it very clear that no order of confiscation shall be issued by the central excise officers without following the principles of natural justice. Not allowing the cross examination of the persons whose statements were relied upon and issuing the impugned order after almost 16 months of conclusion of hearing clearly violates the principles of natural justice. We find that the impugned order with reference to M/s.Veekay Auto Accessories suffers from serious, multiple legal infirmities and as such, cannot be sustained.

11. Regarding the appeal filed by M/s. Newon Seat Covers, we note that except for the statements recorded from the proprietor to the effect that the firm was established on the direction of Shri V.K. Arora, who gave design and style and also supplied packing materials for packing “AVON” brand seat covers manufactured in her premises. Except for this statement, there is nothing on record to establish that the appellants were all throughout engaged in the manufacture of seat covers with brand name of another person. To confirm a central excise duty, some

corroborative evidence is certainly required. We note that the officers conducted the search of the appellant's premises on 17.12.2005, the same clearly mentions that no finished goods with "AVON" brand name was found at that time. Further, the invoices issued by the appellant did not indicate the details of any brand name for the goods cleared. In view of these facts, in the absence of any corroboration to hold the manufacture of branded goods by the appellant, we find it is not possible to confirm the duty liability in this case. Accordingly, the appeal filed by M/s.Newon Seat Covers against the impugned order is to be allowed.

12. Regarding the appeal by M/s.Vibhor Enterprises, we note that the ld. Counsel submitted that the appellants received die for affixing the brand name in September, 2005. Thereafter, they have been making the goods with brand name "AVON". The same is not disputed. The only point agitated is that the clearance during September, 2005 should be excluded. Further, it is also the plea that they did not know the relevant central excise provisions regarding use of brand name and as such, no liability can be confirmed against them. In this regard, we note that the appellants admitted the manufacture of branded goods and are not disputing the same in this appeal also. However, they insisted that they received the die only in September, 2005 and duty liability will arise thereafter only. We note that as the manufacture and clearance of branded items has not been disputed in this appeal, there is no need to go into further corroboration to confirm the demand. However, the appellants did not produce any supporting evidence regarding the specific date of receipt of die for the manufacture of branded goods. In absence of such evidence, no reliance can be placed on the assertion by the appellant to exclude a part of their clearance for duty liability. Not knowing the excise provisions for duty liability is not a factor for setting aside the duty demand. Accordingly, we find no merit in the appeal by M/s.Vibhor Enterprises.

13. In view of the above discussion and analysis, we allow the appeals filed by M/s.Veekay Auto Accessories and M/s. Newon Seat Covers. The appeal filed by M/s.Vibhor Enterprises is dismissed.

[order pronounced on 17.02.2017.]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.