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

Appeal Nos. E/1277-1279/2010

(Arising out of Order-in-Appeal Nos. 36, 37 & 38/2010 (H-IV) CE dated 25.03.2010 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals – II), Hyderabad)

M/s SPM Polymers (P) Ltd.,
Smt. Vijaya Lakshmi, MD,
SPM Polymers (P) Ltd.,
M.V. Sekhar Rao, MD, VSN Plastics Pvt. Ltd., **…..Appellant(s)**

Vs.

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

Appearance
Shri M.V.S. Prasad, Advocate for the Appellant.
Shri Bhanu Kiran, Assistant 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: 06/08/2018
Date of Decision: 11/09/2018

FINAL ORDER No. A/31153-31155/2018

[Order per: P. Venkata Subba Rao]

These appeals are arise out of a single impugned order and hence are being disposed of together. Appeal No. E/1277/2010 is filed by the assessee whereas, E/1278/2010 is filed by Shri M.V. Sekhar Rao, Managing Director of the assessee and appeal No. E/1279/2010 is filed by Smt. Vijaya Lakshmi, MD of SPM Polymers (P) Ltd., regarding the personnel penalties imposed on them.

2. Heard both sides and perused the records.

3. The issue in brief, after filtering out unnecessary details, is that the appellant assessee is a manufacturer of plastic moulded furniture and household articles like buckets and mugs. They were availing the benefit of SSI exemption vide Notification No. 09/2003-CE at the relevant time. They were also manufacturing goods as job worker associated from M/s VSN Plastic Pvt. Ltd., and others. The officers of DGCEI investigated the company and found shortage of finished goods and evidence of clandestine manufacture and removal of goods as well as irregular availment of SSI exemption on products which were bearing the brand name of another company. Accordingly, a show cause notice was issued to the appellant company which was adjudicated by the lower authority vide Order-in-Original No. Ex05/2009 dated 31.03.2009 confirming the allegations and demanding duty, interest and imposing penalties as under:

i) Duty of Rs. 21,039/- on the shortage of finished goods found in the factory premises under Section 11A(1) of the Central Excise Act, 1944 along with appropriate interest under Section 11AB of the Act.

ii) Duty of Rs. 23,369/- on alleged clandestine clearances of finished goods under section 11A(1) of the Central Excise Act along with appropriate interest under Section 11AB of the Act, 1944.

iii) Duty of Rs. 7,22,815/- on goods alleged to have been clandestinely manufactured and cleared under Section 11A(1) of the Central Excise Act along with appropriate interest under Section 11AB of the Act.

iv) Duty of Rs. 5,08,745/- towards the irregular availment of concessional rate of duty under SSI scheme along with appropriate interest under Section 11AB of the Act.

v) He appropriated amount of Rs. 2,22,285/- paid by the appellant company.

vi) Demand of Rs. 1,00,684/- under Rule 12 of the CENVAT Credit Rules, 2002 along with appropriate interest under Rule 12 of the CENVAT Credit Rules r/with Section 11AB of the Act.

vii) Redemption fine of Rs. 2,00,000/- under Rule 25(1) of the Central Excise Rules, 2002.

viii) Penalties under Section 11AC of the Central Excise Act on the duties demanded, Rs. 1,00,000/- under Rule 25 of the Central Excise Rules, 2002 and Rs. 10,000/- under Rule 13 of CENVAT Credit Rules, 2002.

ix) Penalty of Rs. 1,00,000/- each on Smt. Manne Vijayalakshmi MD, and Sri. M.V. Sekhar Rao, her husband, for contravention of the provisions of the Central Excise Act, 1944.

4. On an appeal, the First Appellate Authority has set aside the demands except the demand of Rs. 5,08,745/- (Annexure D-4 to the show cause notice) on account of differential duty on goods cleared by irregularly availing concessional rate of duty on the goods bearing the brand name of another person. He also reduced the penalty on Smt. Vijayalakshmi and Shri M.V. Sekhar Rao from Rs. 1 lakh to Rs. 50,000/-. He modified the penalty imposed under Section 11AC of Central Excise Act with reference to the duty demanded and upheld the penalty of Rs. 10,000/- under Rule 13 of CCR, 2004.

5. In respect of the demands and penalties dropped by the First Appellate Authority, the Department had filed appeal No. E/1328-1330/2010 before this Bench but had withdrawn the appeal as per the new litigation policy and it was consequently dismissed as withdrawn and hence these issues have reached finality. In respect of the differential duty of Rs. 5,08,745/- and the penalties confirmed by the First Appellate Authority these appeals have been filed by the appellant. The appellant company pleaded on the following grounds:

a) the First Appellate Authority has erred in confirming the demand of differential duty of Rs. 5,08,745/- as worked out in annexure D-4 to the show cause notice observing that they had not contested this issue before the lower authority. In fact, in paragraphs 7 &8 and reply to the show cause notice before the lower authority they had clearly pleaded this issue.

b) On perusal of description of the goods annexure D-4 to the show cause notice, it can be seen that the goods had either no brand name or brand names Sagar & Vandana and the duty was calculated denying SSI benefit on all clearances. Hence the demand on this count needs to be recalculated and it works out to only an amount of Rs. 3,39,780/- on goods valued at Rs. 53,09,065/-.

c) The Learned Commissioner (Appeals) dropped the demand on allegations of irregular avaliment of CENVAT credit but had erroneously confirmed a penalty of Rs. 10,000/- under Rule 13 of CENVAT Credit Rules, 2004 on the same ground. In view of the above, they prayed that the impugned order to the extent of confirming the demand of Rs. 5,08,745/- along with interest and imposition of penalties under Section 11AC of the Central Excise Act and Rule 13 of CCR, 2004 may be set aside.

6. The appellants Shri M.V. Sekhar Rao Smt. Vijaya Lakshmi prayed that the personal penalties imposed on them may be set aside. The Learned Counsel for the appellant reiterated the above submissions:

7. The Learned Departmental Representative reiterated the Order-in-Original and Order-in-Appeal and asserted that the demands were rightly confirmed in the impugned order and no need interference. He also explained that as far as the Department's appeal on the demands dropped by the First Appellate Authority is concerned, the same has been withdrawn on account of the new litigation policy.

8. We have considered the arguments made by both sides and perused the records.

9. The disputed demand is now confined to Rs. 5,08,745/- which is the demand towards differential duty on the ground that the appellant had irregularly availed concessional rate of duty under SSI scheme on which brand name of persons. The details of all these clearances are in annexure D-4 to the show cause notice. A perusal of annexure D-4 shows that this annexure describes goods, the value, duty of Excise payable, education cess payable, duty of Excise paid, differential duty, total duty, name of the customer etc. Only some goods have been described as having brand names as “Vandana” or “Sagar”. The first paragraph of the show cause notice states “they manufacture the plastic moulded household articles with their own brand namely VANDANA”. Para 45 of the show cause notice alleges that the appellant assessee had cleared plastic

moulded furniture articles with brand name owned by VSN. Therefore, it is not clear from show cause notice itself, whether the brand name Vandana is owned by the appellant himself in which case no differential duty arises or the brand name is owned by somebody else, in which case, the differential duty is payable. It is also the submission of the appellant that in respect of mint stools manufactured by them the goods did not carry brand name NAMASKAR as alleged by the Department in the show cause notice. These factual aspects need to be verified by the Original Authority to determine which of the clearances indicated in annexure D-4 to the show cause notice had the brand name of another person and re-compute the differential duty accordingly. Consequently, the penalty under Section 11AC, if any, also needs to be recomputed.

10. The Learned Counsel for the appellant submits that this differential amounts needs to be reduced to Rs. 3,39,780/- which claim needs to be verified by the Original Authority. As far as, the penalty of Rs. 10,000/- under Rule 13 of CCR, 2004 is concerned, since the demand on this account has already been set aside by the First Appellate Authority, the penalty needs to be set aside as well. As far as, the personal penalties on Shri. M.V. Sekhar Rao and Smt. M. Vijayalakshmi are concerned, we find Smt. M. Vijayalakshmi is the owner of the appellant private limited company which is also an SSI and it is hard to imagination she was not aware of the day to-day

functioning of such a company. Therefore, she is liable for the alleged offences in the day to-day affairs of the company. Similarly, Shri M. V. Sekhar Rao is not only the husband of the Managing Director of the appellant company but also the owner of the M/s VSN Plastics Pvt. Ltd., whose brand name was used according to the show cause notice, in irregularly availing the consignments availing the benefit of SSI exemption. However, considering the demand itself, even on the ground of irregular availment of SSI exemption is likely to be reduced after re-computation (in view of the fact that Vandana appears to be the brand name of the appellant themselves as per the show cause notice), we are of the view that reduction of personal penalty to Rs. 25,000/- each on Shri M. V. Sekhar Rao and Smt. Vijayalakshmi would meet the ends of justice. Accordingly, we pass the following order:

i) The penalty of Rs. 10,000/- under Rule 13 of CCR, 2004 confirmed by the First Appellate Authority in the impugned order is set aside.

ii) The matter is remanded back to the original authority for the limited purpose of re-computing the demand on an account of irregular availment of SSI exemption as detailed in Annexure D-4 to the show cause notice, restricting the demand to only such clearances where the goods had the brand names of another person. The original authority shall follow principles of natural justice while, re-determining the duty liability.

iii) The penalty under Section 11AC shall stand reduced to the extent of the amount re-computed as above.

iv) Personal penalty on Shri M.V. Sekhar Rao and Smt. M. Vijayalakshmi is reduced to Rs. 25,000/- each.

11. The appeals are disposed of as herein above.

(Order pronounced on 11/09/2018 in open court)

P. VENKATA SUBBA RAO
MEMBER (TECHNICAL)

M.V. RAVINDRAN
MEMBER (JUDICIAL)

Lakshmi….