

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing: 03.11. 2017  
Date of decision: 16.11.2017

**Excise Appeal Nos. 1181 – 1183/2010**

(Arising out of order-in-original No. 16/2009-10 dated 30.11.2009 passed by the Commissioner of Central Excise, Delhi-II).

M/s Devinod Trade Pvt. Ltd.                      Appellant  
Anuj Mahajan, Director  
Vineet Gupta, Partner

CCE, Delhi-II                                              Respondent

AND

**Excise Appeal Nos. 1736 – 1737 of 2011**

(Arising out of order –in-appeal No. 117 & 118/CE/D-II/1153 dt 14.03. 2011 passed by the Commissioner, Central Excise (Appeals), New Delhi).

M/s Devinod Trade Pvt. Ltd.                      Appellant  
Anuj Mahajan, Director

Vs.

CCE, Delhi-II                                              Respondent

Appearance:

Sh. Pradeep Jain, Advocate for the appellant  
Sh. H. C. Saini, AR for the respondent

Coram:

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

Final Order Nos. 57914 – 57918/2017

Per: **V. Padmanabhan:**

These five appeals are against the Order-in-original No. 16/09 dated 30.11.2009 and order –in-appeal No. 117 & 118/CE/D-II/1153 dt 14.03. 2011.

2. M/s Devinod Trade Pvt. Limited (DTPL) was manufacturing and clearing Compact Fluorescent Lights (CFLs) falling under heading 8539.3110 of the First Schedule to the Central Excise Tariff Act, 1985. The Central Excise Officers conducted simultaneous searches on 01.08.2006 at various premises connected with DTPL for investigating the intelligence that DTPL was not paying Central Excise duty on the goods manufactured by them and also that they have not taken Central Excise registration. The premises searched included the various godowns belonging to DTPL and also that of their main buyer, M/s Achiever International. Various documentary evidences were recorded. During the course of investigation, various statements were recorded from persons connected with DTPL. Goods and raw materials relating to DTPL was seized. Further, finished goods found at the godown premises of M/s Achiever International were also seized. Show cause notice dated 29.01.2007 was issued proposing confiscation of the seized goods and vide the order dated 29.03.2010, the Assistant Commissioner ordered confiscation of the seized goods and allowed the same for redemption of payment of redemption fine and penalty. The order of the Assistant Commissioner was challenged before the Commissioner (Appeals) who vide the order dated 13.03.2011 upheld the confiscation. This order is challenged before us in the present appeals.

3. After completion of investigation show cause notice dated 09.06.2008 was issued alleging clandestine clearance of goods by DTPL and demand of Central Excise duty involved in such goods. This show cause notice came to be decided vide the order-in-original impugned before us. In the impugned order, total Central Excise duty amounting to Rs. 93,81,830/- was demanded from DTPL alongwith interest and penalty of an equal amount. The goods seized at

the premises of M/s Achiever International was confiscated, duty demanded of Rs. 4,29,977/-. Penalties were also imposed on Sh. Anuj Mahajan, Director of DTPL as well as Sh. Vineet Gupta, Partners M/s Achiever International. Aggrieved by the two impugned orders, the present appeals have been filed.

4. With the above background, we heard Sh. Pradeep Jain, Id. Advocate for the appellant and Sh. H. C. Saini, Id. AR for the Revenue.

5. The submissions made on behalf of the appellants are summarised below:

- i) At the time of search in various premises, no goods were found at the main premises of DTPL. The goods CFL tubes were got manufactured from job workers until 2006, the goods manufactured on job work basis are required to discharge duty by job worker and not by the principal manufacturer.
- ii) During the course of search operation, the stock of raw materials and finished goods were seized.
- iii) The duty demand has been raised on the quantity of goods alleged to have been manufactured by DTPL and determined on the basis of documents seized from (1) Buyer (2) Job worker and (3) DTPL. Ld. Counsel submitted that such demand is inflated since several quantities are common to all the three.
- (iv) He raised serious objection to the failure to observe the principals of natural justice.
- (v) He submitted that the demand is based on loose slips but none of the relied upon documents have been supplied to the appellant to defend their case.

(vi) He also submitted that the appellants had sought the cross examination of various persons whose statements have been used as evidence against them but the adjudicating authority has not permitted the cross-examination of any of the persons. This involved violation of principles of natural justice.

(vii) The quantification adopted by the adjudicating authority for arriving at the demand is not known. It is also not evident what is the basis for such quantification either from show cause notice or from the impugned orders. Finally, he submitted that the impugned orders may be set aside.

(viii) DTPL will be entitled to the benefit of SSI exemption under Notification No. 8/2006 which has been denied by the adjudicating authority. He claimed that such benefit will be available to the appellant.

6. Ld. AR Sh. H.C. Saini justified the impugned orders. It is his submission that DTPL is to be considered the manufacturer since they have supplied the required raw materials and packing materials to job workers for manufacture of CFL on their account. Such CFLs manufactured have subsequently been sold to buyers. Hence, DTPL is liable for payment of excise duty on the same.

The issue of SSI benefit, which has been denied, has not been raised in the earlier proceedings. Further, DTPL will not be eligible for such benefit, since the CFL cleared by them bears the brand name of other persons. In any case, the claim of SSI benefit, which was never raised before the lower authorities cannot be raised in this forum.

7. We heard both sides and perused appeal record.

8. The case built by the Revenue is that DTPL supplied raw materials and packing materials to various premises where the same were used to manufacture CFL. These were received in the form of finished goods at various premises. Sh. Md. Farooq, Supervisor of M/s DTPL at VVZ-62, Titrapur, New Delhi confirmed in his statement that such goods were being manufactured for DTPL at his premises. Likewise Sh. Kamal Juneja, Supervisor of the DTPL premises at WZ-68/1, Titrapur, New Delhi also confirmed similar manufacture of CFL for DTPL at the above address. On the basis of documentary evidence as well as the statements of Supervisors, it was further established by Revenue that such CFL was manufactured by them bearing various brand names such as LEUCI JAPAL, SAERA, HANS, HUAQIANG, ESAVER, SKN and JEWEL. Various documents in the form of kachha parchies, note books, diary, ledger etc. were recovered from the various premises in which the quantity of CFL manufactured at the various premises were recorded.

Sh. Anuj Mahajan, Director of DTPL was interrogated and his statements were recorded on various dates in which he admitted all the facts and also the fact that no Central Excise duty was paid on such goods at the time of clearance. Further, during the course of investigation an amount of Rs. 50 lakhs was also voluntarily deposited towards payment of Central Excise duty on such goods cleared clandestinely.

9. The definition of “manufacturer” as per Section 2(f) of the Central Excise Act, 1944 is reproduced below:

*“and the word “manufacturer” shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any*

*person who engages in their production or manufacture on his own account”.*

From the above definition it may be noted that a person who employs hired labour in the production or manufacture of excisable goods as also a person who engages in any such manufacture on his own account are to be considered as manufacturers.

10. From the statements recorded from various persons such as Supervisors working at the various premises where manufacture of CFL was found to be taking place, reveals that they were paid employees receiving salary from the DTPL. It is also confirmed from the record that raw materials as well as packing materials bearing the brand names were supplied by DTPL which were used for manufacture and packing of CFL at the various premises. Further, Sh. Anul Mahajan, Director in his statement has confirmed that such goods manufactured at various places are further received in the premises at Basai Darapur, New Delhi where test and repair of these goods are carried out and repacked before sending them to the buyers. From the above, it is evident that DTPL is to be considered as manufacturer of the CFL made at the various premises. Accordingly, DTPL will be liable for payment of duty on the quantity manufactured at the various premises.

11. Next, we consider the claim of the appellant for SSI benefit. The CFL has been manufactured in various premises. But all such goods are reconsidered as manufactured by one person only i.e. DTPL. The appellant has claimed that they will be entitled to SSI benefit under Notification No. 8/2006 at the relevant time. However, it is on record that all the goods manufactured by them were cleared bearing the brand name of other persons such as LEUCI JAPAL,

SAERA, HANS etc. The SSI notification specifically denies the benefit of the notification to goods cleared bearing the brand name of other persons. The appellant has nowhere claimed that the brand names affixed on the CFL cleared by them were belonging to them. The brand names itself suggest that they belong to somebody else. Consequently, we uphold the finding of the adjudicating authority to the effect that the appellant will not be entitled to SSI benefit.

12. The premises of the main buyer M/s Achiever International (Partner Sh. Vineet Gupta) was searched and goods said to be manufactured by DTPL was found and seized. The adjudicating authority has raised the duty demand on such goods amounting to Rs. 4,29,977/-. During the course of arguments, the appellant has claimed that such quantum of goods seized at M/s Achiever International would have already been included in the total quantity of goods allegedly cleared without payment of duty arrived at on the basis of documents seized. Such a plea of the appellant has been discussed by the adjudicating authority. It has further been argued that the relied upon documents based on which the duty demand was arrived at has not been made available to the appellants. Such a plea has been discussed by the adjudicating authority in para 29 of the impugned order. He has categorically recorded that all the relied upon documents were furnished to the appellants at the time of service of show cause notice. Further, he has recorded that the appellants have not disputed the duty worked out on the basis of evidence but has simply denied the quantum of duty. After careful consideration of the evidence on record, we dismiss this ground raised by the appellant for the reasons recorded by the adjudicating authority as above.

13. The appellants have also raised the grounds of cross-examination of various witnesses was not permitted by the adjudicating authority. Upon perusal of record, we find that such a request for cross-examination has never been raised before the adjudicating authority. Consequently, the same has not been discussed by him in the impugned order. Consequently, we find that this ground raised is not tenable.

14. In view of the above discussions, we find no reason to interfere with the impugned order which is upheld.

15. In the result, all the appeals are dismissed.

(Pronounced on 16.11.2017).

(Justice (Dr.) Satish Chandra)  
President

(V. Padmanabhan)  
Member (Technical)

Pant

