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

Date of hearing/decision: 21.12.2017

Excise Appeal No. 51278 of 2017
(Arising out of order-in-appeal No. 27-CE/APPL-I/DLH/2016 dated 18.04.2017 passed by the Commissioner of Central Excise (Appeals)-I, New Delhi).

M/s N.N. Creations Overseas Appellant

Vs.

CCE, Delhi-I Respondent

Appearance:

Sh. T. R. Rustagi, Advocate for the appellant
Sh. M. R. Sharma, AR for the Respondent

Coram:

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

Final Order No. 58745/2017

Per: **V. Padmanabhan**:

The present appeal is filed against the order -in-appeal No. 27-CE/APPL-I/DLH/2016 dated 18.04.2017 passed by the Commissioner of Central Excise (Appeals)-I, New Delhi. The period of dispute is 2008 to - February, 2010.

2. Brief facts of the case are that the appellant is engaged in the manufacture of lunch carry bag under the brand name of "Tupperware". The appellant classified the product under Central Excise Tariff Act, 6305 3900 of the First Schedule to the Central Excise Tariff Act, 1985. Prior to 01.03.2011, all goods falling under Chapter 63 (except heading 630710 were exempted

from excise duty under Notification No. 30/2004-CE dated 09.07.2004. This notification was amended by Notification No. 12/2011 dated 01.03.2011 which restricted such exemption to goods which did not bear the brand name or not sold under the brand name. The branded bags thus became chargeable to duty w.e.f. 01.03.2011 if the same is classifiable under heading 63. The appellant took registration w.e.f. 01.03.2011 and also undertook to pay the duty even though such goods were being manufactured by the job-worker. The Department issued show cause notice in 2014 proposing to reclassify the goods manufactured under Chapter heading 4202 which covers various types of bags. The exemption under Notification No. 30/2004 (as amended) would not be available if the goods are classified under Chapter 42. The Department proceeded to demand duty from the appellant for the period 2008 to February, 2010 from the appellant. Aggrieved by the impugned order, the present appeal has been filed.

3. With the above background, we heard Sh. T.R. Rustagi, ld. Advocate for the appellant and Sh. M. R. Sharma, ld. AR for the Revenue.

4. Ld. Counsel submitted that the duty is payable by the appellant only from the date from which they have filed the undertaking in terms of job work Notification No. 214/86. Such declaration has been filed only w.e.f. 01.03.2011 and for the period prior the appellant will not be liable to pay Central Excise duty and same is required to be done by the job worker who are actual manufacturers of the impugned goods.

5. On the other hand, ld. AR appearing for the Revenue justified the impugned order. He submitted that the goods were got manufactured by the appellant from the job workers even for the period prior to 01.03.2011 and hence, in the absence of benefit of Notification No. 30/2004 it will be the liability of the appellant to discharge the duty since the goods were manufactured and cleared bearing the brand name “Tupperware”.

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

7. The goods i.e. bags for packing lunch boxes, have been manufactured and supplied with the brand name “Tupperware”. There is no dispute on this point. Consequently, in terms of the Notification No. 30/2004 (as amended), the benefit of exemption will not be available if the goods are classified under Chapter 63. The Department issued show cause notice in 2014 proposing to change the classification to Chapter 42. The goods, if classified under Chapter 42 will be liable to payment of duty. The dispute ultimately is with reference to the question who is liable to pay the duty.

8. The goods are being manufactured by the job workers and it is the liability of the manufacturer to discharge the excise duty on such goods. Notification No. 214/86 prescribes a procedure by which the principal manufacturer, who got the goods manufactured by the job worker, can undertake to discharge the duty liability on such goods, if he submits an undertaking to the jurisdictional Central Excise authorities to this effect. From the record, we see that such undertaking has been filed by the appellant

but only w.e.f. 01.03.2011. There is no dispute that for the period after this date, the appellant has discharged the duty liability

9. We are of the view that since the duty liability is essentially on the manufacturer, i.e. job-worker in the present case, the duty liability will need to be recovered from them. The appellant cannot be held liable for payment of such duty for the period prior to such undertaking. Consequently, we find no justification in the demand made in the impugned order for the period prior to 01.03.2011 from the appellant.

10. In the result, the impugned order is set aside and the appeal is allowed.

(Dictated and pronounced in the open Court).

(Justice (Dr.) Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

Pant