CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing: 24.10.2017
Date of Pronouncement: 09112017

Appeal No. E/55956-55959/2014-EX[DB]
[Arising out of the Order-in-Appeal No. 29-32/2014 dated 23-7-2014 passed by the Commissioner of Central Excise, Delhi-II]

M/s. Om Sai Garments … Appellant
Sharwan Kumar Chawla
Rajiv Khera, Partner
M/s Western Garments

Vs.

C.C.E. Delhi-II ... Respondent

Appearance:

Present Shri Sudhir Malhotra, Advocate for the appellant
Present Shri H.C Saini, DR for the respondent

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Technical Member

FINAL ORDER No. 57738 - 57741 /2017

Per V. Padmanabhan:

These four appeals have been filed against the Order-in–Appeal No. 29-32/2014 dated 23-7-2014. Aggrieved by the impugned order, all the present appeals have been filed and are disposed through this common order. The appellant M/s Om Sai Garments, New Delhi was engaged in the manufacture of branded and unbranded readymade garments (RMG) falling under sub-heading 6204 69 90 of Central Excise Tariff Act, 1985.

On 14.08.2012, the appellant's and other's premises as per details below were searched by Anti Evasion Staff of Central Excise Comm'rate Delhi-II:-

1. M/s Om Sai Garments, X-41, Pratap Gali, Gandhi Nagar, Delhi-31.

2. M/s Om Sai Traders, IX/6171, Pratap Gali, Gandhi Nagar, Delhi-31.

3. M/s Om Sai Traders, 1st Floor, IX/6303-A, Jain Mandir Gali, Gandhi Nagar, Delhi-31.

4. M/s Sonu Packers, IX/1527, Mukesh Gali, Gandhi Nagar, Delhi-31.

The result of the search has been summarized as under:-

i) **M/s Om Sai Garments, X-41, Pratap Gali, Gandhi Nagar, Delhi.**

The Central Excise officers visited the premises and conducted the physical verification of stock. The appellant was found engaged in manufactured of branded and unbranded readymade garments. The visiting staff detained raw material (valued at Rs. 29,26,450/-), semi-finished goods (valued at Rs.47,91,800/-) and finished goods (valued at Rs. 8,50,000/-) collectively valued at Rs. 85,68,750/- under section 110 of Customs Act, 1962, for further investigation and production of legal documents thereof. The detention was converted into seizure on 03.09.2012. The goods valued at Rs.4,08,000/- lying with job-workers M/s Sonu Packers were also seized. The total value of seized goods comes to Rs. 89,76,750/- (i.e. Rs. 85,68,750/- plus Rs. 4,08,000/-)

ii) **M/s Om Sai Traders, IX/6171, Pratap Gali, Gandhi Nagar, Delhi.**

The premises was found to be a trading shop and godown for storing Ladies Jeans Pants, Jeans Capri etc. bearing brand "ATS" , "7Eleven" & unbranded garments. The visiting staff detained Readymade Garments valued at Rs. 83,61,400/- as M/s Om Sai Traders could not produce any legal documents for possession of said goods.

iii) **M/s Om Sai Traders,IX/6303-A, 1st Floor, Jain Mandir Gali, Gandhi Nagar, Delhi.**

They are engaged in the trading of readymade garments (girls/ladies/wear) of mostly “7Eleven” and “ATS” brand and also unbranded garments. The stock of goods lying in the premises valued at Rs. 18,68,400/- was detained for non-production of lawful documents. The detention was converted into seizure on 03.09.2012.

iv) **M/s Sonu Packers, IX/1527, Mukesh Gali, Gandhi Nagar, Delhi.**

During the search Sh. Puneet Grover alias Sonu was present at the said premises. He informed that second and third floor of the building was being occupied and used by this firm, i.e. M/s Sonu Packers. M/s Sonu packers was doing ironing and packing of readymade jeans on job-work basis of brand “7Eleven & “ATS” for M/s Om Sai Traders. The stock of readymade garments bearing brand name “7Eleven & “ATS” valued at Rs. 4,08,000/- was detained under panchnama dt. 14.08.2012. The said detained goods were seized on 03.09.2012.

The seized goods were provisionally released to appellant vide letter CNO. IV (Hrqs.Prev)15/37/Inv.D-II/2012/1264 dt. 04.09.2012 subject to fulfillment of conditions thereto. The appellant furnished the bank guarantee and B-11 Bond vide their letter dt. 28.09.2012 and took provisional release of seized goods.

The show cause notice issued under C.No. IV(Hrqs. Prev)15/37/INV/D-II/2012 dt. 12.02.2013 was adjudicated vide order-in-original No. 103/DMD/2013-14 dt. 17.02.2014 by Ld. Deputy Commissioner, Central Excise Division-VIII, Delhi-II. He demanded duty, imposed redemption fine and penalty.

On appeal, Ld. Commissioner (Appeals), New CGO Complex, Faridabad vide Order-in-Appeal No. 29-32/SM/CE/D-II/14 dt. 27.06.2014 upheld the Order-in-Original.

2 With the above background we heard Shri Sudhir Malhotra Ld. Advocate for the appellants as well as Shri H.C. Saini, Departmental Representative.

3. The Ld. Counsel for the appellant, in his arguments submitted as follows.

i) The readymade garments have been seized and subsequently confiscated by the lower authorities by taking the view that branded readymade garments were chargeable to Central Excise Duty under Section 4A of the Central Excise Act, 1944. However, as we may see from the notification from 49/2008 the CE(NT) dated 24-12-2008 as amended, readymade garments are not notified for assessment on MRP basis, hence the confiscation itself is not sustainable.

ii) Central Excise Duty has been levied on branded readymade garments only during the period 1-3-2011 to 1-3-2013, however the impugned goods were sold in lose condition and not packed. Accordingly, there is no requirement for pre-packing the commodity and to affix retail price.

iii) The redemption fine imposed amounting to Rs. 8 Lacs on seized goods valued at Rs. 21,94,752 is unreasonable.

4. The Ld. Departmental Representative justified the impugned order. He submitted that readymade garments are required to be assessed on MRP basis.

Further, Tariff Values have also been prescribed at the rate of 60 per cent of the RSP. Accordingly, he prayed that the impugned order may be upheld.

5. We have heard both sides and perused the record.

6. Readymade garments were seized from 4 premises and subsequently ordered for confiscation by the lower authorities. The reason for such act has been stated as failure to affix MRP on the branded readymade garments by taking the view that these are chargeable to Excise Duty on MRP basis under Section 4A. Section 4A provides for charging Central Excise Duty on goods notified by the Central Government. Only such goods can be notified under Section 4A in relation to which the retail sale price is required to be declared on the package under the provisions of Legal Metrology Act, 2009. The goods which are covered for assessment under Section 4A have been notified by the Government from time to time under notification no. 49/2008 CENT dated 24-12-2008(as amended). However, on a perusal of this notification it is seen that readymade garments are not specified in the said notification leading to the conclusion that at the relevant time, these goods were not covered under Section 4A. Consequently, we are of the view that, that there was no justification for confiscation of the said goods which is here-by set aside.

7. Central Excise Duty has been imposed on branded readymade garments only for a limited period i.e. 1-3-2011 to 28-2-2013. Before the said period as well as after this date, the subject goods enjoy exemption from payment of excise duty. The investigation under taken against the appellants falls within the period when readymade garments were subject to Central Excise Duty. Hence, the duty is liable to be paid on the subjected goods by considering assessable value of such branded

goods at the rate of 60 per cent of the retail sale prices in terms of the Tariff Value fixed by the Government as per notification No. 8/2001/CE(NT) dated 1-3-2001 as amended by Notification No. 20/2001 dated 30-4-2001. The Investigation under taken by the department has established that M/s Om Sai Garments were engaged in the manufacture of readymade garments which were got manufactured with the brands “ATS” and “7-Eleven”. Even though the goods seized did not bear the brand name, it has been admitted in the statements of concerned persons that the goods were cleared bearing the brand names. The total quantum of goods cleared has also been arrived at on the basis of the documents recovered during search. Since, the goods have been manufactured during the period when duty was liable to be paid on RMG with brand name, the duty demand amounting to Rs.2,25,371 raised by the lower authorities under Section 11A of the Central Excise Duty Act, 1944 are to be upheld. The penalty imposed on M/s Om Sai Garments as well as M/s Om Sai Traders are also upheld. However, the penalty on Shri Rajiv Khera imposed under Rule 26 is set aside since penalty already stands imposed on the firm.

8. In view of the above discussion, the order for confiscation, is, set aside, the duty and demand penalties upheld as above.

9. In the result appeals are partially allowed.

[Order Pronounced in the open court on ____2017]

(Justice Dr. Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

Nihar