CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.1

Excise Appeal No.991 of 2011

[Arising out of Order-in-Original No.45/01/V/2011/COMMR/KS, dt.18.03.2011, passed by the CCE, Mumbai-V]

M/s Sumo Polyconverters ......**Appellant**
28/32, Kotkar Industrial Estate,
Off. Aarey Road, Goregaon,
Mumbai 400 063

VERSUS

Commissioner of Central Excise, Mumbai-V ......**Respondent**
5th Floor, Utpad Shulk Bhavan, Plot No.C-24, Block 'E',
Bandra-Kurla Complex, Bandra (East),
Mumbai 400 051

Appearance:
For Appellant : Shri V.S. Shejpal, Advocate
For Respondent : Shri M.P. Damle, A.C. (A.R.)

CORAM:

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

FINAL ORDER NO.A/86562/2019

Date of Hearing: 15.03.2019
Date of Decision: 06.09.2019

PER: Dr.D.M. MISRA

This appeal is filed against Order-in-Original No.45/01/V/2011/COMMR/KS, dt.18.03.2011, passed by the Commissioner of Central Excise, Mumbai-V.

2. Briefly stated the facts of the case are that the Appellants are engaged in the manufacture of Moulds/Dyes for plastic items and parts thereof falling under Chapter Heading No.8480.10/8480.90 of

Central Excise Tariff Act, 1985. Alleging that during the relevant period 2001-2002, the Appellants had cleared 10 pieces of mould against the invoice No.26, dt.15.03.2001 through their related person i.e. M/s Modern Thermoplastics India Pvt. Ltd (M/s MTIPL for short), suppressing the correct value and also they have collected charges on repair/modification of mould sold earlier to various customers but failed to discharge duty on modification/repair charges. Consequently, show cause notice was issued to them for recovery of Excise duty sort paid for the period from July 1997 to March 2002 with interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, they filed an appeal before this Tribunal and this Tribunal vide Order dated 18.02.2010, remanded the matter to the Commissioner to pass a speaking order afresh on all issues except on the issue relating to addition of value of Rs.27.55 lakhs to the aggregate value of the clearances for the financial year 2001-2002. In de-novo proceedings, the learned Commissioner has confirmed a total amount of Rs.3,72,249/- with equivalent penalty and interest; imposed personal penalty of Rs.50,000/- on the Director under Rule 209A of erstwhile Central Excise Rules, 1944 read with Rule 26 of Central Excise (No.2) Rules, 2001. Hence, the present appeal.

3. At the outset, the learned Advocate for the Appellant has submitted that in the first round of litigation, two issues have been decided in their favour by this Tribunal and remaining two issues viz. inclusion of mould modification and repair charges in the aggregate value of clearances involving duty of Rs.3,17,332/- and inclusion of the clearance value of mould sold through M/s MTIPL involving duty

of Rs.54,917/-had been remanded to the Commissioner for fresh adjudication. It is his contention that as far as first issue is concerned, the Appellant, in addition to mould manufacturing, also provides the services of mould repairing and mould modification to their various OEM customers to whom the moulds were sold earlier by the appellant. The Department has wrongly alleged that the modification charges received were towards manufacture and sale of mould parts to the customers.

4. It is his contention that moulds, after being put to use for certain period, requires repair and maintenance. Also, certain moulds require modification due to change in design and specification of parts. It is his contention that the mould repairing/modification does not bring into existence a product having new name, character and use. Hence, therefore no manufacturing activity is involved on such mould repairing/mould modification. It is his contention that the issue is covered by the judgment of this Tribunal in the case of Ampson Engineering Pvt. Ltd Vs CCE Mumbai – 2016 (336) ELT 361 (Tri-Mumbai) and Karthigeya Moulds & Dies Pvt. Ltd Vs CCE, Chennai – 2008 (222) ELT 82 (Tri-Chennai).

5. On the issue of addition of value of Rs.10,93,342/- to the aggregate value of clearance for the year 2001-2002 for the clearance to M/s MTIPL. He has submitted that to qualify as a 'related person' where the units are inter-connected undertakings, as per Clause 2(b) of MRTP Act, 1969, it should be two body corporate and does not apply to two proprietary concerns. In support, he has referred to the judgment of this Tribunal in the case

of Dujodwala Products Ltd Vs CCE Raigad – 2007 (213) ELT 346 (Tri-Mumbai). Further, he has submitted that they have no interest, directly or indirectly, in the business of M/s MTIPL nor the said Company having any interest in their business except sale and purchase of moulds. Hence, merely because they are inter-connected undertakings, in absence of other circumstances, the Unit M/s MTIPL cannot be treated as their related person as defined Section 4(3)(b) of Central Excise Act, 1944, and the normal sale price of Appellant be adopted as per Rule 10 of the Central Excise Valuation Rules, 2000. In support, he has referred to the judgment of this Tribunal in case of Handy Wires Pvt. Ltd Vs CCE Nagpur – 2015 (329) ELT 169 (Tri-Mumbai) and Universal Starch Chem Allied Ltd Vs CCE & ST Nashik -2017 (358) ELT 279 (Tri-Mum).

6. It is his contention that the moulds sold by the Appellant to M/s MTIPL had been subjected to further process of chemical itching and thereafter sold to M/s IKEA. Therefore, the moulds which were sold by the Appellant to M/s MTIPL are not sold as such but after certain processes undertaken on the said moulds. Hence, Rule 9 of the Central Excise Valuation Rules, 2000 cannot be made applicable. Out of the 19 moulds supplied by M/s MTIPL to M/s IKEA, they had procured 14 moulds from the Appellant and imported remaining 5 moulds. He has submitted that the value of all 14 moulds were not on higher side when sold to M/s IKEA. In fact, only 2 moulds were sold at higher price than purchased from the Appellant.

7. The learned A.R. for the Revenue reiterates the findings of the learned Commissioner.

8. Heard both sides and perused the records.

9. The issues involved in the present appeal for determination are: whether the amount collected by the Appellant from their customers as mould modification/repair charges during the period 1997 to 2002 be added to the aggregate value of the clearances in determining the value of clearance; and also the price at which moulds were sold by their inter-connected undertaking M/s MTIPL, during the period 2001-2002 be considered in computing the aggregate value of clearance for the said year in determining the admissibility of SSI exemption notification.

10. The learned Advocate for the Appellant has contended that the mould modification/mould repairing is an activity which cannot be considered as 'manufacture' within the meaning of Section 2(f) of Central Excise Act, 1944, hence the amount received from the customer towards the said activity cannot be added to the aggregate value of the clearances in determining the SSI exemption benefit.

11. We find that this Tribunal in the case of Ampson Engineering Pvt. Ltd (supra) and Karthigeya Moulds & Dies Pvt. Ltd (supra), held that the activity of modification/rectification of the existing mould does not pass the test of manufacture, as defined under Section 2(f) of Central Excise Act, 1944, since no new product other than mould emerges in the activity of modification of the mould. Therefore, on the issue of repairing/modification of moulds, the demand confirmed against the Appellant is unsustainable. On the issues of the applicability of the provisions of related person under the category of inter-connected undertaking, as mentioned under the definition of

related person, we find that this Tribunal in the case of Dujodwala Products Ltd (supra), it is held that the Proprietaryship Concern and a Limited Company could not fall under the category of Explanation 2 (G) of MRTP Act, as the same applies to two body corporates and not one body corporate and a proprietary-ship concern.Thus, following the aforesaid precedents, we do not find merits in the findings of the adjudicating Commissioner, holding that the price at which M/s MTIPL sold the goods to customers be considered the value, in computing the aggregate value of clearance while determining the SSI exemption benefit of the Appellant for the financial year2001-2002.

12. In the result, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Order pronounced in the open court on 06.09.2019)

(Dr. D.M. Misra)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

Bahalkar