CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI

PRINCIPAL BENCH – COURT NO. II

Excise Appeal No. 52431 of 2018-DB

(Arising out of Order-in-Original No. 32-33/CE/DLH/2018 dated 3.5.2018 passed by the Commissioner of Central Excise (Appeals), New Delhi)

Vijay Kumar Garg, Authorized Signatory of M/s Sakshi Footwear Industries **Appellant**
104, Tarun Enclave, Pitampura
New Delhi – 110034.

Versus

Pr. Commissioner of Central Goods & Service Tax, Delhi (North)' **Respondent**
C.R. Building, I.P. Building,'
I.P. Estate, New Delhi-110002

AND

Excise Appeal No. 52442 of 2018-DB

(Arising out of Order-in-Appeal No. 32-33/CE/DLH/2018 dated 3.5.2018 dated 3.5.2018 passed by the Commissioner of Central Excise (Appeals), New Delhi)

M/s Sakshi Footwear Industries **Appellant**
104, Tarun Enclave, Pitampura
New Delhi-110034.

Versus

Pr. Commissioner of Central Goods & Service Tax, Delhi (East) **Respondent**
C.R. Building, I.P. Building,'
I.P. Estate, New Delhi-110002

Appearance

Shri Bharat Bhushan, Advocate - for the appellant

Shri H.C. Saini, DR - for the respondent

CORAM: HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)

Date of Hearing: 5.4.2019
Date of Decision: 3.7.2019

Final Order No. 50832-50833/2019

Per **Bijay Kumar :**

Being aggrieved by the Order-in-Appeal dated 3.5.2018, the appellants have filed these appeals. In the impugned order, the learned Commissioner has sustained the Order-in-Original dated 30.11.2016 wherein a demand against the appellant have been confirmed as under:

(a) Central Excise duty amounting to Rs. 7,83,544/- under Section 11A of Central Excise Act, 1944 (for short, Excise Act);

(b) Excise duty along with cess amounting to Rs.9,521/- under Section 11A of the Act;

(c) Demand of interest at the applicable rate under Section 11(AA) (erstwhile Section 11B of Excise Act);

(d) Imposed penalty of Rs. 7,93,066 under the provisions of Section 11AC of the Act read with Rule 25 of Central Excise Rules, 2002 (for short Excise Rules);

(e) Penalty of Rs. 5,000/- under Rule 27 of Excise Rules;

(f) Penalty of Rs. 7,93,066/- upon Shri Vijay Kumar, authorised person of the appellant under Rule 26 of Excise Rules.

2. The brief facts of the case that acting on the intelligence, the factory premises of appellant were searched on 29.4.2011 along with the other factories belonging to their family members viz. -

(1) Rajesh Plastics Pvt. Ltd., F-1750-1751, DSIDC Indl. Area, Narela, Delhi-40;
(2) J.N. Footwear Pvt. Ltd. H-1246, DSIDC Indl. Area, Narela, Delhi;
(3) Sakshi Footwear Pvt. Ltd. C-368, DSIDC Industrial Area, Narela, Delhi;
(4) Sakshi Footwear, I-2276, Narela Indl. Area, Delhi.

After investigation of the case and recording of statement of various persons, two Show Cause Notices dated 24.10.2011 and 8.10.2016 were issued. Show Cause Notice dated 24.10.2011 was issued with respect of their raw material and finished goods seized by the departmental officer during the search operation and the other show cause notices were issued for the demand of duties for the alleged clandestinely removed goods. The period of demand in these two show cause notices is from the period 1 Jan., 2011 to 29 April, 2011. The appellant is engaged in production of PVC soles classifiable under First schedule to Central Excise Tariff Act under Chapter Heading 6406 06 00 and availing the benefit of small scale exemption Notification No. 8/2003-CE dated 1.3.2003. The intelligence revealed that the appellant engaged in manufacture of PVC soles and many brands like TRUE, JUMP, TOIAL, EXPORT, FLAXOLOGY APPLE & SINGAPORE etc. and, therefore, the SSI benefit under the aforesaid notification was not applicable to the appellant. It was also found by the Department that the benefit of Notification No. 4/2006-CE dated 1.3.2006 is not available to the appellant as they are mixing the other ingredients in recycling waste and scrap of plastic. Under the above facts and circumstances, the case was adjudicated by the primary adjudicating authority confirming the demands, against the appellant (which was sustained by the learned Commissioner (Appeals), vide the impugned order.

3. Learned Advocate on behalf of the appellant submits that the learned primary adjudicating authority as well as learned Commissioner (Appeals) have travelled beyond the show cause notices as the demand therein was confirmed on PVC soles. However, the two authorities below confirmed the demand on PVC granules. On this ground itself ignoring the other anomalies, the impugned order is not sustainable. Further, the demand is based upon some documents, which were recovered from the factory premises of the appellant, which contained the detail of 146 pairs of PVC soles for footwear. In the show cause notice there is a production total amount 1,63,480/- Kg. of PVC granules which has been converted into production of PVC soles and the demands were raised on PVC soles. But the demand was confirmed on the PVC granules, which is beyond the show cause notice.

3.1 Learned Advocate further submits that the SSI exemption has been denied on the ground that the PVC soles having been manufactured with various brands like TRUE, JUMP, TOIAL, EXPORT FLAXOLOGY APPLE & SINGAPORE etc. During the investigation, the Central Excise officers visited the website of the Trade Mark Authorities found that TRUE, JUMP, TOIAL and EXPORT brands were owned by someone else. However, nothing is mentioned about the ownership of FLAXOLOGY APPLE, SINGAPORE brands. It was submitted that these brands were not owned by the appellant and goods with the brand names were cleared clandestinely without payment of appropriate Central Excise duty. However, the SSI exemption is available to clandestinely removed goods also. As no evidence, whatsoever, has been brought on record that the appellant sold the goods bore the same brand name is charge is not sustainable. Further, it was also submitted that the Department failed to adduce any evidence in the show cause notice that the said brands have acquired such reputation to be identified with person in whose name such brands are registered. The reliance was placed on the decision of Final Order No. 50068-50070 of 2019 dated 22.1.2019 of **M/s J.N. Footwears Pvt. Ltd. and others Vs. CCE, New Delhi.**

3.2 The learned Advocate also contended that the valuation has been arrived at Rs. 18 per sole or Rs. 36 per pair which is without any basis in view of the fact that this value was confirmed by the appellant. As per practice in the footwear industry the price is always quoted for pairs and not for piece. Revenue has failed to adduce any independent evidence regarding this.

3.3 It is also submitted that the whole demand raised by these two show cause notices are based on the presumption and assumption without identifying as to 'export' the 'Jump brand' are not registered and hence it cannot be said that the entire clearance is on the branded goods. The department during investigation has not adduced any evidence regarding clandestine removal of the goods which is based on the private record regarding the sale entry in the private record. Further, Department has failed to identify the supplier of raw material purchaser, transport thereof etc. No inculpatory statement has also been recorded from any of the persons during the investigation. In view of above, it has submitted by the learned Advocate that the demand is not sustainable and required to be set aside.

4. Learned Departmental Representative on behalf of the Revenue reiterated the findings contained in the impugned order. It is stated by the learned AR that the appellant has accepted the existence of entries in the private record regarding clearance of the goods without payment of duty. In view of above, there is no infirmity in the order by sustaining the demand against the appellant.

5. We have heard the parties and perused the case record.

6. There are two issues involved in this appeal, one is regarding the availability of Notification No. 4/2006 regarding the manufacture of PVC granules from old and used plastic materials and the SSI benefit to the manufactured PVC soles by the appellant. It is apparent from the two Show Cause Notices and the Order-in-Original that the case has emanated from the searches made on 29.4.2011 on the various firms/companies including that of the appellant, which appeared to be the family concerns. A common Show Cause Notice has been issued to all of the units and their Director/proprietor, which has also been adjudicated by a common order-in-original, which is under challenge in this appeal. The appeal filed by M/s J.N. Footwears Pvt. Ltd. which was also in one of the party in the proceedings initiated by the Revenue has

been decided by this Tribunal vide Final Order No. 50068-50070 of 2019 (supra), the said order it is held as under :

> "12. In the instant case also Revenue have adduced no evidence to show that the said brands had acquired such reputation so as to be identified with the persons who applied for registration. Considering all these facts, we are of considered opinion that benefit of SSI exemption was available to the appellant company. We find that the department have failed to adduce any evidence to show that the appellant was using any other material, apart from old and used PVC shoes, for manufacture of PVC granules, so as to deny the benefit of Exemption Notification. Accordingly, we set aside orders passed by the authorities below and allow the appeals. The appellants shall be entitled to consequential benefits in accordance with law."

7. As it has been held in the said order that the brand names, have been used by the appellant is eligible for SSI exemption under Notification No. 3/2003 available to the appellant. The said Final Order relied upon the decision of Hon'ble Delhi High Court in the case of **Commissioner Vs. Minimax Industries - 2011 (269) ELT 166** and **Anil Pumps Pvt. Ltd. Vs. Commissioner - 2005 (180) ELT 500 (Tri.-Del.)** and following the same accordingly, SSI benefit is available to the appellant. We also find that the denial of exemption Notification No. 4/2006 (supra) is incorrect as the notification nowhere says that addition of some other material would disentitle the exemption notification in this regard. We find that the CBEC vide its Circular No. 52/94 dated 1.9.1994 has clarified the issue which favours appellant. We also draw support in above contention from the decision of this Tribunal in the case of **Vee Ei Cee Industries Vs. CCE - 2013 (298) ELT 732 (Tri.-Del.).** In this case the manufacturer was using 20% to 40% of fresh plastic along with plastic waste for manufacture of PVC

granules. Further, we find that the department has also failed to produce that the appellant clandestinely removed goods by way of corroborative evidence as held in the case of **CCE Vs. Juhi Alloys - 2014 (302) ELT 487(All.)**, **Continental Cement Company Vs. Union of India – 2014 (309) ELT 411 (All.)** and **CCE Vs. Kuber Tobacco India Ltd. – 2016 (338) ELT 113 (Tri.-Del.).** Accordingly, we find that the impugned order is not sustainable.

8. As the demand against the main appellant is not sustainable there is no question of imposition of penalty on the other appellant and hence the same is also being set aside.

9. Appeals are allowed with consequential benefit as per law.

(Pronounced in open Court on 3.7.2019)

(Anil Choudhary)
Member (Judicial)

(Bijay Kumar)
Member (Technical)

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