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

Appeal No. E/574/2010

(Arising out of Order-in-Original No.19/2009 -CE-Commr-HYD III/ADJN dated 11.12.2009 passed by CC&CE, Hyderabad)

M/s Elegant Chemicals Enterprises Pvt Ltd., ….. Appellant(s)

Vs.

CC, CE & ST, Secunderabad - GST ….. Respondent(s)

Appeal No. E/575/2010

M/s Procter & Gamble Hygiene & Health Care Pvt Ltd., ….. Appellant(s)

Vs.

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

Appearance

Shri Vipin Verma, Advocate for the Appellant(s).

Ms. B.V. Siva Naga Kumari & Shri Bhanu Kiran (ARs) for the Respondent.

Coram:

Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 21.02.2019
Date of Decision: __________

FINAL ORDER No. A/____________

[Order per: M.V. Ravindran]

1. These two appeals are directed against Order-in-Original No.19/2009-CE-Commr-HYD III/ADJN dated 11-12-2009. Since both the appeals are interconnected they are being disposed of by a common order.

2. The relevant facts that arise for consideration after filtering out unnecessary details are appellant (M/s Elegant Chemicals Enterprises Pvt Ltd.,) is engaged in the manufacture of Vicks Action 500 tablets and Vicks Inhaler as a job worker for appellant no.2 (Procter & Gamble Hygiene and Healthcare Limited) on job work basis. The job work agreement between appellant and appellant no.2 was entered on 23.10.2002 and amended and reveiwed from time to time. In addition to the goods being manufactured with the job worker appellant, appellant no. 2 was manufacturing the very same goods on their own. Appellant herein after manufacturing on job work Vicks Action 500 and Vicks Inhaler, used to dispatch the same to various depots as instructed by appellant no.2. For clearing the goods to the depots of appellant no.2, appellant used to discharge the Central Excise Duty based upon the value arrived at in terms of the principles laid down by the Hon'ble Supreme Court in the case of Ujagar Prints Ltd. The current dispute is, as per the allegations in show cause notice, that appellant herein for the period 2004-05 to 2007-08 has to include the

amount paid by appellant no.2 as royalty to their parent concern in the value for discharging the central excise duty. Appellant did not agree with the contentions raised hence a show cause notice dated 03-08-2009 was issued for demand of the duty for the period 2004-05 to 2007-08, demanding interest and also seeking to impose equivalent penalty on the appellant and penalty on appellant no.2. Both the appellants contested the show cause notice on merits as well as on limitation. The adjudicating authority after following due process of law, confirmed the demands raised with interest and also imposed penalties on both the appellants.

3. Learned Counsel submits after giving overall facet of the case submits the sequence of events which are reproduced as under:

Date	Event
19.09.2005 to 22.09.2005	Audit conducted by C & AG
13.10.2006 to 18.10.2006	Audit conducted A.G's Audit Party
12.11.2007 to 15.11.2007	Audit conducted A.G's Audit Party
November, 2007	Audit by the Central Excise Audit Group
December, 2008	Audit by the Central Excise Audit Group
16.04.1999	SCN issued to the Appellant demanding differential duty on job work valuation
27.09.2005	Appellant submitted details that the goods were valued based on the decision of the Supreme Court in the case of Ujagar Prints
14.11.2005	Details of clearances of goods manufactured on job work basis were submitted
18.11.2005	Details of valuation of goods manufactured were submitted
11.04.2008	SCN issued demanding differential duty in respect of goods manufactured as a JW alleging that there was a substantial difference between the assessable value which was adopted and the Retail Sale Price of P & G and therefore the expenses incurred at the Principal Manufacturer's end should be included for the purpose of valuation. The period of this demand is between April 2003 to March 2007.

12.06.2009	Order-in-Original passed consequence to the remand order of the Hon'ble Tribunal wherein the proceedings initiated vide SCN dated 11.04.2008 was dropped on the ground that as long as the valuation method prescribed under Ujagar Prints case was followed no dispute can be raised.
03.08.2009	Impugned SCN
06.11.2008	SCN issued with a proposal to demand differential excise duty on the ground that the valuation is to be done in terms of Rule 10A of the Vauation Rules for the period April 2007 onwards.
30.04.2009	OIO passed adjudicating the SCN dated 06.11.2008 confirming the demand
18.12.2018	Tribunal confirmed the OIO dated 30.04.2009 upholding the demand under Rule 10A for the period April 2007 to February 2008

It is his submission that the show cause notice seeking differential duty demand for the period in question is repetitive and of periodical one as earlier as show cause notices were issued. It is his submission that the valuation method adopted by the appellant for discharge of central excise duty on the goods manufactured and cleared as job worker is in terms of the decision of the Apex Court in the case of *Ujagar Prints Vs Union of India [1989 (3) ELT 493 (SC)]*. It is his submission that it can be seen from the table that there is overlapping of the demands in the case in hand. He would submit that it is an accepted position that in the appellant's own case for the very same period Ujagar Prints case was followed, hence the excise duty is confirmed on different valuation method is incorrect. Further it is his submission that provisions of Rule 6 of Central Excise Valuation Rules will not be applicable as appellant herein was a job worker and any consideration paid by appellant no.2 to their parent concern was not in the knowledge of the appellant. He would submit that appellant was given a direction to manufacture the goods on job work basis and valuation has to be done in accordance with the documents given to them by appellant no.2

which they have done so. It is his submission that there is no free supply of material to the appellant from appellant no.2. Further it is his submission that in any case any royalty paid for the purpose of usage of trade mark is not includable in the value when the goods are manufactured under job work basis. He would submit that the entire demand is barred by limitation in as much, the job work arrangement between appellant and appellant no.2 is within the knowledge of department since 1999, as a valuation dispute itself was raised on the goods manufactured on job work basis; there were regular audits conducted by the departmental authorities and C & AG department wherein job work agreement, manner of valuation of goods, has been examined and no demands were raised. It is his submission that for the period April 2003 – March 2007, proceedings were initiated against the appellant and method valuation adopted for job work manufactured goods is on record the copy of the Order-in-Original dropping demand is enclosed along with the appeal memoranda, and the said order is not contested by the Revenue. It is his further submission that as an alternative, the calculation of the demands is also incorrect as it has not considered the value of the goods cleared under Section 4A i.e. for the items Vicks Action 500 when they were brought into MRP regime. He would submit that two assessments cannot be done for the same period for the same issue is the law as settled by Apex Court in the case of *Duncans Industries Ltd., [2006 (201) ELT 517 (SC)]* and *Simplex Infrastructure Ltd., [2016 (42) STR 634 (Cal)]*. He would also submit that decision of the Tribunal in the case of *Vishnu Dyeing & Printing Works [2008 (221) ELT*

369 (Tri-Mumbai)] for the proposition that declaration of job worker based on the details disclosed to them by the principal manufacturer and accepted by the department, in the absence of any evidence of misdeclaration by the job worker, extended period cannot be invoked. It is his submission that this judgment has been upheld by the Hon'ble High Court of Bombay as reported at *2009 (239) ELT A84 (Bom)*. It is his submission that since the demands are not at all sustainable on limitation as well as on merits, imposition of penalties on appellant and appellant no. 2 does not arise. He prays for setting aside the impugned order.

4. Learned Principal Commissioner (AR) after giving small picture of the activity undertaken by appellant submits that appellant no. 2 paid royalty charges to Procter & Gamble, USA and that value needs to be included in the value for discharging of central excise duty. She would submit that as per technical know-how and trade mark agreement dated 01.12.2004, between Procter & Gamble, USA and appellant no. 2, there is a transfer of manufacturing technology and know-how and trade mark for which royalty and technical fees are paid. It is the submission that once these amounts are paid towards royalty and technical fees, they have to become a part of assessable value as per the provisions of Section 4 r/w relevant rules of the valuation rules. She would gainfully refer to CBEC No. 619/10/2002 dated 19.02.2002 and submits that it was clarified so. It is her submission that the assessee contended that Rule 6 is not applicable as there is no additional consideration in this case, however in this case, the value of the

goods cleared were in doubt accordingly after process of elimination, residual rule 11 was followed by which, provisions of Rule 6 are made applicable. It is her submission that the demands which are contested on limitation are also correct as non-inclusion of royalty charges in the assessable value came to the knowledge of the department only after detailed investigation conducted; as per Notification No. 36/2001-CE (NT) it is a job workers' responsibility to declare the correct assessable value, and appellant has failed to declare correct assessable value. She relies upon the following case laws:

i) Karamyogi Dyeing Pvt Ltd., Vs CCE, Mumbai
[2002 (148) ELT 431 (Tri-Mumbai)]
ii) Vishnu Dyeing & Printing Works Vs CCE, Mumbai
[2008 (221) ELT 369 (Tri-Mumbai)]

It is her further submission that the adjudicating authority in the case as discussed each and every aspect which were argued by the assessee more specifically regarding periodical submission of cost sheets with the authorities, method in which cost of production was arrived as per manufacturing agreement between appellant and appellant no. 2 was also considered in its correct perspective and has come to a conclusion that the duty liability arises.

5. Considered the submissions made by both sides and perused the records.

6. It transpires from the records that the demand of the differential central excise duty on the appellant and imposition of penalty on appellant no. 2 is based upon the allegation and the findings that appellant no.1 has misdeclared the value of the goods cleared by them.

7. Undisputedly appellant is a job worker for appellant no. 2; manufactures Vicks Action 500 and Vicks Inhalers; discharges the duty liability on the said products based upon the formula of valuation as settled by the Apex Court in the case of Ujagar Prints i.e. cost of materials plus job work charges (which includes job workers profit); filed regularly the cost sheets, declarations etc., with the authorities as being job worker of the appellant no.2.

8. Considering this factual matrix we have to see whether the appellant herein has misdeclared the value or otherwise. It is also undisputed that appellant no. 2 is brand owners of Vicks Action 500 and Vicks Inhalers and supplies all the materials required for manufacturing all these items to the main appellant and also gives the cost involved in such input materials. Based upon such cost sheets and documents received from appellant no. 2, appellant herein files a price declaration including the cost of job work for doing the job working of the items and discharges the central excise duty. In our considered view, the ratio of the judgement in the case of Ujagar Prints is directly applicable in the case herein for more than one reason.

9. Firstly, we find that appellant may not be aware as to the fact that appellant no. 2 is paying royalty or technical fee to Procter & Gamble, USA. In fact nothing is brought on record that appellant was aware of payment of royalty charges and technical fees by appellant no.2 to Procter & Gamble, USA and nor there is any allegation in the show cause notice that indicate so. In our view, in the absence of any knowledge of any payment made by appellant no. 2 to Procter & Gamble, USA, it cannot be held that appellant had misdeclared the value of the goods manufactured on job work basis. Further, in the entire proceedings, the Revenue has not disputed that appellant had been filing cost sheets along with the declaration made by appellant no.2 when they manufactured and cleared Vicks Action 500 and Vicks Inhalers from their factory premises. If that be so, alleging that there was a misdeclaration of the value in the case in hand seems to be unfounded and incorrect.

10. Secondly, reading the Apex Court Judgment in the case of Ujagar Prints the discharge of the duty liability by the appellant based upon the cost of material plus job works charges during the period in question is the correct law followed and was followed.

11. As regards the limitation, we find that on limitation also the appellant has a case in his favour. Undisputedly, the declaration of the price which has been made by appellant is based upon the cost sheets given by

appellant no. 2 to him and discharged the duty liability accordingly. It is also undisputed that the appellant has been filing the monthly returns with the authorities. If that be so a show cause notice dated 03-08-2009 invoking the extended period for demanding the duty for the period 2004-05 to 2007-08 is blatantly hit by limitation. In our view, the demand cannot sustain on limitation also.

12. The appeal filed by appellant is acceptable on merits as well as on limitation and accordingly we set aside the demands raised on the appellant. Since, we have set aside the demands on merits as well as on limitation, penalties imposed on appellant and appellant no. 2 do not survive and need to be set aside, accordingly we do so.

13. In view of the foregoing, the impugned order is set aside and the appeals are allowed.

(Order pronounced in open court on _____________)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

Jaya…