IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO. II

Appeal No. E/255/2009

(Arising out of Order-in-Appeal No. IPL/225/NSK/2008 dated 04.12.2008 passed by the Commissioner of Central Excise (Appeals), Nashik).

M/s Leeds Kem	Appellant

Vs.

Commissioner of Central Excise, Nashik	Respondent

Appearance:

Shri Sanandan Khairnar, Advocate	for Appellant
Shri A.B. Kulgod, Asstt. Commissioner (AR)	for Respondent

CORAM:

HON'BLE SHRI RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE SHRI RAJU, MEMBER (TECHNICAL)

Date of Hearing: 20.03.2018

Date of Decision: 13.04.2018

ORDER NO. **A/86012 / 2018**

Per: Ramesh Nair

The facts of the case are that the appellants are engaged in the manufacture of Para Nitro Benzyl Bromide (PNBB) and other chemicals. They are manufacturing on job-work basis for M/s Ranbaxy Ltd. For the manufacture of such goods, the Ranbaxy provided two types of critical raw materials namely – (i) Para Nitro Toluene, and (ii) Liquid Bromine under Rule 57F (4)/ 57AC (5)(a) of

Central Excise Rules, 1944. The appellant have not included the value of such pre-supply inputs used in the manufacture of job-work goods. The case of the department is that the value of such two types of critical raw material supplied by Ranbaxy should be added in the assessable value of the goods manufactured by the appellant. Accordingly, differential duty demand was confirmed and the same was upheld by the Commissioner (Appeals).

2. Shri Sanandan Khairnar, learned Counsel appearing on behalf of the appellant submits that since their two inputs were supplied by M/s Ranbaxy under Rule 57 AC (5)(a), the value of the said goods cannot be included in the assessable value. In support, he placed reliance on the following judgments: -

(a) *International Auto Ltd. Vs. CCE, Bihar – 2005 (183) ELT 239 (SC).*

(b) *Vako Seals Pvt. Ltd. Vs. CCE, Mumbai – 2016 (344) ELT 482 (Tri-Mum)*

(c) *SRF Ltd. Vs. CCE – 2007 (220) ELT 201 (Tri-Chennai) affirmed by Hon'ble Supreme Court reported at 2016 (331) ELT A138 (SC).*

(d) *Menon & Menon Ltd. Vs. CCE – 2006 (195) ELT 38 (Tri-Mum) upheld by Hon'ble Supreme Court reported at 2015 (325) ELT 10 (SC).*

He further submits that the cum duty value should have been adopted for calculating the differential duty as held by the Hon'ble Supreme Court in the case of *CCE Vs. Maruti Udyog Ltd. – 2002 (141) ELT 3 (SC).* He further submits that the highest value of the said raw materials supplied by M/s Ranbaxy was taken for calculating the differential duty, which is incorrect.

3. Shri A.B. Kulgod, learned Asstt. Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by both the sides. We find that the appellants are manufacturing the goods for Ranbaxy on job-work basis. For the purpose of job-work, the value of the goods to be arrived at the valuation principles laid down by the Hon'ble Supreme Court in the case of *Ujagar Prints & others Vs. Union of India – 1987 (27) ELT 567 (SC)* shall apply. According to such principles, the valuation should be done on the cost of raw material + job charges. Following such principles, the cost of the raw materials used in the manufacture of final product should be taken for the purpose of arriving at the assessable value. Therefore, there is no reason why the cost of two raw materials supplied by Ranbaxy should not be included in the assessable value. Merely because the certain raw material was supplied by the principal under Rule 57F or 57 AC of erstwhile Central Excise Rules, 1944, the inclusion of cost of such raw material cannot be avoided. Since the appellant have opted to job-work on payment of excise duty then the correct assessable value has to be arrived at i.e. cost of all the raw materials used in the manufacture + job charges and nothing can be excluded from such value. The submissions of the appellant's Counsel that since in respect of the said two raw materials CENVAT Credit was availed by the principal, therefore, to that extent duty should be reduced, does not found sound as there is no provision under the Valuation Rules that any such deduction is permissible.

4.1 As regards the cum duty value, we find that the proposal of the department is to include actual cost of the raw material on which cum duty value should not be further taken, hence the same cannot be allowed on this count.

4.2 As regards the contention of the appellant that highest value of the raw materials was adopted, we find that the appellants have not produced any evidence to show that the raw material received by them from M/s Ranbaxy have the lower price. Therefore, in absence of any supporting documents produced by the appellant, the claim made by them on this count is rejected.

5. As per our above discussions, the impugned order is liable to be sustained and hence the same is upheld. The appeal is accordingly dismissed.

(Pronounced in Court on 13.04.2018)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

Sinha