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

Division Bench
Court – I

Excise Appeal No. 1535 of 2011

(Arising out of Order-in-Appeal No. 25/2011 (H-IV) CE dt.22.02.2011 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals-II), Hyderabad)

DCL Bulk Technologies Pvt Ltd
IDA, Jeedimetla, Hyderabad,
Telangana – 500 055 **……Appellant**

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Hyderabad-IV
Posnett Bhawan, Ramkoti,
Hyderabad – 500 004 **……Respondent**

Appearance
Shri P. Rama Krishna, Advocate for the Appellant.
Shri A. Rangadham, AR for the Respondent.

Coram:
HON'BLE MR. R. MURALIDHAR (JUDICIAL)
HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30057/2023

Date of Hearing: 10.04.2023
Date of Decision: 10.04.2023

[Order per: R. MURALIDHAR]

The Learned Counsel submits that in this case the issue is as to whether the appellant is the manufacturer liable to pay the excise duty or not. He brings in documentary evidence to the fact that they have engaged a job worker M/s Meghana Metals to take up the fabrication work by completing all the activities including the painting and testing. Therefore, as per him the manufacture has taken place at the premises of job worker. The Show Cause Notice was issued based on the audit observation that the turnover shown by them during the period 2004-05 and 2005-06 were not subjected to Excise Duty payment. They have submitted their reply to the Audit taking the stand that the manufacture has taken place at the premises of the job worker and hence the present appellant is not liable for payment of Excise Duty. During the period under consideration they were only carrying on trading activities and were not registered with the Central Excise Department. He also submits that the show cause notice was issued on

11.01.2010 for the period 2004-05 and 2005-06 which is hit by time bar. Accordingly, he prays that the present appeal may be allowed.

2. Learned AR submits that the Appellant has got only certain parts fabricated by Meghana and they are procuring several items from the Meghana and the fabricated and other items were being assembled at the premises of the buyer. Therefore, the Department was correct in taking the stand that the Appellant is the manufacturer as the manufacture has taken place at the buyer's premises. Since, the Appellant was not registered with the Department and the details came to light only on account of detailed audit taken up for their unit. He submits that notification of extended period is justified. Accordingly, he submits that appeal is liable to be rejected.

3. Heard both sides and perused relevant documents. It is observed that the present demand is on account of the audit conducted by the Department during January, 2009. It is seen that when the Audit had raised the point about the Appellant being the manufacturer, the Appellants have contested the issue which is recorded in the Audit Report dt.13.05.2009. The relevant extract is given below:

> *" When the audit objection was brought to the notice of the assesses, <u>they have contested that they did not have any manufacturing premises during the said period and they got their goods manufactured on job work basis. However, neither the assessee (in the capacity of the principal manufacturer) nor the job worker (on behalf of the principal manufacturer) has paid the duty on the above clearances. Hence the duty liability has to be borne by the assessee in terms of the said Notification</u>." [emphasis supplied]*

Subsequently, when the SCN was issued, at Para 5, the Appellant is mentioned as Assessee (in the capacity of the principal manufacturer) and M/s Meghana Metals is mentioned as job worker (on behalf of principal manufactuer) noting that that neither of them have paid the Excise Duty. The relevant portions are extracted below:

> *"5…………… However, the fact remains that neither the assesses (in the capacity of the principal manufacturer) nor the job worker (on behalf of the principal manufacturer) has paid the duty on the above clearances. Further, it is seen that the value of clearances during the said period are reflected in the Balance Sheet of the assessee and that the invoices are raised in their name."*

4. The Appellant in their reply to SCN and during the Personal Hearing have been always contesting that M/s Meghana Metals had completed the job work wherein finished goods have emerged at their end and hence

Excise Duty, if any, is required to be paid by the job worker. The Commissioner (Appeals) in his findings at Para 7.2 also makes a note of it giving his finding thus;

> *"7.2. ……………………………… However, Meghana Steels also failed in discharging central excise duty on the fabricated items manufactured and sold to the appellants. The respondent department is at liberty to take appropriate action as deem fit against M/s Meghana Steels."*

5. It is seen from the above documents that the entire proceedings have been taken up on the basis of turnover shown in the Profit & Loss Account and Balance Sheet on the assumption that the Appellant is the manufacturer. In spite of the Appellant contesting the issue on the ground that M/s Meghana Metals were the actual manufacturers, it is seen that no efforts have been made by the Department to verify these facts by conducting any enquiry/ investigation at the end of M/s Meghana Metals.

6. It is well settled law that when the manufacturing takes place at the end of the job worker, the liability to pay Excise Duty is on the job worker. In this case, the Appellant has shown that on the finished goods cleared by the job worker M/s Meghana Metals and they have paid Sales Tax/ VAT. It is also not a case where the present Appellant had sent the goods to the job worker in terms of Notification No. 214/86. Had this procedure been followed, then the liability would be on the Appellant to pay the Excise Duty.

7. Based on the factual matrix detailed above, it is clear that the present proceedings have been taken up without proper verification/ investigation and the Department has not effectively rebutted the Appellant's claim that they are not the manufacturers but M/s Meghana Metals are the actual manufacturers.

8. We set aside the OIA and allow the present Appeal.

(Operative Part of the Order was pronounced in the Open Court)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

Veda