IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Excise Appeal No. 52479 & 52575 of 2016

[Arising out of Order-in-Appeal No. BHO-EXCUS-002-APP-052-16-17 dated 27.05.2016 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Raipur]

M/s. Nilkamal Ltd. **Appellant**
M/s. Godriwala Plastics Pvt.Ltd.
Vs.

Commissioner of Central Excise & ST, Raipur **Respondent**

Appearance:
Shri J M Sharma, Advocate for the Appellants
Shri R K Mishra, DR for the Respondent

CORAM:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B Ravichandran, Member (Technical)

Date of Hearing/ Decision: 1.1.2018

FINAL ORDER NO. 50105 – 50106 /2018

Per: B Ravichandaran:

Both the appeals are against the common impugned order No. BHO-EXCUS-002-APP-052-16-17 dated 27.05.2016 of Commissioner (Appeals), Raipur. The main appellant M/s. Godriwala Plastics Ltd. are engaged in the manufacture of plastic furniture under various brand names. Present dispute is with reference to manufacture of furniture with 'Nilkamal' brand name in terms of MOU with M/s. Nilkamal Ltd., owner of 'Nilkamal' brand. Revenue entertained a view that the main appellant did not value their excisable goods properly for payment of Central Excise duty holding that the arrangement is one of the principal – job worker. The Revenue held that the value of branded furniture by the appellant supplied to M/s.Nilkamal Ltd. should be in terms of Rule 10A of Central Excise Valuation Rules, 2000. The appellants contested the view of the Revenue. The lower authorities upheld the contention of the Revenue and accordingly, demanded the differential duty and imposed penalties on both the appellants.

2. Learned Counsel appearing for both the appellants submitted that in terms of MOU dated 10.6.10, the main appellant manufactured plastic furniture as per the requirement of second appellant. He relied on the terms of agreement as per MOU to state that arrangement cannot be considered as job worker arrangement. They have freedom to fix the price and same is not dictated by the brand owner. He also submitted that M/s. Nilkamal Ltd. had such arrangement with various manufacturers similar to one presently in dispute. In one such case, the proceedings initiated against similarly placed manufacture was dropped by the original authority himself vide order dated 23.1.13 in respect of M/s. I Tech Global Ltd., Gowahati.

3. Learned Counsel also submitted that the value fixed by the appellant for sale of furniture is true transaction value and the value of

moulds supplied by the brand owner has also been properly accounted for amortisation in terms of the Valuation Rules. This is not disputed. However, based on the possible difference between the sale value of ' M/s. Nilkamal and the appellant, Revenue inferred that it is a job worker arrangement. Learned Counsel contested such finding on fact .

4. Learned AR submitted that arrangement appeared to be job worker arrangement as brand owner has power and entire control over the appellant with reference to branded goods. He supported the findings with reference to application of Rule 10A.

5. We have heard Shri J M Sharma and Shri R K Mishra, learned representatives of the parties and perused the material available on record.

6. The dispute is with reference to valuation of branded furniture cleared by the main appellant with brand name of M/s. Nilkamal. We have perused the MOU dated 10.6.2010. It is apparent that such MOU is not an arrangement for job work and it only specifies that the main appellant shall manufacture furniture of specified quality and raw materials also should be as per the standard and specification of brand norms. The price to be charged is to include the cost of raw material, packing material, master batch, stickers, manufacturing and other overheads, as fixed from time to time with profit margin plus sales tax and excise. The payment shall be made on weekly basis.

On careful perusal of the MOU, we note that same cannot be considered as arrangement for job work. Infact, an identical MOU was the subject matter of decision in respect of another manufacturer in Gowhati. There the original authority held that there is no job worker arrangement. The fact M/s. Nilkamal has sold the said furniture with much higher price and hence Rule 10A of Central Excise Valuation Rules, 2000, apply to manufacture of the appellant is not tenable. The goods sold by M/s. Neelkamal is on the higher price as it includes expenses like storage, advertisement and sales after the goods were received from the appellant. Hence, the difference between the sale price of the appellant and sale price of Neelkamal by itself will not justify the inference of job work arrangement.

7. In view of the above discussion and analysis, we find the impugned order cannot be legally sustained and accordingly same is set aside and both the appeals are allowed.

(Dictated and pronounced in the open Court)

(Justice (Dr.) Satish Chandra)
President

(B Ravichandaran)
Member(Technical)

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