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

REGIONAL BENCH – COURT NO.2

Excise Appeal No.112 of 2009

(Arising out of Order-in-Original No. 8/Denovo/Commissioner/CE/Kol-VII/Adjn/2008-09 dated 16.12.08 passed by Commissioner of Central Excise, Kolkata-VII)

M/s. Dragon Star Leather Co. (P) Ltd.
(Ground Floor, Ashavari Apartments, 12/1,
Monohar Pukur Road, Kolkata-700026)

Appellant

VERSUS

Commr. of Central Excise, Kolkata-VII
(C. R. Building, (5th Floor), 169, A. J. C. Bose Road, Kolkata-700014)

R**espondent**

APPEARANCE :

Mr. J. P. Khaitan & Agnibesh Sengupta, both Advocates for the Appellant

Mr. S. S. Chattopadhyay, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.77574/2023

Date of Hearing : 08 November 2023
Date of Pronouncement:24/11/2023

PER R. MURALIDHAR:

The Appellant was manufacturing leather goods and exporting the same directly and through 3rd party merchant exporters. They were supplying the same in the domestic market. Show Cause Notice was issued on 22/3/2000. After due process, the Adjudicating Authority confirmed the demand. Being aggrieved, the Appellant have filed their Appeal before the Tribunal. This Tribunal vide Final Order No. A/515/KOL/2002 dated 2/04/2002 remanded the matter to the Adjudicating Authority. Being aggrieved by the Denovo Adjudication, the Appellant filed their Appeal before the Tribunal. This Tribunal vide Order No. M-8/S-45/A-68/KOL/08 dated 07/01/2008 dismissed the

Appeal. Being aggrieved, the Appellants have approached the Hon'ble High Court of Calcutta. The High Court of Kolkata vide their Order dated 05/03/2008 directed the Tribunal to hear the matter on merits. This Tribunal vide Order dated M-193/S-596/A-753/KOL/2008 dated 16/07/2008 remanded the matter to the Adjudicating Authority with the following directions:-

> *"In view of submission that materials are available to lead appropriate defence, to meet the ends of justice, <u>we are of the view that the appellant may be granted an opportunity to explain its case to the learned Adjudicating Authority adducing entire evidence which goes to the root of the matter. To bring an end to the dispute the Appellant shall cooperate without seeking unnecessary adjournments before the learned Adjudicating Authority.</u> The demand involved being huge, that Authority may dispose the matter at least by end of December, 2008 to serve useful purpose of remand." [Emphasis supplied]*

2. Consequent to this Final Order, the Adjudicating Authority has taken up the denovo proceedings and has passed the impugned OIO No. 08 dated 16/12/2008 wherein he has confirmed the entire demand originally made under the Show Cause Notice. Being aggrieved, the Appellant is before the Tribunal for the third time.

3. The Learned Advocate appearing on behalf of the Appellant submits that after receiving the Final Order dated 16/07/2008, the Adjudicating Authority vide their letter dated 29/08/2008 sought various documents so as to complete the adjudication proceedings. The Appellant without any delay, vide their letter dated 31/10/2008 filed on 03/11/2008 their detailed letter along with the full details of direct exports, exports through merchant exports, details of sale of traded and manufactured goods and details of excess income shown in the Balance Sheet. The Learned Advocate draws our attention to the Second page of this letter wherein they have submitted number of Sheets for each of the above details. He also draws our attention to

next page of this letter wherein they have submitted one file containing of Page 236, relating to direct export page 10-236 relating to export through merchant exporters and one file containing pages 1-62 towards domestic sales of manufactured goods. He submits that these detailed documentary evidence would prove that the turnovers are on account of direct exports, exports through merchant exporters and local sales of manufactured goods and traded goods. He submits that if these documents were properly verified, the Adjudicating Authority would have easily come to a conclusion that major portion of the demand is required to be dropped on account of the turnover of direct exports and exports through merchant exporters. He submits that this detailed verification was never taken up by the Adjudicating Authority. He also submits that for the period 1995-96 1996-97, 1997-98, 1998-99, they also sought small scale exemption for the turnover as was applicable during that time. He submits that even this request was not properly considered by the Adjudicating Authority. He further submits that they have filed year-wise, invoice-wise, item-wise, details of direct exports through merchant exporters. These details were not at all considered by the Adjudicating Authority. He has produced these documents before the Bench which were produced before the Adjudicating Authority.

4. We have taken up a few instances to check these documents. It is seen from Para 14 of the OIO, the Adjudicating Authority has cited only 10 Shipping Bills and invoices pertaining to the exports through merchant exporter DSL. He has also held that the relevant Shipping documents were not produced because of which proper linking could not be arrived at. On the other hand, when we went through the details of 236 pages filed by the Appellant, it is seen that in the year 1996-97 itself, the appellant has made more than 15 clearances under DSL. Similarly in respect of exports through others while the Adjudicating Authority has considered only two shipping

Bills/Invoices, the Appellant has given the details of nine clearances during 1999-98 and 21 clearances during the period 1998-99. For each of these Invoices, the Appellant has also enclosed the relevant Shipping Bill, E-Way Bill/Bill of Lading and other documentary evidence. This shows that the Adjudicating Authority has not gone through all the documentary evidence properly before coming to his conclusion. The entire proceedings have been taken up on the basis of the turnover shown by the Appellant in their Profit & Loss Account and Balance Sheet. When the Appellant provides the proof that turnover also consists of direct exports and exports through merchant exporters along with the documentary evidence, it is the duty of the Adjudicating Authority to get these facts properly verified and to give a detailed findings as to why the documentary evidence submitted would not be sufficient to prove their exports, if he intends to confirm demand. It cannot be a case that the Appellant failed to even partly prove the details of export undertaken by them directly or through merchant exporter as is being made out in the impugned OIO. As the matter pertains to 1996-97 and 1997-98 and denovo adjudication was to be taken up in 2008, much better and larger efforts should have been made by the Adjudicating Authority to follow the principles of natural justice and to get proper verification done, which has not been done in this case. Now the Appeal filed by the Appellant in 2010 has come up for hearing after more than 12 years. Even at this juncture, we cannot decide the case directly on merits since the factual details have not been properly verified before the impugned Order was passed.

5. In such a case, we have no alternative but to remand the matter to the Adjudicating Authority with the following directions:-

(i) The Appellant has already filed their detailed documentary evidence as outlined above. The Adjudicating Authority should cause the necessary verification and pass a detailed Order after going through Invoice, Shipping Bill and other linked documents. Further, their claim with regard to SSI exemption should also be considered properly and order is required to be passed on this account also.

(ii) Apart from this, the appellant have been claiming that in order to get better credit facilities, they have inflated their income. Though this is not legally correct but it was being followed by many firms in order to get the better loan facilities from the banks, this claim is required to be thoroughly verified.

The Appellant is directed to give the details as to how they have inflated figures in the Balance Sheets. They should specify the details of actual figures vis-à-vis the inflated figures shown by them. All the relevant documents should be provided to the Adjudicating Authority who should get these verified and pass a detailed Order on this issue also.

4. Since the matter pertains to 1995-1996 to 1998-99, the Adjudicating Authority is directed to complete the Denovo process within four months from the date of receipt of this Order.

(Order was pronounced in the open court on 24/11/2023.)

Sd/-
(R. Muralidhar)
Member (Judicial)

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

Pooja