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

Division Bench
Court – I

Appeal No. E/741-742/2009

(Arising out of Order-in-Original No.07/2009-CE-HYD III-ADJN.Commr. dated 30.4.2009 passed by CCCE, Hyderabad - III)

Elegant Chemicals Enterprises Pvt Ltd ….. Appellant(s)

Vs.

CCCE & ST, Hyderabad - III ….. Respondent(s)

Appearance

Ms. Swetha & Shri G. Prahlad, Advocates for the Appellant.
Shri Bhanu Kiran, Asst. 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/31568-31569/2018

[Order per: M.V. Ravindran]

1. These appeals are directed against Order-in-Original No. 07/2009-CE-HYD III-ADJN. Commr. dated 30.04.2009.

2. Relevant facts that arise for consideration, after filtering out unnecessary details are appellant are registered manufacturers of Ayurvedic medicaments on job work basis under contract with M/s Procter & Gamble Co. (USA) (P & G). In terms of the agreement entered with P & G appellant are required to manufacture final products from raw materials and packing materials supplied to them against various excise invoices issued by P & G and also manufacturing technology required to do so. The agreement is on principal to principal basis i.e., appellant has to discharge Central Excise duty on the goods manufactured and cleared as per the contract entered by them for the amounts to be received as consideration by them and supply the final product to P & G. Appellant were discharging Central Excise duty on the said products as the manufacturer on

the value arrived in terms of principles laid down by the Apex Court in the case of Ujagar Prints [1988 (38) ELT 535 (SC)]. There were earlier proceedings against the appellant on the very same products by a show cause notice dated 16.04.1999 for non-inclusion of certain expenses, which culminated on demand being dropped. Similar proceedings were initiated by show cause notice dated 11.04.2008 alleging that valuation should be on the basis of selling price of P & G. The said proceedings were also dropped during adjudication. In the present proceedings, appellant's factory was visited by the departmental officers and noticed that they are functioning as job worker for P & G and were not discharging Central Excise Duty as required under provisions of Rule 10A of Central Excise Rules, 2000. Noticing such discrepancy show cause notice dated 06.11.2008 was issued for demand of the differential duty, interest thereof and imposition of penalties on the company as well as the individual. The show cause notice also demanded duty for the period 01.04.2007 to 29.02.2008 by invoking the extended period. The appellants contested the show cause notice on merits as well as on the limitation. The adjudicating authority after following due process of law did not agree with the contentions raised by the appellant and by the impugned order confirmed the demands raised with interest and imposed penalties on the company as well as the individual. Hence, these appeals are filed before this Bench.

3. Learned counsel takes us through the records of the case and submits that provisions of Rule 10A of Central Excise Rules will not apply as the relationship between appellant and P & G is on a principal to principal basis, there is no control or supervision of P & G in the manufacturing activity; Rule 10A of the valuation rules is not applicable to the present case as the said rule would apply where the excisable goods are manufactured by job worker on behalf of the manufacturer. It is his submission that appellant herein though is a job worker is not manufacturing the goods on behalf of principal manufacturer

but for the manufacturer. It is his submission that the phrase "on behalf of" would mean that the job worker is either an employee of the supplier of raw material or is an agent of the latter and in the case in hand it is not so. It is the further submission that the arrangement of manufacturing activity is so that appellant manufacture the inhalers and cleared the same to the depot. Hence, the actual activity of the appellant would not fall under provisions of Rule 10A as it contemplates three parties and in the case in hand there are only two parties. It is the submission that on these grounds they had discharged the Central Excise Duty based upon the principles arrived at by the judgment of the Apex Court in the case of Ujagar Prints. It is the submission that penalty is not imposable as this was in accordance with the law laid down by the Apex Court. As regards the question of limitation, it is the submission that revenue was fully aware of the activity of the appellant as on the very same products two show cause notices were at least issued which resulted in dropping of the proceedings. Hence, department was aware of all the activities. It is the further submission that penalty of Shri C.L. Chadda needs to be set aside as the said Shri C.L. Chadda has expired on 16.1.2009 and as per the provisions of CESTAT Rules in proceedings on an individual abates due to sad demise.

4. Learned departmental representative, on the other hand, submits that the issue is now squarely covered by the judgment of the Tribunal in the case of Audi Automobiles [2010 (249) ELT 124] which has been followed by this Bench in the case of Mahindra Navistar Automotives Ltd. It is also the submission that similar issue has been decided in the case of Makson Healthcare Pvt Ltd by the Tribunal in Final Order No. 54667-54668/2016. He produced the copy of the same.

5. We have considered the submissions made by both sides and perused the records.

6. The demand of the duty on the appellant is for the period 01.04.2007 to 29.02.2008 by show cause notice dated 06.11.2008. The said show cause notice has invoked the extended period of limitation on the ground that appellant was aware that the Central Excise Duty on the goods manufactured by them is required to be discharged as per the provisions of Rule 10A of Central Excise Valuation Rules, 2000. To come to such a conclusion, the adjudicating authority has relied upon various correspondences entered by appellant with P & G. On merits, it has been held that the goods manufactured by them are covered under provisions of Rule 10A as appellant is a job worker.

7. On merits, we find that the issue is no more *res integra*. It is seen from the records and undisputed that appellant is manufacturing various items like vicks inhalers etc., from the raw material and packing material given by P & G based upon the agreement. Technology of manufacturing such product is also given by P & G. In our view, the provisions of Rule 10A would strictly apply in this case and appellant has to discharge the duty liability under the said rules and not as per the principles laid down by Ujagar Prints. As per the provisions of Rule 10A appellant is required to discharge the duty liability on the basis of sale price of the said goods. We find the issue is no more *res integra* and covered by our decision in the case of Audi Automobiles (supra) and Makson Healthcare Pvt Ltd [2007 (218) ELT 286] who were incidental and also were manufacturing the same goods for P & G. Accordingly, on merits we find no case for the appellant.

8. On the question of limitation, we find that the adjudicating authority has reproduced various correspondences entered into by the appellant with P & G to hold that there was a suppression of the fact and that is fortified by the fact that appellant had not approached the department to seek clarification as to the applicability of provisions of Rule 10A. In our view, the findings arrived at by the adjudicating authority on the question of limitation, are unassailable. The

correspondences entered into by the appellant with P & G indicates that they were concerned with the issue but at the same time did not seek any clarification from the revenue authorities. Secondly, we find that the appellant's counsel was relying upon show cause notice dated 11.04.2008 to submit that the issue is hit by limitation, may also not carry their case any further as the adjudicating authority while adjudicating the said show cause notice clearly has recorded that the said show cause notice is up to 31.03.2007. The dates are very important on this issue as from 01.04.2007, provisions of Rule 10A came into existence for discharge of duty liability by the manufacturer as a job worker. Accordingly, appellant's case that revenue authorities were aware of the same issue before this adjudication is incorrect as the issue involved in that case was different and for a period up to March, 2007 wherein there was no provision for discharging duty liability under Rule 10A of the valuation rules, 2000.

9. As regards the penalty imposed on individual, we do find that the said penalty needs to be set aside as appeal itself abates due to said demise of Shri C.L. Chadda.

10. In view of the foregoing, appeal filed by M.s Elegant Chemicals is rejected and appeal of Shri C.L. Chadda abates.

(Pronounced in the Open Court on 18.12.2018)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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