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

REGIONAL BENCH – COURT NO.1

Excise Appeal No.194 of 2011
(On behalf of Appellant)

(Arising out of Order-in-Appeal No.64-65/Kol.VII/2010 dated 30.12.2010 passed by Commissioner (Appeals) of Central Excise,Kolkata)

M/s Sabitri Udyog
Plot No.571, Zone-6,Calcutta Leather Complex,Karaidanga, 24 Parganas (South),W.B.

Appellant

VERSUS

Commissioner of Central Excise,Kolkata VII
180, Shantipally, Rajdanga Main Road,Kolkata-700107

Respondent

APPERANCE :

Dr.Samir Chakraborty,Sr.Advocate & Shri Abhijit Biswas,Advocate for the Appellant
Shri S.Mukhopadhyay, Authorised Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO…77212/2023

DATE OF HEARING : 25.09.2023
DATE OF DECISION : 25.09.2023

Per Ashok Jindal :

The appellant is in appeal against the impugned order wherein the benefit of Exemption Notification No.8/2003-CE dated March 1, 2003 has been denied to the appellant for the period from June 18, 2004 to March 31, 2005.

2. The facts of the case are that the appellant was manufacturing footwear and got themselves registered w.e.f. 05.05.2005 for carrying out the manufacturing activity in the factory since 1997 until May, 2005. The appellant was a manufacturer of footwear and selling the same. The appellant was registered as a small scale industrial unit during the said period. The appellant, inter alia, during the

material period sold the entire footwear manufactured by it to Khadim Shoe (P) Ltd. and Khadim's Chain Store (P) Ltd., with which it had entered into an agreement therefor. The entire goods manufactured by the appellant were sold to the group companies belonging to Khadim. on principal to principal basis, on commercial considerations.

2.1 The entire process of manufacture was completed in the appellant's factory premises and goods were delivered to Khadim in a fully manufactured condition packed in poly propelene bags by affixing only a computer generated code number consisting of a few numerical digits and not by affixing the name, symbol, trade mark or any other particular which would show that the footwear manufactured in the appellant's factory premises belonged to Khadim.

2.2 On the footwear supplied by the appellant, Khadim got the same packed in boxes, affixing therein the price sticker and logo of Khadim and paid Central Excise duty thereon at the appropriate rate as prescribed. A certificate was also issued by Khadim Chain Store (P) Ltd., Kolkata certifying that they received unbranded shoes from the appellant and paid excise duty thereon, which was obtained by the appellant pursuant to requisition therefor by the authorities below.

2.3 But the proceedings were initiated against the appellant alleging that during the period 2004-05 and 2005-06 (upto June 20, 2006), the appellant has manufactured and cleared footwear for and on behalf of Khadim and bearing the brand name of Khadim by availing the benefit of exemption granted under Notification No.8/2003-CE dated March 1, 2003 as amended that the exemption to the said Notification was not available since the appellant was manufacturing branded footwear, and thus manufactured and sold branded goods of Khadim without observing the statutory requirements and without payment of duty, during the period June 18, 2004 to June 20, 2005. Therefore, the appellant was required to pay duty on the said clearances.

2.4 The matter was adjudicated. The demand of duty was confirmed by denying the benefit of Exemption Notification No.8/2003-CE dated March 1, 2003.

2.5 Against the said order, the appellant is before us.

3. Heard both the parties and considered the submissions.

4. We find that the facts are not in dispute. The appellant is manufacturing footwear and the same were delivered to Khadim in a fully manufactured condition packed in poly propelene bags by affixing only a computer generated code number consisting of a few numerical digits and **not** by affixing the name, symbol, trade mark or any other particular which would show that the footwear manufactured in the appellant's factory premises belonged to Khadim and paid the Central Excise duty. The said facts are not in dispute.

5. In that circumstances, it cannot be alleged that the appellant is manufacturing branded footwear. Therefore, the benefit of SSI Exemption Notification No.8/2003-CE dated March 1, 2003, cannot be denied to the appellant.

6. In that circumstances, the impugned proceedings initiated against the appellant are not sustained.

7. Accordingly, we hold that no duty is payable by the appellant and the appellant is entitled for the benefit of Exemption Notification No.8/2003-CE dated March 1, 2003.

8. Therefore, we do not find any merit in the impugned order and the same is set aside.

9. In the result, the appeal is allowed with consequential relief, if any.

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

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K.Anpazhakan)
Member (Technical)

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