

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.**

**Date of Hearing: 12.1.2018
Date of Pronouncement: 19.1.2018**

Appeal No. E/50379/2017-DB

(Arising out of Order-in-Appeal No. BHO-EXCUS-001-APP-450-16-17 dated 18.11.2016 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Bhopal)

M/s Hershey India Pvt. Ltd.

Appellant

Vs.

CCE & ST, Bhopal

Respondent

Appearance

Shri Anandodaya Mishra, Advocate - for the appellant

Shri R.K. Mishra, D.R. - for the respondent

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

Final Order No.

Per V. Padmanabhan

The present appeal is filed against the Order-in-Appeal No. 450/2016-17 dated 18.11.2016. The appellant is engaged in the manufacture of ready to drink Ice Tea under the brand names "Tealite Lemon" and "Tealite Apple" falling under Central Excise Tariff Heading 2202 of the Central Excise Tariff Act, 1985. During the course of audit of the appellant, for the period April 2010 to May 2011, it was noticed that the goods were manufactured by the appellant as per an agreement dated 8.7.2010 with M/s Zydus

Wellness Ltd. In terms of the agreement, the appellant was required to undertake manufacture making use of the technical knowhow and specifications of the goods as supplied by M/s Zydus. The process was subject to quality control and supervision of the representative of M/s Zydus and goods were to be cleared to M/s Zydus exclusively, bearing the trade mark of M/s Zydus. Further, as per the agreement, the raw materials are to be procured by the appellant only from the suppliers identified by M/s Zydus. The sale price of the goods were agreed between two parties and specified in the agreement. The goods were cleared by the appellant to M/s Zydus on payment of excise duty on the transaction value. The department was of the view that the inputs were manufactured by the appellant on job work basis for M/s Zydus and hence the valuation of the goods for purposes of charging excise duty were to be done in terms of Rule 10A of the Central Excise (Determination of Price of Excisable Goods) Rules, 2000. After issue of the show cause notice, the authorities below have demanded differential excise duty by adopting the basis of charging excise duty as the price charged by M/s Zydus at the time of clearance of the goods from their depot (as per Rule 10A(ii) instead of the price charged by the appellant to M/s Zydus. The period under dispute is April 2010 to May 2011. Aggrieved by the impugned order, the present appeal has been filed.

2. With this background, heard Shri Anandodaya Mishra and Shri R.K. Mishra, Id. Counsel for the parties.

3. The Id. Counsel for the appellant submitted that the goods were manufactured by the appellant in terms of the agreement entered into by appellant with M/s Zydus. However, he claimed that the appellant is neither a job worker nor manufacturing the goods on behalf of M/s Zydus. Therefore, Rule 10A of Valuation Rules has no application in the present case. He claimed that the transaction between the appellant and M/s Zydus were on principal to principal basis and goods are sold on the basis of the prices agreed between two parties. Finally, he submitted that in terms of Section 4(1)(a) of the Central Excise Act, 1944 transaction value should be accepted, since the price is the sole consideration and relationship between the appellant and M/s Zydus is at arms length. He also relied on various case laws and specifically in the case of ***Shivani Detergent Pvt. Ltd. Vs. CCE, Indore*** - 2016 (11) TMI 1342-CESTAT-New Delhi.

4. The Id. DR justified the impugned order. He argued that in terms of the agreement between the appellants and M/s Zydus, it is evident that all the conditions specified in Explanation to Rule 10A are satisfied and hence it is to be concluded that goods have been supplied by the appellant as the job worker to M/s Zydus. He specifically emphasised the fact that the goods are to be

manufactured only as per the specifications and using the technical knowhow made available exclusively by M/s Zydus to the appellant. Further, the raw materials are to be procured only from the suppliers identified by M/s Zydus and out of the vender list supplied by them. He finally submitted that in terms of Rule 10A of the Valuation Rules, the duty has been rightly charged at the price at which M/s Zydus is selling the goods. The ld. DR relied on this judgement in the case of *Jabil Circuit India Pvt. Ltd. Vs. CCE, Pune-III* - 2013 (295) ELT 29 (Bom.).

5. We have heard both sides at length and perused the appeal record. Since, the entire dispute is revolving the Rule 10A of the Central Excise Valuation Rules, the same is reproduced below for ready reference:

“10A. Where the excisable goods are produced or manufactured by a job-worker, on behalf of a person (hereinafter referred to as principal manufacturer), then,-

(i) in a case where the goods are sold by the principal manufacturer for delivery at the time of removal of goods from the factory of job-worker, where the principal manufacturer and the buyer of the goods are not related and the price is the sole consideration for the sale, the value of the excisable goods shall be the transaction value of the said goods sold by the principal manufacturer;

(ii) in a case where the goods are not sold by the principal manufacturer at the time of removal of goods from the factory of the job -worker, but are transferred to some other place from where the

said goods are to be sold after their clearance from the factory of job-worker and where the principal manufacturer and buyer of the goods are not related and the price is the sole consideration for the sale, the value of the excisable goods shall be the normal transaction value of such goods sold from such other place at or about the same time and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of said goods from the factory of job-worker;

(iii) in a case not covered under clause (i) or (ii), the provisions of foregoing rules, wherever applicable, shall mutatis mutandis apply for determination of the value of the excisable goods:

Provided that the cost of transportation, if any, from the premises, wherefrom the goods are sold, to the place of delivery shall not be included in the value of excisable goods.

Explanation.- For the purposes of this rule, job-worker means a person engaged in the manufacture or production of goods on behalf of a principal manufacturer, from any inputs or goods supplied by the said principal manufacturer or by any other person authorised by him.”

6. The transaction between the appellant and M/s Zydus are governed by the agreement termed as “Manufacturing Agreement”. The appellant has manufactured and supplied the goods in terms of the agreement, at prices included in the agreement as per the negotiation between the two parties. The claim of the appellant is that the goods have been manufactured and supplied on principal to principal basis whereas Revenue, after referring the various clauses of the agreement, have concluded that the transactions are in the nature of job work as outlined in Rule 10 A *ibid*.

7. The term “job worker” has been assigned specifically meaning as per the Explanation inserted in Rule 10A. In terms of this Explanation any person to be a job worker should satisfy:

- (i) He should manufacture or production goods;
- (ii) He should do it on behalf of the principal manufacturer;
- (iii) He should do it from any inputs or goods supplied by principal manufacturer or any other person authorised by him

8. There is no dispute that the first condition has been satisfied. But dispute is whether the conditions (ii) and (iii) above are satisfied. In terms of the agreement, it is evident that the appellant is required to manufacture the goods exclusively for M/s Zydus, and using their specifications as an agent of M/s Zydus, and using the technical knowhow relating to the product which will be supplied by M/s Zydus. It is further specified in clause 4.1 which is relevant is reproduced below :

“4.1 GHJ shall at its own cost, purchase such raw materials, ingredients, packs and packaging material of such standard, quality, specifications and grade for the manufacture of the Product as may be prescribed by ZWL. The pre-mix required for the Product shall be supplied by the supplier identified by ZWL.”

9. It is evident from the above clause of the agreement that the goods are to be manufactured from inputs supplied by the suppliers identified by M/s Zydus which clearly satisfies as the third condition in the Explanation to Rule 10A. Further on perusal of the various clauses of the agreement read together leads to the conclusion that the goods have been manufactured by the appellant as a job worker on behalf of M/s Zydus.

10. The above conclusion is further reinforced by the fact that in a case of principal to principal transaction the goods are to be priced including all the elements of cost involved in the manufacture and sale of goods. In the present case, from the price agreed between two parties it is obvious that various elements of cost which clearly are required to be included in the selling price of manufactured product have not been included. In the present case, for example, the goods are to be manufactured using the technology, standard and technical knowhow relating to the product which will be supplied by M/s Zydus. But such elements of cost have escaped the agreed price between the appellant and M/s Zydus.

11. Once we conclude that the appellant has acted as a job worker for M/s Zydus the mischief of Rule 10A of the Valuation Rules becomes applicable and the goods are required to be valued on the

basis of the price at which the principal manufacturer, M/s Zydus sells such goods from their depot.

12. In view of above discussion, we are inclined to uphold the findings of the lower authorities which are on the above lines.

13. In the result, the impugned order is sustained and the appeal is dismissed.

(Pronounced in Court on 19.1.2018)

(Justice Dr. Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

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