CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench
Court - I

Appeal No. E/1585/2010
(Arising out of Order-in-Original No.26/2009-Commr.-C.Ex. dated 30.12.2009 (De novo) passed by CCCE, Hyderabad - IV)

Ultrapack ..... **Appellant(s)**

Vs.

CCCE & ST, Hyderabad - IV ..... **Respondent(s)**

Appearance
Ms. Swetha, Advocate for the Appellant.
Shri Arun Kumar, Dy. Commissioner/AR for the Respondent.

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

Date of Hearing: 29.10.2018
Date of Decision: 18.12.2018

FINAL ORDER No. A/31567/2018

[Order per: M.V. Ravindran]

1. This appeal is directed against the Order-in-Original No. 26/2009-Commr-C.Ex dated 30.12.2009 (De novo).

2. The issue involved in this case is regarding the valuation of the cement used for consumption.

3. During the period July, 2000 to February, 2002, appellants herein were receiving Ultramarine Robin Blue in bulk pack from Reckitt Benckiser India Ltd (RBIL); repacking the same into retail packs of different sizes and as this activity of repacking amounts to manufacture, are required to discharge the Central Excise Duty on such repacked goods. Appellants were discharging the Central Excise Duty on such repacked goods but valuation of the said goods was not done in accordance with the provisions of Central

Excise valuation Rules is the allegation of the department which stems from the price declarations filed by the appellant. Appellant herein had declared price of Ultramarine Robin Blue in bulk as the basic price and did not include the 15% mark up as required under the provisions of Central Excise valuation Rules. Two show cause notices were issued covering the period from July, 2000 to February, 2002, demanding the differential duty and demand of the interest along with proposal for imposition of penalty. The adjudicating authority dropped the proceedings initiated by the two show cause notices. Aggrieved by such an order, an appeal was preferred before the CESTAT. The Tribunal by Final Order No. 618/2009 dated 13.05.2009 after holding that on merits the issue is covered in favour of the revenue, remanded the matter back to the lower authority for considering the question of valuation of the goods. The adjudicating authority in the impugned order in this appeal has considered the remand proceedings as directed by the Bench. Adjudicating authority after following due process of law confirmed the demands raised along with interest and also imposed penalties.

4. Learned counsel takes us through the entire case records in this appeal. It is the submission that there is no dispute as to the fact that Ultramarine Robin Blue is procured in bulk and subsequently repacked. It is the submission that appellant had preferred to discharge the duty liability based upon the cost construction method as laid down by the Apex Court in the case of Ujagar Prints. It is the contention that the phrase “cost of production” needs to consider only the actual cost of production of Ultramarine Robin Blue in bulk which is excluding the profit margin of 15% as provided under Rule 8 of Central Excise Valuation Rules. It is the submission that in view of this, the demands raised are liable to be set

aside. On limitation, it is his submission that during the period in question, they were of bonafide belief that the cost of production as per Rule 8 has been only misinterpreted and demands raised by invoking extended period of limitation must be set aside.

5. Learned departmental representative, on the other hand, submits that on valuation issue this Bench has already taken a view against the assessee on to that the value needs to be considered by the principal manufacturer of Ultramarine Robin Blue. It is his further submission that on the question of limitation, the appellant had been filing the declaration by reducing the cost of production subsequent to such case which has been raised on them i.e., on 18.10.2001. From that date, department was made aware the improper deductions claimed by the appellant. Hence, the demand confirmed by invoking extended period of limitation is also correct.

6. On careful consideration of the submissions made by both sides and perusal of records, we find that the appellant herein has no case on merits as well as on limitation for more than one reason.

7. Firstly, there is no dispute as to the fact that appellant is procuring Ultramarine Robin Blue in bulk from RBIL and repacking the same. RBIL is discharging the duty liability on such bulk Ultramarine Robin Blue by considering the cost of production and 15% mark up as provided under Rule 8 of Central Excise Valuation Rules. It is not in dispute that RBIL is correctly discharging the duty liability as the bulk Ultramarine Robin Blue cleared is repacked and resold as Ultramarine Blue on behalf of RBIL. Provisions of Rule 8 would apply to RBIL and they accordingly discharged the duty liability. Appellant herein claimed the formula as settled by the Apex Court

in the case of Ujagar Prints, for discharging duty liability on the end. There is no dispute as to that the said formula is applicable.

8. Secondly, the formula which is sought to be applied for discharge of duty liability by the appellant is cost of raw material plus Job worker's charges and on this amount, the Central Excise Duty needs to be discharged. In the case in hand, appellant undisputedly is a job worker and includes the cost of job charges but while arriving at the raw material cost has considered only cost of production shown by RBIL in their invoice when they cleared the Ultramarine Robin Blue in bulk. Appellant did not considered the amount of 15% mark up which is added to the cost of production by RBIL, entertaining a view that it is not the cost of production. We are afraid to state that appellant has totally misinterpreted the law settled by the Apex Court in the case of Ujagar Prints. Apex Court in the case of Ujagar Prints had specifically stated that the job workers should consider the cost/ value of raw materials and their job charges for discharging the Central Excise duty, if an assessee is working as a job worker. In the case in hand, there being no dispute as to the fact that appellant is job worker of RBIL, has to consider the cost/ value of the raw materials. In the case in hand, raw material for the appellant is Ultramarine Robin Blue in bulk pack on which the duty liability is discharged by taking value of the cost of production plus 15% mark up. Appellant should have considered the value of bulk Ultramarine Robin Blue on which the principal has discharged the duty liability. To that extent, we find no merits in the appeals filed by the appellant. The ratio of the Apex Court in the case of Ujagar Prints is very clear and appellant had tried to misinterpret the said provisions, which is unacceptable.

9. As regards the question of limitation, appellant had not brought this aspect of the valuation to the notice of the department and did not file any price declarations as was required during the relevant period. The first price declaration which was filed by him was in 2001. In our view, appellant has no made out any case in his favour on the question of limitation also. Appellant being a job worker was mandated to discharge the Central Excise duty applying the correct law. Having not done so has correctly been held as liable to discharge the duty liability even in the extended period of limitation.

10. In short, we do not find any merits in the appeal filed by the appellant. The impugned order is upheld and the appeal stands rejected.

(Pronounced in the Open Court on 18.12.2018)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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