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

APPEAL NO.E/598 & 599/2011

(Arising out of Order-in-Appeal No.SB/01&02/M-IV/2011 dated 11/01/2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-I)

Shri Charles Henry D'Silva
Proprietor M/s.Aurrick Tools
: **Appellants**

Smt Helen Charles D'Silva
Proprietor of M/s.Austin

VS

Commissioner of Central Excise : **Respondent**
Mumbai

<u>Appearance</u>

None for Appellant
Ms. A.S. Parab, Asst. Comm. (A.R) for respondent

CORAM:

Hon'ble Dr. D.M. Misra, Member (Judicial)
Hon'ble Shri P Anjani Kumar, Member (Technical)

Date of hearing : 05/02/2019
Date of decision : 05/02/2019

ORDER NO. A/85264-85265/2019

Per : P Anjani Kumar

M/s.Aurrick Tools, proprietary concern of Shri Charles D'Silva are engaged in the manufacture of PP Caps and Aluminum Vial Seals classifiable under Chapter 83 of the First Schedule to the CETA, 1985. On the basis of an information received and subsequent investigation conducted, the department has concluded that the appellants have opened up a dummy name sake unit in the name of M/s.Austin

(Smt.Helen Charles D'Silva is the Proprietor of M/s.Ausitn and wife of Shri Charles D'Silva). It was contended by the department that the appellants were removing the goods in the guise of removal for job work; during the investigation both Shri Charles D'Silva and Smt. Helen Charles D'Silva Proprietors of M/s.Aurrick Tools and M/s.Austin have accepted that M/s.Austin had no machinery and where with all to undertake job work like cutting/punching of aluminum sheets. Accordingly, the department has issued a show-cause notice seeking to recover Central Excise duty of Rs.10,09,082/- and Education Cess of Rs.11,359/- on PP Caps and Vial Seals manufactured and cleared by the appellants on the invoice of M/s.Austin. Show-cause notice was confirmed by the Additional Commissioner vide order dated 02/09/2009 and the Commissioner (Appeals) vide order dated 11/01/2011 had confirmed the demand, equal penalty under Section 11AC and penalty imposed on the Proprietor of the appellants as well as M/s.Austin.

2. None appeared for the appellants. However, vide letter dated 18/05/2017, the appellants have submitted written submissions and requested that the proceedings be decided as per the available records. In their short submissions, they have submitted that (i) they are a small scale unit availing the benefit of notifications No.09/2002-CE and 09/2003 as amended. (ii) M/s.Austin came into existence in 2002 and is a independent firm. (iii) M/s.Austin did not opt for Notification No.09/2002-CE or 08/2002-CE, but the value of clearances were within Rs.100 lakhs. (iv) to assist the manufacturing work done by M/s.Austin, certain machineries installed with the appellants were transferred to M/s.Austin without any consideration. Documents

indicated that goods were sent to M/s.Austin for job work basis and the amounts were paid by M/s.Austin. It can be seen by way of Debit notes. (v) M/s.Austin did not take Cenvat Credit for duty paid on the aluminum sheets, therefore, the procedure for dispatch of inputs under Rule 4 (5) (a) was not applicable. They are eligible to send goods for job-work under Notification No.83/94-CE dated 11/04/1994 and therefore, the job worker, i.e. the appellants is not liable to pay duty. M/s.Austin had not maintained records on the assumption that it was not required to pay any duty on the goods, which were got manufactured on job work basis. Non-compliance to the Notification No.83/94 is only with technical and procedural lapse. (vi) As M/s.Austin is a small scale unit, the appellants have no duty liability on the job work done for M/s.Austin. (vii) on the issue of limitation, he submitted that demand is time barred, the same was issued on 01/04/2008 and covers a period from 01/04/2002 onwards, which is beyond five years. Therefore, the period 01/04/2002 to 31/03/2003 is clearly beyond five years and no duty can be demanded. Thus, duty of Rs.96,950.82 is required to be set aside.

3. Learned AR appearing for the Revenue has reiterated the findings of OIO/OIA. He has submitted that the appellants have created a dummy name sake unit in the name of M/s.Austin under a proprietorship of Smt.Helen Charles D'Silva, wife of proprietor of the appellants. The goods were shown to have been sent by M/s.Austin to the appellants for the sake of job work. However, no records were maintained and even where stray records were available, it can be seen that the names were struck off pointing out that the authenticity of the records was questionable. He further submitted that the case

has been properly established by the department on the basis of panchnama dated 11/09/2006, statements of Shri Charles D'Silva on 01/12/2006 and 07/06/2007. Statements of Smt. Helen Charles D'Silva on 11/09/2006, 02/07/2007 and 19/02/2007. None of the persons involved have retracted the statements. Therefore, the order-in-original and order-in-appeal are maintainable.

4. Perused the records and heard the learned AR for the department. We find that the Commissioner (Appeals) has given a clear findings that Shri Charles D'Silva in his statement dated 01/12/2006, replying to a query regarding receipt of goods for job work and challans for the same, stated that the appellants are not doing any job work for any party or client instead they sent their goods out for job work such as shearing, slitting and printing but no job work of any sort is carried out or was ever carried out from the premises of M/s.Aurrick Tools. Learned Commissioner (Appeals) further found that non-maintenance of records and non-following of the procedure under Notification No.83/94-CE dated 11/04/1994 is not a mere procedural lapse. M/s.Austin have no premises of their own, no machineries, workers/employees on payroll of M/s.Austin were working for M/s.Aurrick, negligible consumption of electricity. Therefore, we find that M/s.Austin is a dummy name sake unit floated to evade payment of Central Excise Duty.

4.1 We find that as for the statements of concerned, the findings of the learned Commissioner (Appeals) do not require intervention. We also find that the Commissioner (Appeals) has correctly held that duty at the normal rate for the period 01/03/2005 to 2006-2007 was payable as the appellants have failed to follow the procedures prescribed under Notification No.08/2003-CE dated 01/03/2003. However, we find that there is certain force in the arguments of the appellants that part of the show-cause notice is time barred being a period of five years. Therefore, we find that the duty liability of the appellants should be restricted to 01/04/2003 onwards only. However, we find that equal penalty was imposed on Smt.Helen Charles D'Silva while holding that Shri Charles D'Silva was the person, who has established a dummy unit by using the name of Smt.Helan Charles D'Silva of proprietor of M/s.Austin except the fact that her name has been used, no other positive and pro-active roles alleged on her part in the evasion of duty by the appellants. Therefore, we find that the penalty imposed on her needs to be commensurate with here offence and thus, requires to be reduced.

5. In view of the above, we uphold the order of the Commissioner (Appeals) to the extent of confirmation of duty of Rs.8,23,490/-. Accordingly, we restrict penalty imposed under Section 11AC on M/s.Aurrick Tools to Rs.8,23,490/-, we reduced the penalty imposed on Smt. Helen Charles D'Silva to Rs.2,50,000/-. Appeals disposed of.

(Pronounced in Court)

(D.M. Misra)
Member (Judicial)

(P Anjani Kumar*)*
Member (Technical)

PJ