IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA

REGIONAL BENCH – COURT NO.2

Excise Appeal No.75295 of 2016

(Arising out of Order-in-Original No.17/Commr./CE/SLG/15-16 dated 11.12.2015 passed by Commr. (Appeals) of Central Excise, Customs & Service Tax, Siliguri)

M/s HSB Agro Industries Ltd.
Mazabari, P.O. Rajganj,
Dist.-Jalpaiguri, Pin-735134

Applicant

VERSUS

CCEx. & S.Tax, Siliguri
C.R.Building, Haren Mukherjee Road,
Hakim Para, Siliguri-734001

Respondent

APPERANCE :

Shri N.K.Chowdhury, Advocate for the Appellant
Shri A.K.Biswas, Authorized Representative for the Appellant

CORAM:

HON'BLE MR. P.K.CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR.C. J. MATHEWS, MEMBER (TECHNICAL)

FINAL ORDER NO.76390/2019

DATE OF HEARING : 23.09.2019
DATE OF DECISION : 23.09.2019

PER P.K.CHOUDHARY :

Brief facts of the case are that the appellants are engaged in the manufacture of jute bags classifiable under Chapter 63 of the First Schedule to the Central Excise Tariff Act, 1985. The appellants were claiming the benefit of Central Excise Notification No.30/2004-CE dated 09.07.2004. The Notification granted exemption to jute bags. The period of dispute is from 01.03.2011 to 28.02.2013, during which the Notification was amended vide Notification No.12/2011-CE dated 01.03.2011. The amendment restricted the exemption to goods other than those bearing brand name or sold under the brand name.

2. The jute bags manufactured by the appellants, were required to print on jute bags certain information in terms of orders passed by the Jute Commissioner. These details included the name of the buyers, logo, year of manufacture etc.. Bulk of the jute bags manufactured were supplied to Food Corporation of India as well as various State Government Agency to be used in the Public Distribution System. After noticing the fact that the jute bags were printed with the name of the buyers, such as, Food Corporation of India, the Department was of the view that these jute bags were manufactured and cleared bearing the brand name of the buyers. Accordingly, Departmental Authorities came to the conclusion that the appellants will not be entitled to the benefit of Notification No.30/2004-CE dated 09.07.2004 as it stood amended during the period of dispute. The authorities below have ordered for payment of Central Excise duty without the benefit of the Notification No.30/2004-CE along with interest and penalty. These orders are under challenge in the present proceedings.

3. We have heard the Ld. Counsel representing the appellants as well as the Departmental Representative for the Revenue.

4. Both sides agree that the dispute involved in all the present appeals stands decided by the Hon'ble Supreme Court in the case of RDB Textiles Ltd. Vs. CCEx. & S.Tax, Kol.IV as reported in 2018 (359) ELT 433 (SC). The Hon'ble Apex Court had examined the wordings of the Notification as it stood during the disputed period and decided that the printing of the name, logo and other particulars of buyer, like, FCI and State Governments, were made by the manufacturers to comply with the requirements of Jute Control Order. The Hon'ble Supreme Court further held that the markings on jute bags were under compulsion of law and meant for identification, monitoring and control by Government Agencies and such markings cannot be considered as brand name. Accordingly, the Apex Court held that the benefit of Notification No.30/2004-CE will be available during the disputed period. The observations of the Apex Court are reproduced below :

> "***18.*** *It is obvious that, on the facts of these cases, what is in fact affixed to the jute bags is the name of the procurer*

agency in question such as the FCI, the State Government of Punjab and so on, the crop year, the name of the jute mill concerned, its BIS certification number and the statement that the food grains are manufactured in India. It is clear that all the aforesaid markings have, on the pain of penalty, to be done by the manufacturers of the jute bags, given the Jute Control Order and the requisition orders made thereunder. Obviously, such markings are made by compulsion of law, which are meant for identification, monitoring and control by Governmental agencies involved in the PDS. Neither do such markings enhance the value of the jute bags in any manner nor is it the intention of the appellants to so enhance the value of jute bags, which is necessary if Excise duty is to be imposed. This flows from the expression "...for the purpose of indicating, or so as to indicate, a connection in the course of trade between the product and some person using such name or mark...". In the present case, the markings on the jute bags are not for the purpose of indicating a connection in the course of trade between the jute bag and some person using such name or mark. The markings are by compulsion of law only in order that Governmental Authorities involved in the PDS may identify and segregate the aforesaid jute bags. This being the case, it is obvious that there is no "brand name" involved in the facts of the present cases.

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22. *The facts of these cases are far from the facts in Kohinoor Elastics (supra). In Kohinoor Elastics (supra), it was found that, as a matter of fact, the customer wanted the brand name affixed on the product because he wanted the consumer to know that there is a connection between the product and him. This is very far from the facts of the present case, in that, as has been held by* *us above, it is clear that the markings required on the jute bags are compulsory, being required by the Jute Commissioner, and are not for the purpose of enhancing the value of the jute bags by indicating a connection in the course of trade between the aforesaid products and the manufacturer of those products."*

5. Since the issue has been decided by the Apex Court, by respectfully following the ratio of the Apex Court, we allow the appeal. Ordered accordingly.

(Operative part of the order was pronounced in the open court)

Sd/
(P. K. Choudhary)
Member (Judicial)

Sd/
(C.J.Mathews)
Member (Technical)

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