(In the Customs, Excise & Service Tax Appellate Tribunal
West Block No.2, R.K. Puram, New Delhi-110066

Appeal No.E/51010,51358/2014
(Arising out of Order-in-Appeal No. 171/172/CE/DLH/2013 dated 08.11.2013 passed by Commissioner, Central Excise (Appeals), New Delhi).

M/s Malbros Industries
M/s Pankaj Mittal …Appellant

Vs

CCE Delhi-I …Respondent

Appearance:
Present for the Appellant : Shri JP Kaushik, Advocate
Present for the Respondent : Shri SK Bansal, DR

Coram:
HON'BLE JUSTICE (DR) SATISH CHANDRA, PRESIDENT
HON'BLE MR V.PADMANABHAN, MEMBER (JUDICIAL)

Date of hearing : 15.09.2017
Date of decision: 22.09.2017

Final Order No.56724-56725/2017

Per V.Padmanabhan,

These appeals are against Order-in-Appeal dated 08.11.2013.

2. The appellants have a factory in Wazirpur Industrial Area, where they manufacture Inj. Moulded Plastic articles of plastic. Some of the plastic items manufactured by them are cups, trays, plastic photo frames, plates, jugs, bucket etc. The appellant were availing the SSI exemption. They also have a shop in Karol Bagh, from where, in addition to the plastic items being manufactured by them in their Wazirpur factory, they also sell other gift items like vacuum cleaners, electric kettles, rice cookers etc. purchased from outside. On the goods being sold by them, whether manufactured by them or purchased from outside, in some cases, the name/logo of the customers was being printed on their request. The Jurisdictional

Central Excise officers visited the appellant’s factory on 29/11/07 and conducted enquiry with its partners and also with their customers. On 01/10/12, a show cause notice was issued demanding duty of Rs. 15,93,935/- from the appellant for the period from July 2007 to February 2012 alleging that the goods as listed in detail in Annexure to the show cause notice, are the plastic items manufactured by the appellant in their factory at Wazirpur Industrial Area and the same had been cleared by affixing the brand name/logo of other persons and accordingly in respect of the goods bearing the brand name/logo of other person, the appellant would be liable to pay the duty, as they are not eligible for SSI exemption. The goods listed in the Annexure to the show cause notice are bottle openers, mini bars, folding umbrella, stationery racks, ice buckets, stainless steel flasks with mugs, double colour glass set, water serving jugs, folding napkin stand, clocks, plastic glass set, planner plus table mats, serving plastic bowls, stainless tumblers, Tiffin boxes, stainless lunch box, photo frames, ball pens etc. The Department treated all these goods as goods manufactured by them and cleared by affixing the brand name/logo of other persons and on this basis the duty was demanded. The show cause notice was adjudicated by the Additional Commissioner vide order-in-original dated 31/1/13 by which the duty demand, mentioned above, was confirmed alongwith interest and penalty of equal amount was imposed on the appellant firm under Section 11AC of Central Excise Act, 1944 and beside this, penalty of Rs. 3,00,000/- each was imposed on Shri V.K. Malik and Shri Pankaj Malik, partners of the appellant firm under Rule 26 of the Central Excise Rules, 2002. On appeals being filed to Commissioner (Appeals) against this order of the Additional Commissioner, the Commissioner (Appeals) vide order-in-appeal dated 08/11/13 upheld the Additional Commissioner’s order. Though in course of proceedings before the Additional Commissioner as well as the Commissioner (Appeals), it was pleaded by the appellant that most of the articles mentioned in the Annexure to the show cause notice on which duty had been demanded are not plastic items and neither the appellant have capacity to manufacture those items nor the same are manufactured by them and hence no duty can be demanded, but this plea was not accepted. Against this order of the Commissioner (Appeals), these appeals have been filed by the appellant firm and Shri Pankaj Malik.

3. With the above background, we heard Shri JP Kaushik, ld Advocate representing the appellants as well as Shri SK Bansal, DR.

4. Shri JP Kaushik, Advocate, the learned Counsel for the appellant, pleaded that the appellant in their factory at Wazirpur Industrial Area, manufactured only Inj. Moulded plastic articles under Chapter 39 like cups, trays, plastic photo frames, plates, jugs, buckets etc., that they are not manufacturing the items like bottle openers, mini bars, folding umbrellas, stationery racks, ice bucket, stainless steel flask with mugs, double colour glass sets, folding napkin stand, clocks, stainless tumblers, stainless lunch box, ball pens etc. on which the duty has been demanded, that the appellant have a shop in Karol Bagh from which in addition the goods manufactured by them in their Wazirpur Industrial Area factory they also sell the goods purchased from other persons, that just because in some cases, they on the request of the customers, have got the name and logo of the buyers printed on the goods sold, duty cannot be demanded on those goods, as just printing the name/logo of the customer does not amount to manufacture, that in the impugned order, the Commissioner (Appeals) has upheld the confirmation of duty demand on the items which are not manufactured by the appellant and for which the appellant have no capacity to manufacture, that bulk of the duty demand is made in respect of such items only, that even for printing the name/logo of the buyer on the goods sold including plastic items, the appellant do not have the facility in their factory and the printing of the name/logo is got done from outside, that in most of the cases where the duty has been demanded on the plastic items, no printing of the name or logo of the customer has been done, that the entire allegation is based on the statements of the buyers, that in any case, the duty demand is time barred as while the officers had visited the factory on 29/11/07, the show cause notice for

demand of duty for the period from July 2007 to February 2012 has been issued on 01/10/12 and as such the facts, on the basis of which the duty demand has been made, were within the knowledge of the Department, that in this regard he relies upon the Apex court's judgment in the case of **CCE, Visakhapatnam vs. Mehta & Co.** reported in **2011 (264) E.L.T. 481 (S.C.)**, that when duty demand against the appellant firm is not sustainable, there is no question of imposition of penalty on it under Section 11AC or imposition of penalty under Rule 26 of the Central Excise Rules, 2002 on its partners, that the impugned order is, therefore, not sustainable.

5. The ld DR justified the impugned order.

6. The admitted facts are that the appellant in their factory at Wazirpur Industrial Area manufactured various plastic moulded articles falling under Chapter 39 of the Central Excise Tariff and that they have also a shop in Karol Bagh from where in addition to the plastic goods manufactured by them, they also sell the goods procured from other sources like Vacuum Cleaners, Electric Kettles, Rice Cookers, Stainless Steel mugs, Steel Flasks, Stainless Steel Lunch Box, wall clocks, ball pens etc. The goods in respect of which the duty has been demanded are listed in the Annexure to the show cause notice. On going through the Annexure it is seen that most of the goods are not even the Inj. Moulded plastic articles which are manufactured by the appellant but the duty had been demanded in respect of those goods on the basis that the appellant have sold them by printing the brand name/logo of the customers. Though the appellant had given the break up of the goods manufactured by them and sold from their shop and the goods purchased from outside and sold from their shop, but this plea had not been considered at all.

7. Even though the factory as well as the shop are owned by the appellant, their factory will be entitled to SSI benefit in respect of goods manufactured there

on the basis of the value of such clearances. From the facts of the case, we find that there is no allegation that goods manufactured in the factory are cleared bearing the brand name of customers. Consequently, there is no reason to allege that goods have been manufactured and cleared bearing the brand name of others. Consequently, there is no justification to deny the SSI benefit on this ground. From the list of goods in respect of which duty has been demanded, we note that most of the goods are not even manufactured by the appellant. Consequently, we find no reason to sustain the impugned order.

7. In view of the above discussions, impugned order is set-aside and the appeals are allowed.

(Pronounced in the court on 22.09.2017)

(Justice (Dr) Satish Chandra) President	(V.Padmanabhan) Member (Technical)

pcs