IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 77111 of 2017

(Arising out of Order-in-Original No. 09/Commr/CGST & CEx/HWH/Adjn/2017-18 dated 26.09.2017 passed by the Commissioner of Central Tax GST Howrah Commissionerate M.S. Building, Customs House, 15/1, Strand Road, Kolkata-700 001)

M/s. Exotic Industries (India), **: Appellant**
5/1, Height Road, Howrah-711 204
Office 203/1, Mahatma Gandhi Road,
Room No. 310, 3rd Floor, Kolkata-700 007

VERSUS

Commissioner of Central Tax (GST & C. EX.) **: Respondent**
Howrah Commissionerate,
M.S. Building, Custom House,
15/1, Strand Road, Kolkata-700 001

AND

Excise Appeal No. 77087 of 2017

(Arising out of Order-in-Original No. 09/Commr/CGST & CEx/HWH/Adjn/2017-18 dated 26.09.2017 passed by the Commissioner of Central Tax GST Howrah Commissionerate M.S. Building, Customs House, 15/1, Strand Road, Kolkata-700 001)

M/s. Eagle Home Appliances Pvt. Ltd. **: Appellant**
4th Floor, Parmar Gallery,
77, Shivarkar Road, Wanwadi, Pune-411040

VERSUS

Commissioner of Central Tax (GST & C. EX.) **: Respondent**
Howrah Commissionerate,
M.S. Building, Custom House,
15/1, Strand Road, Kolkata-700 001

APPEARANCE:

Shri H. K. Pandey, Advocate for the Appellant(s)
Shri B. K. Singh, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs.76033-76034/ 2025

DATE OF HEARING:25.04.2025
DATE OF PRONOUNCEMENT: 30.04.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The instant appeal has been filed against the order in original dated 26.09.2017 passed by the Commissioner of Central Excise, Howrah Commissionerate wherein the Ld. Commissioner has confirmed the Central Excise Duty including (Cess) amounting to Rs.2,07,20,373/- along with interest. A penalty equal to the amount of duty has been also been imposed on the appellant under Section 11 AC of the Act.

2. The facts of the case are that the Anti Evasion Unit of Kolkata-II Central Excise Commissionerate during their visit and search of the factory premises of M/s Exotic Industries India (herein after referred as the appellant) (Proprietor- Shri Rajendra Kumar Sureka) at 5/1, Height Road, Liluah, Howrah on 26.12.2013 found a number of plastic bags and cartons stacked inside the premises containing thermo flask with 'Eagle' label. It was found that the premises was shared by the Appellant and M/s Shanti International – a partnership firm having Shri Rajendra Kumar Sureka as one of the partners. Shri Piyush Sureka, representative of said M/s Shanti International tendered a statement recorded under summons before the visiting officers wherein he stated, inter-alia, that apart from manufacture and clearance of goods such as Plastic Hangers, Garment Bags, Connector Clips, sizer and Plastic Boxes *etc* in the company M/s Shanti International, they were also manufacturing top cap and bottom of the flask and the body is job-worked outside and the same is assembled in the factory and dispatched to Eagle. This work belongs to M/s Exotic Industries India (the

appellant herein) and are kept in their factory on behalf of them.

2.1. Shri Rajendra Kumar Sureka in his statement dated 26.12.2013 recorded under summons stated, inter-alia, that he is one of the partner in M/s Shanti International having a common registered office at 203/1, M.G. Road/16, Basant Lal Murarka Road, Kolkat-70007. They deal in plastic products like hangers etc. M/s Exotic Industries India has no manufacturing unit of its own. The goods sold by them are being manufactured by various job workers and they supply raw material to them. They have agreement with M/s Eagle Home Appliance Pvt. Ltd. to manufacture Eagle brand Thermo flask but they have no factory of their own to manufacture the said goods. So, they get it manufactured through various job workers located in 'rural areas'. He further stated that they are having VAT/CST registration from the Government of West Bengal and discharge sales tax liability as per state law. Regarding the mould and dice found in their premises, he stated that those are required for manufacture of goods which they provided to the job workers as they do not have their own manufacturing unit.

2.2. During investigation it was found that the Appellant firms had paid labour charges to various job workers. From the inquiry conducted with M/s Eagle Home Appliance Pvt. Ltd., it was revealed that they purchased flasks from various manufactures including the Appellant and the transaction with their vendors are on principal to principal basis.

2.3. On completion of investigation, a Show cause cum demand notice was issued to M/s Exotic Industries (India) alleging that they are engaged in manufacture and sale of branded goods without payment of Central Excise duty and availing SSI exemption by fragmenting and distributing the turnover between them and M/s Shanti International. The turnover of the Appellant and M/s Shanti International were clubbed together for the financial years 2009-10 to 2013-14 in quantifying the demand. Accordingly, Central excise duty amounting to Rs. 2,07,20,373 /- (inclusive of cesses) was demanded from the appellant along with interest; penalties were also proposed to be imposed on the appellants.

2.4. On adjudication, the Ld. adjudicating authority has held that the value of clearances of M/s shanti international is required to be clubbed with the clearance value of the appellant company for the purpose of demanding Central excise duty as proposed in the show cause notice. Accordingly, he confirmed the demand of central excise duty amounting to Rs.2,07,20,373/- (inclusive of cesses), along with interest, from the appellant no. 1 viz. M/s. Exotic Industries (India). He also imposed equal amount of duty as penalty under Section 11 AC of the Central Excise Act, 1944 on the appellant no. 1. A penalty of Rs.25,00,000/- was imposed on the appellant no. 2 viz. M/s. Eagle Home Appliances Pvt. Ltd. under Rule 26 of the Central Excise Rules, 2002. Rs.20,00,000/- already deposited by the appellant during the course of investigation has been appropriated against the demand of central excise duty confirmed. .Aggrieved against the confirmation of the demands of central excise duty along with interest and penalties, both the appellants have filed these appeals.

3. During the course of hearing, the appellant no. 1 submitted that they are a proprietorship concern having office at 203/1, Mahatma Gandhi Road, Parekh Kothi, room No. 310, 3rd Floor, Kolkata-700007 and godown at 5/1, Height Road, Liluah, Howrah. During the material period, they undertook the activity of purchasing and selling of different items including plastic hangers, connector clips, sizer and plastic boxes *etc.*; they also used to get Eagle brand Flasks manufactured through job workers located in the 'Rural areas. The appellant submitted that in the same premises at 5/1, Height Road, Liluah, Howrah, one M/s Shanti International was also operating during the material period under dispute. The said firm was a partnership firm and the proprietor of the appellant was also 50% partner of the said M/s Shanti International, who were also engaged in the manufacture and sale of the aforesaid plastic items. It is submitted that both the said firms were carrying out their activities from 5/1, Height Road, Liluah, Howrah by sharing space, which was demarcated well and was separated by walls. Both of them have their different Sales Tax Registration, Income Tax Accounts and have different identifications in conducting business; that the appellant was also undertaking some activities in a rented premises in the rural areas of vill-Bhattanagar, P.O.- Anandnagar, P.S.- Liluah, Dist-Howrah, where different parts of flasks were assembled and the same were packed in boxes having Brand name 'Eagle'. The appellant submits that they bring these goods to their godown at Liluah, and the said flasks were sold to M/s Eagle Home Appliances Pvt. Ltd. The appellant submitted

that they were eligible for the benefit of SSI exemption under Notification No. 8/2003-CE dated 01.03.2003 as the branded goods were manufactured in the rural areas. It is the submission of the appellant that they have not undertaken any process in their godown at Liluah. In support of this claim, the appellant submitted that there was no plant and machinery installed at the said premises.

3.1. With respect to the allegation that the appellant M/s. Exotic Industries (India) [appellant] and M/s Shanti International have intricate and conjugate business relationship, the appellant the partnership firm in the name and style of M/s Shanti International were not having shares in other firms business; there is no evidence of sharing of profits and further, no evidence of a single beneficiary. The appellant has provided break-up of clearance values under different heads which includes export sales and resale. Thus, the appellant contended that the benefit SSI benefit cannot be denied to them by clubbing the value of clearance of M/s Shanti International.

3.2. The allegation against the appellant is that they got the goods including Flask bearing Brand name "Eagle" manufactured through dummy manufacturers and not included those value of clearances to their turn over to arrive at the eligibility of SSI exemption. In this regard, the appellant submits that during the course of search of the premises belonging to the Appellant, no plant or machinery were found; there is no allegation either that they were manufacturing the goods on his own. It is on record that they got the goods with the brand name 'Eagle' manufactured through various small manufacturers scattered over rural area who were not liable to excise duty and thus the appellant submits that there is no contrary evidence brought in record by the Department.

3.3. The said appellant further submitted that in the instant proceedings, M/s Shanti International, the partnership firm was not made a party although the effect of clubbing is alleged to be imposed on them as well. It is contended that they are not required to pay any Central Excise duty during the material period under review *i.e.* 2012-13. The appellant further contended that they did not avail any credit of duty paid on the inputs and in the eventuality, they are required to pay duty, then, by virtue of the fact of their being eligible for credit of duty paid on inputs, it would be a revenue-neutral phenomena.

3.4. In view of the above submissions, the appellant prayed for setting aside the demands of duty, interest and penalty confirmed in the impugned order.

4. The Ld. Departmental Representative appearing for the Revenue reiterated the findings in the impugned order. He submits that the evidence collected by the investigation indicated that the 'Eagle' brand flasks were finally assembled and manufactured at the premises of the appellant and hence the appellant are not eligible for the SSI exemption for the branded goods manufactured by them. Therefore, the Revenue submits that the premises was shared by both the Appellant and M/s Shanti International, a partnership firm having Shri

Rajendra Kumar Sureka as one of the partners. Hence both companies have interest in each others business. Accordingly, the Ld. Authorized Representative of the Revenue submitted that the demand has been rightly confirmed in the impugned order.

5. Heard both sides and perused the appeal records.

6. We observe that the appellant no. 1 M/s. Exotic Industries India have an agreement with M/s Eagle Home Appliance Pvt. Ltd. to manufacture 'Eagle brand' Thermo flask but they have no factory of their own to manufacture the said goods. So, they get it manufactured through various job workers located in 'rural areas'. The allegation in the impugned order is that the appellant no. 1 are engaged in manufacture and sale of 'branded goods' without payment of Central Excise duty and availing SSI exemption by fragmenting and distributing the turnover between them and M/s Shanti International. Accordingly, the turnover of the Appellant no. 1 and M/s Shanti International were clubbed together for the Financial years 2009-10 to 2013-14 in quantifying the demand and the said demand along with interest and penalty is confirmed in the impugned order.

6.1. From the statement dated 26.12.203 of Shri Rajendra Kumar Sureka, we observe that in his statement he categorically stated that the goods sold by them were manufactured by various job workers and they supply raw material to them. The mould and dice required for manufacture of 'Eagle' brand flasks were also provided to the job workers by the appellant. Various parts of the flask are manufactured by the job workers. Parts of the flasks manufactured by various job workers along with packing boxes [inner and outer having the brand name ‘Eagle”] are sent to an address in village Bhattanagar in Anandpur, Liluah, for final manufacture of the “Vacuum Flask”. Thus, we observe that all the parts along with the final packing of the flask with 'Eagle' brand are manufactured in' rural areas' and they receive it and sell it to M/s Eagle Home Appliances Ltd as a trader, as per the agreement entered with them. In the premises located at 5/1, Height Road, Liluah, Howrah, the said appellant is having VAT/CST registration from the Government of West Bengal and they discharge sales tax liability on the final product 'Eagle Brand' Flask as a trader.

6.2. We observe that Notification No. 8/2003-CE dated 01.03.2003 as amended exempts 'branded products' manufactured in rural areas. For ready reference, the relevant para of the said exemption is reproduced below:

> *"4.* ***The exemption contained in this notification shall not apply to specified goods bearing a brand name or trade name, whether registered or not, of another person, except in the following cases: -***
>
> *(a) ---*
>
> *(b) --*
>
> ***(c) where the specified goods are manufactured in a factory located in a rural area.***
>
> *5. This notification shall come into force on the 1st day of April, 2003.*
>
> *Explanation.- For the purposes of this notification,-*

(A) "brand name" or "trade name" means a brand name or a trade name, whether registered or not, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person;

(B) where the specified goods manufactured by a manufacturer bear a brand name or trade name, whether registered or not, of another manufacturer or trader, such specified goods shall not, merely by reason of that fact, be deemed to have been manufactured by such other manufacturer or trader;

6.3. It is a fact on record that the course of search of the appellant's premises, no manufacturing activity was observed by the visiting team. The Appellant has been consistently stating that he is getting the goods manufactured by various small scale manufacturers in rural area which is exempted from levy of excise duty. The investigation has not brought any contrary evidence either.

6.4. If the 'Eagle brand' flasks are manufactured in rural areas, then the said goods are eligible for the exemption provided under the above said notification. From the impugned order, we observe that the Ld. Adjudicating Authority refers to the statement of the Applicant that though he is not having any manufacturing unit, he gets the goods manufactured by various job workers by supplying raw materials, moulds etc. and that various parts of the flask likewise is manufactured by job workers and finally assembled at their premises 5/1 , Height Road, Liluah, Howrah. Flasks along with packing boxes [inner and outer covers with the brand name ‛Eagle”] are sent to an address in village Bhattanagar in Anandpur, Liluah for final manufacture of the “Vacuum Flask”. Thus, we observe that the Ld. adjudicating authority in his findings accepts that the final products after packing the goods ready with the brand name of 'Eagle' ready for sale emerges at the rural area namely, village Bhattanagar in Anandpur, Liluah.. There is no dispute that this address is a rural area and the branded goods manufactured in this village are exempted from payment of central excise duty. Thus, we observe that the clearance of finished goods bearing the brand name 'Eagle' by the appellant are eligible for the SSI exemption as provided under the notification 8/2003 -CE dated 01.03.2003, as amended. Hence, demand of duty from the appellant for manufacture and sale of branded goods of another person is not sustainable and accordingly, the same is set aside.

6.5. Regarding clubbing of clearances by the Appellant and that of M/s Shanti International, the Adjudicating Authority observes that both the units are operative from the same premises ; they were controlled by one single family; all the production activities were carried out in the premises of one unit and raw materials and packing materials were stored in the other premises and both the units have common office; accordingly, the value of clearances of both the units are clubbed. Regarding the role of M/s Eagle Home Appliance

Pvt. Ltd., the Adjudicating authority finds that they dealt with such excisable goods on which proper central excise duty was not discharged and hence were liable to confiscation. Accordingly they were liable to penalty under Rule 26 of the Central Excise Act, 1944.

6.6. We also take note of the fact that the Ld. Advocate appearing on behalf of the Appellants has submitted that the impugned Order is passed without considering the admitted fact and submission of the Appellant during the proceedings. We observe that it is an admitted fact that the Appellant do not have any manufacturing unit on their own. Their office and that of M/s Shanti International, though located in same premises having number 5/1, Height Road, Liluah, they are admittedly separated and demarcated. Both the units have separate VAT and Income Tax Registration Numbers. Even Central Excise Department has granted separate Registrations to both the units as recorded in the Show cause Notice itself. Both firms are maintaining separate Books of Account, Profit and Loss Account etc. and filing their own Income tax returns. The investigation has not brought in any evidence to show that both have financial interest in each other. No flow back of money found. Under such circumstances, we hold that the clearances of the appellant company and that of M/s. Shanti International cannot be clubbed, as both have separate independent existence. This view is supported by the decisions in the followings judgments:

(i) Superior Products vs Commissioner of Central Excise-2002(144) E.L.T. 187 (Tri- Delhi) affirmed by the Apex Court in 2008 (230) E.L.T. 03 (SC)

(ii) Electro Mechanical Engg. Corporation Vs Commissioner of Central Excise, Jaipur - 2003 (132) E.L.T. 194 (Tri- Delhi) maintained in2008 (229) E.L.T. 321 (SC)

(iii) Bright Paints and Chemicals Vs Commissioner of central Excise, Kolkata-V reported in 2007 (216) E.L.T. 36 (Tri- Kol).

6.7. In view of the discussion and by relying on the decisions cited supra, we hold that the clearances of the appellant-company M/s. Exotic Industries (India) and that of M/s. Shanti International cannot be clubbed together for the purpose of demanding central excise duty from the appellant company. Accordingly, the demand confirmed by clubbing the value of clearances of both the companies is set aside.

6.8. Thus, we hold that the demands of central excise duty confirmed in the impugned order on account of clubbing the value of clearances of the appellant company and that of M/s. Shanti International is not sustained. Also, the demand of central excise duty on the allegation of denial of the exemption provided under the Notification No. 8/2003-CE dated 01.03.2003 is not sustained. Accordingly, we set aside the demands of central excise duty confirmed in the impugned order.

7. As the demands confirmed are sustained the question of demanding interest and imposing penalty, either on M/s. Exotic Industries (India) [appellant no. 1] or the brand owner M/s Eagle Home Appliances [appellant no. 2] does not arise. Accordingly, we set aside the same.

8. In the result, we set aside the impugned order and allow the appeals filed by the appellants, with consequential relief, if any, as per law.

(Order Pronounced in Open court on 30.04.2025)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP