CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.1

Excise Appeal No.44 of 2011

[Arising out of Order-in-Appeal No.SB(111 to 114)/MV/2010, dt.16.10.2010 , passed by the CCE (A) Mumbai Zone-I]

M/s Prints Electronics Equipments Pvt. Ltd ......**Appellant**
101 & 102, Mahavir Industrial Estate, Ramchandra Lane Extension, Kanchpada, Malad (West), Mumbai 400 064

VERSUS

Commr. of Central Excise–V, ...**Respondent**
Utpad Shulk Bhavan, Plot No.C-24,
Sector-B, BandraKurla Complex,
Bandra (East), Mumbai 400 051

WITH

Excise Appeal No.41 of 2011 (M/s J.R.S. Electronics Pvt. Ltd)
Excise Appeal No.45 of 2011 (Mr. Nilesh Bupendra Parikh)
Excise Appeal No.68 of 2011 (Mr. Jayesh N. Shah)

[Arising out of Order-in-Appeal No.SB(111 to 114)/MV/2010, dt.16.10.2010 , passed by the CCE (A) Mumbai Zone-I]

Appearance:
Jayesh N. Shah, Shri Rajesh Ostwal, Advocate for M/s Print Electronics and N.B. Parikh
Shri M.S. Murthy, Advocate for M/s J.R.S. Electronics Pvt. Ltd.
Shri Anil Choudhary, DC (AR), Shri Sanjay Hasija, Supdtt. (AR) and
Shri N.N. Prabhudesai, Supdtt. (AR) for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.A/86359-86362/2019

Date of Hearing: 06.02.2019
Date of Decision: 05.08.2019

PER: D.M. MISRA

These four appeals are filed against Order-in-Appeal No.SB(111 to 114)/MV/2010, dt.16.10.2010 , passed by the CCE (A) Mumbai.

2. Narrating the facts of the case the Ld. Advocate has submitted that M/s Prints Electronics Equipments Pvt. Ltd (for short M/s PEEPL) are engaged in the manufacture of excisable goods viz. Electronics Attendance Recorder, Access Control System etc. falling under Chapter Sub Heading No.9106.1000 of Central Excise Tariff Act, 1985. During the relevant period 2004-05 to 2008-09, they had been availing small scale exemption under Notification No.8/2003-CE, dt.01.03.2003 and filed prescribed quarterly returns and discharged appropriate excise duty on clearance of excisable goods in excess of specified exemption limit under the said Notification. The Appellant's factory is situated at Malad in Mumbai whereas their administrative office is at Vadala in Mumbai. The purchase orders from customers were received at their administrative office, and communicated for execution to the factory at Malad. The raw materials mostly electronic items are assembled and programmed to form the machine, checked for quality control and made to ready for dispatch. A unique identification number is assigned to each of the machine for internal purpose. Similarly, a hardware configuration report is prepared, listing all parts used for assembly of the finished goods. From the Malad factory, machines were either directly supplied to the customers or dispatched to the administrative office,

from where these were further supplied to the clients. The hardware installation report prepared in duplicate is also maintained at administrative office.

3. In the same industrial estate where the administrative office of the Appellant M/s PEEPL is situated, there existed the office of another entity M/s J.R.S. Electronics (in short M/s JRSE) on the 3rd floor of the same building. The factory of M/s JRSE is situated at Bangalore and is a Private Limited Company, registered under Companies Act. M/s JRSE is a small scale enterprise and engaged in the manufacture of vehicle tracking system, electronic attendance recorder, etc. The goods manufactured by the Appellant M/s PEEPL Pvt. Ltd. are also manufactured by M/s JRSE. However, the items like electronic attendance recorder etc. manufactured by M/s JRSE were totally different in quality from those manufactured by the Appellant M/s PEEPL.

4. M/s JRSE had availed SSI exemption and not paid the duty during the relevant period. The director of M/s M/s JRSE viz. Mr.Jayesh Shah, Mr.Ramanuja Varadachari and Mr. Shashikant Bhairi stationed at Bangalore factory and were taking care of manufacturing activities there. M/s JRSE procures raw materials such as assembly etc either by way of import or from local market as their administrative office is situated in Mumbai from where it is further supplied to the factory at Bangalore.

5. M/s PEEPL in some cases, receive from the customers their existing machine for replacement by upgraded machine. Accordingly,

M/s PEEPL cleared the upgraded machine to the customers on payment of appropriate excise duty by determining the assessable value in terms of Section 4 of the Central Excise Act,1944. Also, from certain customers, M/s PEEPL received the machines for repair and undertaken minor repair work on such machine and after repairing returns the machine to the customers. The Appellant do not pay the excise duty on such repairing work.

6. The allegation of the Department in the show cause notice is that the Appellants M/s Prints Electronics Equipments Pvt. Ltd have manufactured and clandestinely cleared the goods in excess of the exemption limit under the invoice of M/s JRSE. Therefore, the clearances allegedly made by the Appellant under the invoice of M/s JRSE have to be clubbed with the clearance of the Appellant M/s Prints Electronics Equipments Pvt. Ltd.

7. The Revenue's allegations rest subsequent to the visit of the factory of the Appellant M/s PEEPL and that of M/s JRSE at Bangalore. It is alleged the factory at Bangalore is merely a flat and M/s JRSE do not have technical equipment and technical manpower required to manufacture the goods in the said premises. Besides, the employees of M/s JRSE could not provide the production record to the investigating authority to establish the fact that manufacturing activity carried out at M/s JRSE at the premises at Bangalore. It is also alleged that Shri Shashikant Bhairi, Technical Director of M/s JRSE looking after the operations at Bangalore, has deposed in his statement that the goods cleared under the invoices of M/s JRSE were not manufactured at Bangalore and he does not know the

source of the manufactured goods. Similarly, Mr. Shivakumar, an employee of the Appellant Company, who introduces himself as Branch Manager of M/s JRSE occupied a table space at office of M/s JRSE at Bangalore and also signs VAT returns of M/s JRSE. Therefore, the factory of M/s JRSE had been used by both M/s Prints Electronics Equipments Pvt. Ltd and M/s JRSE. Thus, it is alleged that they have mutual interest in the business of each other and all the finished goods were manufactured only at Malad factory of M/s PEEPL and the manufactured goods were sold in the name of M/s JRSE.

8. It is also the allegation of the Department that the price charged by the Appellant for upgraded machine in exchange of old machine has been under-valued as money value of additional consideration in the form of old machine were not considered. Further, the Appellant M/s PEEPL could not provide the corresponding invoices in respect of certain hardware installation report issued for repair and reconditioning of the goods which were found at office at Vadala.

9. The learned Advocate, assailing the impugned order, has submitted that nowhere the Department has alleged that M/s JRSE is a dummy unit of the Appellant company M/s PEEPL. Hence, clubbing of the clearance value of M/s JRSE to that of the Appellant is unsustainable. Further, they have submitted that even if it is assumed that the goods were cleared under the invoices of M/s JRSE were not manufactured at their Bangalore factory, then also the situs for levy and collection of duty is at Bangalore, hence the show

cause notice issued by Commissioner at Mumbai is beyond jurisdiction. In support, they referred to the judgment of the Tribunal in the case of Modern Industrial Enterprises Vs CCE – 2006 (193) ELT 513 (T).

10. It is their contention that the department has also failed to prove any mutuality of interest or financial flow back between the two companies. Also, no evidence has been placed to establish the financial or managerial control of both the companies by one person. Further, they have submitted that assuming without admitting that the Appellant had cleared certain goods under the invoices of M/s JRSE, it does not establish that the goods were manufactured by the Appellant. Further, analysing the statements of various persons recorded during the course of investigation, the Appellant has submitted that the statements, in any manner, do not disclose that the goods were manufactured in the premises of M/s PEEPL and later cleared against the invoices of M/s JRSE. On the contrary, reading each and all of the statements, as a whole, it can be concluded that the except some minor contradictions and discrepancies in the evidences, no one has stated or accepted categorically the fact that the goods were manufactured in the premises of M/s Prints Electronics Equipments Pvt. Ltd and cleared against the invoices of M/s JRSE.

11. The learned Advocate further submitted that there is no evidence to show that the goods were alleged to have been cleared under the invoices of M/s JRSE being manufactured in the premises

of Appellant M/s PEEPL at Malad and the department has miserably failed to establish the said fact. There is no evidence of transporter that goods were transferred from the premises of M/s PEEPL under the invoices of M/s JRSE. There is not a single statement of the Customer stating that invoices of M/s JRSE were supplied against the goods manufactured/cleared by M/s PEEPL. Hence, the demand is not sustainable In support, they have referred to the judgment of this Tribunal in the case of Summerking Electricals (P) Ltd Vs CCE – 2004 (176) ELT 302 (Tri.).

12. The learned Advocate Shri M.S. Murthy for the Appellant M/s JRSE submitted that in the impugned order, penalty has been imposed on the Appellant under Rule 26 of Central Excise Rules, 2002, observing that the Appellant had no manufacturing set up to manufacture the goods. It is alleged that the goods were manufactured by M/s PEEPL Pvt. Ltd and cleared in the name of M/s JRSE. In arriving at the said conclusion, it is assumed that the premises where M/s JRSE was operating being a flat and there was no manufacturing equipment and no employees were available at the time of Mazhar drawn by the Officers. It was alleged that their sales invoices were used by M/s PEEPL for clearance of their manufactured product. The learned Advocate, assailing the impugned order, has argued that M/s JRSE had been the real manufacturer of the goods in their factory even though the premises was a flat and the findings of the learned Commissioner were not in consonance with Mazhar. It is his contention that the process of assembly of the raw material was going on in the said premises at

the time of visit of the officers which is evident from the fact that there were around 10 pieces of finished goods lying in the said premises. In support of his contention that the goods were manufactured at Bangalore the learned Advocate has placed certificate from the Karnataka Director of Industries & Commerce allowing manufacturing in the said premises, Product catalogue of the Appellant, sales turnover and Audit report of the Appellant indicating the manufacturing sales, and also letter dt.22.12.2008 addressed to the Inspector of Central Excise, Bangalore explaining the process of manufacture undertaken by M/s JRSE. Also, it is contended that they have demonstrated from the seized records that it contains copies of Bills of Entry of various imported raw materials, local purchases, courier documents indicating dispatch of the finished goods from their Bangalore factory, which proves that their factory is not a dummy unit and was in existence and engaged in the manufacture of finished goods.

13. Further, he has submitted that M/s JRSE is an independent unit and the directors were not common between M/s JRSE and M/s PEEPL and there is no financial dealing/flow back between the said two companies. It is the contention that even if the same minor administrative help extended by M/s JRSE to M/s PEEPL or vice versa, relating to manufacturing/sale service of the goods; this cannot be construed that the goods were manufactured by M/s PEEPL at Bangalore unit. It is his contention that the Revenue could not establish the fact that the M/s PEEPL Ltd were actual manufacturer of the goods from their own raw materials and affixing the brand name M/s JRSE. Further, he has submitted that the

Technical Director Shri Shashikant Bhairi, in his statement dt.23.12.2008 and later by an affidavit dt.31.01.2009 clarified the manufacturing activity beyond any doubt. Further, he has submitted that therefore, imposition of penalty under Rule 26 of CER, 2002 on the Appellant M/s JRSE are unwarranted and uncalled for, hence liable to be set aside.

14. Heard both sides and perused the records.

15. The Appellant M/s PEEPL has not disputed the liability of duty of Rs.1,40,709/- which they have paid on providing upgraded machines to existing customers in exchange of old machines. The issue for consideration in the present appeals is whether during the relevant period 2004-2005 to 2008-2009, the Appellant M/s PEEPL had exceeded the SSI exemption limit of Rs.1.00 crore / 1.50 crore, as the case may be, prescribed under Notification No.8/2003-CE, dt.1.3.2003 as amended. The allegation of the Revenue is that even though M/s PEEPL during the period manufactured and cleared the goods from the said premises but has not included the value of clearance of all the manufactured goods in their gross turnover, and part of the clearances were effected on the invoices of M/s JRSE. The argument of M/s PEEPL and M/s JRSE are that both these companies are independent in existence and separately manufactured and sold goods even though exchanged/shared some administrative convenience on purely commercial basis since their head offices were situated in the same premises. Thus, the goods cleared under the invoice of M/s JRSE cannot be added to the value of the clearances of M/s PEEPL. We find that in confirming the demand, the Revenue has mainly relied upon the statements of

various persons and the manufacturing facility available at the unit of M/s JRSE at Bangalore.

16. It has been recorded by the authorities below that on the date of visit of the premises of M/s JRSE, the visiting officers could not find any substantial machinery nor work force in the said premises where the manufacturing activity of M/s JRSE claimed to have been carried out. In answering the allegation, the Appellant has submitted that during the said period in question, some semi-finished goods were found in the said premises as per the pending orders; they are duly registered under the Directorate of Industries & Commerce, Govt. of Karnataka to manufacture electronic equipments viz. vehicle tracking system, attendance recording system in the said premises. Further, during the period in question, i.e. 2004-05 to 2007-08, they have carried out the process of assembly of various imported as well as indigenous materials in the said premises and sold the same to the customers independently. The detailed process carried out by them in the said premises was duly informed by them through their letter dt.22.12.2008. It is their contention that merely because an employee of M/s PEEPL was allowed to sit within the said premises at Bangalore and sign some VAT documents purely on mutual understanding basis, cannot be construed that both the units have mutual interest of business of each other. Further, they have submitted that none of the employees, Directors of the Appellant M/s PEEPL have admitted to have manufactured and cleared the goods clandestinely from the factory and sold in the market using

the invoices of M/s JRSE. It is their contention that the customers of M/s PEEPL were not examined to ascertain the source of supply of goods nor the transporters in connection with movement of goods alleged to have been manufactured and cleared under the invoice of M/s JRSE from the premises of M/s PEEPL. We find substance in the argument of the Appellant inasmuch as the entire case has been built up by the Revenue mainly on the ground that since M/s JRSE alleged to have no adequate manufacturing facility on the date of visit of the officers to the premises at Bangalore, one of the employee of M/s PEEPL stationed at Bangalore and statements of employees/Director that all the goods must have been manufactured at the premises of M/s PEEPL at Malad, Mumbai and cleared without payment of duty, under the invoice of M/s JRSE.

17. There is no evidence to the effect that M/s PEEPL Ltd had procured raw material assembled at their premises at Malad and cleared/sold in the market without payment of duty. No evidence has been brought on record of those buyers who purchased the said goods and to whom the manufactured goods were sold and mode of delivery of alleged goods clandestinely from the manufacturing premises at Malad to the buyer’s premises.

18. In absence of substantial evidences of manufacturing and clearances of the goods, it cannot be assumed that since, the facility of manufacture at the premises of M/s JRSE, is inadequate, therefore, the goods must have been manufactured and cleared from the premises at Malad Unit of M/s PEEPL in the local market against the invoices of M/s JRSE. The kind of electronic goods manufactured by the Appellants, do not require a huge premises and machineries; it could be assembled with simple tools/machineries.

19. In the result, the demand confirmed clubbing the clearances of M/s PEEPL with that of M/s JRSE, is not sustainable, accordingly set aside. Consequently, the penalty imposed on all the Appellants are also set aside. The impugned Order is modified accordingly and the Appeals are disposed off accordingly.

(Order pronounced in the open court on 05.08.2019)

(D.M. Misra)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

Bahalkar