

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL,**

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COU RT -III

Excise Appeal No. E/2038/2007-EX [DB]

[Arising out of Order-in-Original No. 18/COMMR/CEX/2007 dated 11.05.2007 passed by the Commissioner of Customs & Central Excise, Bhopal]

M/s. Raymond Ltd.

...Appellant

Vs.

C.C.E.- Bhopal

...Respondent

Appearance:

Mr. Prakash Shah, (Advocate) for the Appellant
Mr. R.K. Grover, DR for the Respondent

CORAM:

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

Date of Hearing/Decision.24.02.2016

Final Order No. 56488 /2016

Per S.K. Mohanty:

This appeal is directed against the impugned order dated 11.05.2007 passed by the Id. Commissioner, Customs & Central Excise, Bhopal, wherein duty demand of Rs. 67,42,575/- along with interest has been confirmed and equal amount of penalty imposed on the appellant.

2. Brief facts of the case are that the appellant is engaged in the manufacture and sale of woolen fabrics, MM fabrics and Plush fabrics, falling under Chapter Nos. 51, 55 and 58 of the Central Excise Tariff Act, 1985. During scrutiny of ER 1 returns for the disputed period, the Central Excise officers noticed that the appellant had paid lesser amount of duty on clearance of MM fabrics to its associate company, M/s Raymond Apparel Ltd. (for short, "M/s RAL"). Thus, the Department issued the show cause notice dated 04.04.2006, seeking recovery of short paid duty for the period from September, 2001 to June, 2004. In response, the appellant, *inter alia*, contended that it had paid the duty correctly on sales made to its subsidiary unit M/s RAL, as per Rule 8 of the Central Excise Valuation Rules, 2000. The matter was adjudicated vide the impugned order dated 11.05.2007, holding that since there is no stock transfer of goods to the sister unit, but sold on purely commercial considerations, the value of the goods for the purpose of charging of duty of excise has to be determined as per Section 4 of the Central Excise Act, 1944 and the provisions of Rule 8 *ibid* cannot be resorted to for determination of value for payment of duty. On the basis of such findings, the adjudicating authority has confirmed the demands against the appellant.

3. Shri Prakash Shah, the Id. Advocate appearing for the appellant submitted that since the goods were sold to M/s RAL, who is related to the appellant, the assessable value was determined under the provisions of section 4(1)(b) *ibid* read with Rule 8 *ibid*. He further submitted that show cause proceedings

initiated by the Department is barred by limitation of time in as much as the period of dispute is from September 2001 to June 2004; whereas, the notice was issued on 04.04.2006, invoking the extended period of limitation. He submitted that the appellant had disclosed the sale transaction made with RAL and the method of determination of assessable value under cost construction basis during the period December 2001. In this context, the Id. Advocate has referred to various correspondences exchanged between the appellant and the Department regarding supply of goods to RAL on the valuation derived under the cost construction method. He further submits that the appellant had adopted the valuation rules for determination of the assessable value based on the CBEC Circular dated 01.07.2002. Thus, the Id. Advocate submitted that since there is no suppression or misstatement on the part of the appellant to defraud the government revenue, the show cause notice should have been issued within one year from the date of filing the monthly return/knowledge regarding sale to such related person. To support the stand that the proceedings cannot be initiated beyond the normal period, the Id. Advocate has relied on various judgments delivered by the judicial forums.

4. On the other hand, Shri R.K. Grover, Id. D.R. appearing for the Revenue reiterated the findings recorded in the impugned order.

5. Heard both sides and perused the case records.

6. The Department had confirmed the demand against the appellant on the ground that there was no stock

transfer of goods to the sister unit M/s RAL and the goods were sold on purely commercial considerations; thus, the valuation provisions contained in Section 4 (1)(a) *ibid* will be applicable for determination of the transaction value, as against the claim of appellant for the valuation as provided under Rule 8 *ibid*.

7. The valuation provisions contained in Rule 8 *ibid* provides that in case, where the goods are not sold by the assessee, but are used for consumption by him or on his behalf in the manufacture of other articles, the value shall be one hundred and ten per cent of the cost of manufacture of such goods. In this case, it is an admitted fact on record that goods were sold by the appellant to M/s. RAL at the price at which it had sold similar goods to other buyers. Since there was no stock transfer of goods for consumption by the appellant or on its behalf by others in the manufacture of other articles, the situation is not governed under the provisions of Rule 8 *ibid* and the valuation provisions contained in Section 4 *ibid* will be applicable for determination of the transaction value for the purpose of charging duty of excise. We also find that Shri.Ratan Chakravorty vide his statement dated 19.07.2002 had also accepted that upto 08.09.2001, the appellant was discharging duty on the transaction value (sale value), but from 14.09.2001 onwards, it had decided to pay duty as per Rule 8 *ibid*. When the position of law remains the same, appellant cannot change the practice according to his choice. Thus, the stand taken by the Department regarding adoption of

Rule 8 of Valuation Rules, for determination of value cannot be faulted with.

8. On perusal of the case records, we find that extended period of limitation has been invoked for confirmation of the adjudged demand inasmuch as, the period of dispute is from September, 2001 to June, 2004; whereas, the show cause notice was issued on 04.04.2006. From the available records, we find that the appellant had disclosed the sale transaction to the related person and method of determination of assessable value under cost construction method. Further, Shri Ratan Chakravorty in his statement dated 17.09.2002 had also informed the Department regarding the modus operandi adopted by the appellant in supplying the goods to the sister unit M/s. RAL. Furthermore, clarification furnished by the CBEC vide Circular dated 01.07.2002 has also clarified with regard to determination of valuation of goods under different circumstances. Vide the said circular, it has been clarified that in case of sale of goods to related buyers, recourse will have to be taken to the residual Rule 11 read with Rule 9 (or 10). Thus, adoption of Rule 8 for determination of value by the appellant can be said to be on entertaining a reasonable doubt, for which extended period of limitation, in our opinion, cannot be invoked. There is no element of *mensrea* involved in the case.

9. The demand for extended period can be issued and confirmed only in case where the non-payment of duty is by reason of fraud/collusion/wilful mis-statement/suppression of

fact/contravention of any statutory provision with intent to evade payment of duty. In the present case, we note that the enquiry into the activities of the appellant were carried out in summon proceedings way back in 2002. The materials/documents submitted by the appellants were with the Department. However, with the same set of facts/background and based on records maintained by the appellant, demand invoking suppression of fact was issued in 2006. While we are aware that the relevant date for issue of demand is with reference to periodical returns to be filed, the Department has to allege and establish with supporting evidence, the existence of factors indicating wilful mis-statement/suppression of facts etc. It should be a positive act of the appellant. The particulars, which formed basis of demand were all maintained and recorded in books of the appellant and were furnished to the Department.

10. The show cause notice in this case has been issued by the Department alleging suppression of facts by the appellant. It is trite in law that the suppression (intentional and deliberate) can never be said to exist when material and relevant fact forming the basis of the demand were already within the knowledge of the Department. Accordingly, the pre-conditions for applicability of the proviso to Section 11A *ibid* cannot be said to be existing and in such eventuality, the extended period of limitation cannot be invoked and the demand to be confined to the normal period of one year.

11. In context with issuance of show cause notice, where there is no involvement of suppression on the part of the assessee, the Hon'ble Supreme Court in the case of C.C.E., Bangalore vs. Pragathi Concrete Products Ltd. – 2015 (322) E.L.T. 819 (S.C.) have held that extended period of limitation not to be invoked where the show cause notice was issued in 2000 for the period from 1995-1999 as no case of suppression could be made out when the Department had conducted several audits of the Appellant during the period prior to issue of show cause notice. Further, in the case of Blue Star Ltd. vs. Union of India – 2015 (322) E.L.T. 820 (S.C.), it has been held by the Hon'ble Supreme Court that no case of suppression could be made out where all the relevant facts were within the knowledge of the Department and consequently, the extended period of limitation could not be invoked. In the case of Commissioner vs. Shah Alloys Ltd. – 2011 (270) E.L.T. A 38 (S.C.), the SLP filed by Revenue was dismissed, holding that the extended period of limitation cannot be invoked, when it is established that the Department had knowledge of the facts. In the case of C.C.E., Meerut vs. Monsanto Manufactures Pvt. Ltd. – 2010 (260) E.L.T. 335 (S.C.), the Hon'ble Supreme Court held that the Appellant's transaction was on the basis of an agreement which was within the knowledge of the Department from 1995 and accordingly, the extended period of limitation under Section 11A of the Central Excise Act, 1944 could not be invoked vide show cause notice issued in 2000. In case of Kushal Fertilisers vs. C.C.E., Meerut – 2009 (238) E.L.T. 21 (S.C.), the Department carried out periodic inspections of the factories and

was also intimated in 1991 by the Assessee of the details of its business. In this background, the Department issued a show cause notice to the assessee in 1994 invoking extended period of limitation. The Hon'ble Apex Court held that since the requisite information had always been provided to the Department when requested, no case of suppression could be made out against the assessee. Where the Department had inspected and collected necessary information and details from the assessee, the Hon'ble Supreme Court in the case of C.C.E., Mumbai vs. Damnet Chemicals Pvt. Ltd. – 2007 (216) E.L.T. 3 (S.C.) held that the relevant facts were within the knowledge of Departmental Authorities and accordingly the extended period of limitation could not be invoked. Further, in the case of Aban Loyd Chiles Offshore Ltd. vs. C.C.E, Maharashtra – 2006 (200) E.L.T. 370 (S.C.), the Hon'ble Supreme Court held that since the Department was all throughout aware of the Appellant's operations, the extended period of limitation under proviso to Section 28 of the Customs Act cannot be invoked. In the case of C.C.E. vs. Chemphar Drugs & Liniments – 1989 (40) E.L.T. 276 (S.C.), it has been held by the Hon'ble Supreme Court that when the Department had full knowledge and the assessee's non-disclosure was based on its interpretation of the law, the extended period of limitation could not have been invoked.

12. In the case in hand, the *modus operandi* adopted by the appellant for selling its products were known to the Department and based on the information/documents furnished by the

appellant in 2002, the show cause proceedings were initiated by the Department on 04.04.2006, seeking confirmation of demand for the period September 2001 to June 2004. We are of the considered view that the proceedings are barred by limitation of time, having not been initiated within the normal period. Thus, the appeal should succeed on the ground of limitation.

13. In view of the foregoing discussion and analysis, we set aside the impugned order and allow the appeal in favour of the appellant on the ground of limitation alone.

(Operative part of the order Pronounced in the open court)

(B. RAVICHANDRAN)
MEMBER(TECHNICAL)

(S. K. MOHANTY)
MEMBER (JUDICIAL)

Anita