CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court – I

Appeal No. E/480- 482/2009

(Arising out of Order-in-Original No. 04/2009 dated 27.02.2009 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad-III)

Innocorp Ltd.,
Shri G.S. Prasad
Smt. K. Saraswathy **…..Appellant(s)**

Vs.

Commissioner of Central Excise, Customs
& Service Tax, Hyderabad -III **…..Respondent(s)**

Appearance
Shri R. Muralidhar, Advocate for the Appellant.
Smt. B.V. Siva Naga Kumari, Commissioner (AR) for the Respondent.

Coram:
Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)
Hon'ble Mr. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 04/07/2018
Date of Decision: 01/08/2018

FINAL ORDER No. A/30802-30804/2018

[Order per: P. Venkata Subba Rao]

All these appeals are directed against the Order-in-Original No. 04/2009 passed by Commissioner of Central Excise-

Hyderabad-III. Appeal No. E/480/2009 was filed by the assessee while appeal No. E/481/2009 was filed by Shri G.S. Prasad Manager of the assessee and E/482/2009 was filed by Shri K. Saraswati Executive Director of the assessee. In the impugned Order-in-Original personal penalties were imposed on Smt. K. Saraswati & Shri G.S. Prasad under Rule 209 A of the Central Excise Rules, 1944.

2. Heard both sides and perused the records.

3. The appellant assessee manufactures plastic moulded chairs with the brand name of “POLYSET” and supplies the same to the M/s Polyset Plastic Limited (PPL) at an assessable value. M/s Polyset Plastic Limited in turn, sells these plastic chairs at a much higher price. After conducting investigation, a show cause notice No. O.R. No. 205/2002 Hyd-III-Adjn dated 31.01.2005 was issued alleging that the transaction between M/s Polyset Plastics Ltd., and the assessee is not at a arm’s length and that they are related parties with interest in the business of each other. It was also alleged in the show cause notice that there was additional consideration for sale and that there were several direct and indirect benefits such as payment of insurance premium by PPL on the machinery supplied to the assessee, supply of raw materials at a lower cost etc. It is also alleged that PPL supplied the requisite moulds to the assessee. It

was further alleged that the PPL has purchase the machinery after taking loan at an interest of 15% per annum.

4. Thus, they were two kinds of allegations in the show cause notice namely,

a) that M/s PPL and assessee had related parties and

b) that M/s PPL had incurred some expenditure on behalf of the assessee which should form additional consideration for sale.

However, at the end, demand was raised as per the annexure in the show cause notice taking the price at which M/s PPL sold the chairs to the customers as the assessable value. Therefore, duty was demanded on the difference between price in which the assessee sold to M/s PPL and the price in which M/s PPL sold to their customers. There is no demand in the show cause notice on account of additional consideration for sale.

5. After the first round of litigation, the matter was remanded back to the Commissioner by CESTAT. Thereafter, the matter was decided by the impugned Order-in-Original by the Commissioner. In para 36 of the Order-in-Original, the Commissioner has, after detailed examination of the terms and conditions of the agreement, held that the agreement is on principal to principal basis. He further ascertained that they do not in any way come near to the definition of the related persons as defied in Central Excise Law. Therefore, he

held that the question of determining the assessable value on the basis of sale price of PPL does not arise and to this extent the allegations in the show cause notice are not sustainable. He found that the Department had alleged that M/s PPL supplied imported raw materials whose value will be higher than the indigenously procured material, but had not given any figures to support this and therefore this is not a consideration for sale. The supply of machines and moulds by M/s PPL has been satisfactorily explained and therefore cannot be considered as additional consideration for sale. However, he found that the insurance of the machinery was taken by M/s PPL as per the conditions of the agreement and found that this should be regarded as additional consideration for sale. He further said that while the assessee has paid Rs. 4 lakhs as lease charges whereas M/s PPL has procured machinery by taking loan at the rate of 15% per annum. The different between interest and the lease charges should be treated as additional consideration for sale. Thus, he held that

i) insurance charges on the machinery paid by M/s PPL; and

ii) difference between annual interest on loan paid or payable by M/s PPL on the purchase of machinery and the lease charges paid by the assessee to M/s PPL should be considered as additional consideration for sale. He held that the additional consideration for sale was Rs. 60,43,120/- and confirmed the duty thereon of Rs. 3,77,695/-.

6. Therefore he confirmed a demand of Rs. 3,77,695/- along with interest and imposed penalties on the assessee as well as personal penalty of Rs. 10,000/- each on Shri K. Saraswati, Executive Director of the assessee Shri G.S.Prasad Manger of the assessee and Shri Bhupesh Bafna, Director of M/s PPL.

7. Learned Counsel for the appellants submitted that the demand confirmed in the Order-in-Original is not sustainable because it travelled beyond the show cause notice. The show cause notice made allegations regarding the relationship between the appellant and M/s PPL and also regarding additional consideration for sale but the final demand in the show cause notice was raised only on the ground that the related parties and therefore the price at which PPL was selling the chairs should be taken the assessable value. There is no demand in the show cause notice on the grounds of additional consideration for sale. As the demand is not sustainable, interest and penalty on the appellant as well as penalties on the others are not sustainable either.

8. The Learned Commissioner (AR), on the other hand, reiterated the arguments in the Order-in-Original and asserted that the demand confirmed in the Order-in-Original is sustainable and the personal penalties are imposable.

9. We have considered the arguments on both sides.

10. The demand in the show cause notice is only on the ground that PPL and assessee were related parties and therefore the price at which M/s PPL was selling the chairs to the customers should be the assessable value for the purpose of Central Excise duty. There is no demand whatsoever in the show cause notice on the grounds that there is an additional consideration for sale. That being the fact that Order-in-Original has travelled beyond the scope of show cause notice in confirming the demand which is not correct and the same needs to be set aside. Since the demand has been found liable to be set aside the interest and penalties do not survive either. In view of the above, we find that the demand confirmed in the Order-in-Original and the interest and the penalties imposed are liable to be set aside and we do so.

11. The appeals are allowed and the impugned Order-in-Original is set aside.

(Order pronounced on 01/08/2018 in open court)

P. VENKATA SUBBA RAO
MEMBER (TECHNICAL)

M.V. RAVINDRAN
MEMBER (JUDICIAL)

Lakshmi….