CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 970 of 2011

(Arising out of Order-in-Original No. 01/KLG/TH-II/2011/192 28.02.2011 dated passed by the Commissioner of Central Excise, Thane-II)

M/s. Mandhana Industries Pvt. Ltd. .... Appellant
Mandhana Fashion Port, 205-213, Peninsula Centre
Dr. S.S.Road, Off Dr. Ambedkar Road, Parel
Mumbai-400 012.

Versus

Commissioner of Central Excise, Thane-II .... Respondent
3rd Floor, Navprabhat Chambers, Ranade Road,
Dadar (West), Mumbai-400 028.

With

Excise Appeal No. 971 of 2011

(Arising out of Order-in-Original No. 01/KLG/TH-II/2011/192 28.02.2011 dated passed by the Commissioner of Central Excise, Thane-II)

M/s. Mandhana Industries Pvt. Ltd. .... Appellant
207-213, Peninsula Centre
Dr. S.S.Road, Off Dr. Ambedkar Road, Parel
Mumbai-400 012.

Versus

Commissioner of Central Excise, Thane-II .... Respondent
3rd Floor, Navprabhat Chambers, Ranade Road,
Dadar (West), Mumbai-400 028.

With

Excise Appeal No. 972 of 2011

(Arising out of Order-in-Original No. 01/KLG/TH-II/2011/192 28.02.2011 dated passed by the Commissioner of Central Excise, Thane-II)

Purushottam C. Mandhana .... Appellant
Director, Mandhana Industries Pvt. Ltd.
205-213, Peninsula Centre
Dr. S.S.Road, Off Dr. Ambedkar Road, Parel
Mumbai-400 012.

Versus

Commissioner of Central Excise, Thane-II .... Respondent
3rd Floor, Navprabhat Chambers, Ranade Road,
Dadar (West), Mumbai-400 028.

And

Excise Appeal No. 984 of 2011

(Arising out of Order-in-Original No. 01/KLG/TH-II/2011/192 28.02.2011 dated passed by the Commissioner of Central Excise, Thane-II)

M/s. Mandhana Dyeing **.... Appellant**
E-25, MIDC Industries Area, Tarapur
Boisar-401506.

Versus

Commissioner of Central Excise, Thane-II **.... Respondent**
3rd Floor, Navprabhat Chambers, Ranade Road,
Dadar (West), Mumbai-400 028.

Appearance:

Shri Gajendra Jain, Advocate, for the Appellant

Ms. Varsha Nimbalkar, JC (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/87408-87411/2019

Date of Hearing: 05.07.2019

Date of Decision: 05.07.2019

Per: Dr. D.M. Misra

These appeals are filed against Order-in-Original No. 01/KLG/TH-II/2011 dated 28.02.2011 passed by the Commissioner of Central Excise, Thane-II.

2. Briefly stated the facts of the case are that M/s Mandhana Industries Pvt. Ltd. (MIPL) have two divisions viz. (i) Mandhana Dyeing (hereinafter referred as Appellant) and (ii) Mandhana Fashion Port – Export Division (MFP). The appellants M/s. Mandhana Dyeing undertake process like washing, dyeing of grey cotton fabrics and manmade fabric on job work basis. The appellants cleared the processed fabrics by discharging excise duty

in accordance with the principle of law laid down by the Hon'ble Supreme Court in the case of M/s Ujagar Prints V/s Union of India - 1989 (39) ELT 493(SC). The job work is undertaken by Appellant for MIPL and MFP as well as for other customers. MIPL is also engaged in trading activities. Apart from carrying out job work processed fabrics from the Appellant, MIPL also imports processed fabrics for resale in India. MFP is engaged in the manufacture and export of readymade garments. They captively consume the entire quantity of processed fabrics received from the appellant in the manufacture of readymade garments and export the same out of India. The appellant during the relevant period availed deemed credit in terms of Notification No. 6/2000 CE dated 01.03.2002 on the inputs and utilized the same for payment of duty on the processed fabrics. Alleging that the method of valuation arrived at by the appellants relating to their fabrics processed on job work basis for MIPL & MIP is incorrect as the clearances of job-worked goods to MIPL and MIP, their own divisions, are clearance to related person on not to independent buyers, Show cause notice was issued to the Appellant demanding differential duty for the period from May 2001 to May 2003 amounting to Rs.4,15,25,760/- with interest and penalty; also personal penalty under Rule 26 of Central Excise Rules, 2002, proposed on other notices. On adjudication, the demand was confirmed with interest and penalty against the appellant and personal penalty was imposed on other noticees. Hence, the present appeals.

3. Learned Advocate Shri Gajendra Jain has submitted that though the department has alleged that the appellant and MIPL are related persons, however, failed to prove as to how exactly the

definition of related persons is satisfied. He has submitted that the Rule 9 of the Central Excise (Valuation) Rules, 2000, is not applicable in the present case. It is his contention that the concept of 'relative' under Clause 41 of Section 2 of Indian Companies Act, 1956, applies only to the 'natural persons' and not to the impersonal bodies. In support, he referred to the judgment of the Hon'ble Supreme Court in the case of *Union of India V/s Hind Lamps Ltd. -1989 (43) ELT 161 (SC); Reliance Industrial Products V/s Commissioner of Central Excise - 2012 (276) ELT 107 (Tri.-Mumbai)*. Further, he has submitted that since the appellant-2 are divisions of MIPL, the appellant and MIPL may be interconnected undertakings in terms of Clause (ii) of Section 4 (3)(b) of Central Excise Act, 1944.

4. Further he has submitted that since the relationship has not influenced the assessable value, the same cannot be rejected. It is his contention that the appellant's factory came into existence much prior to the introduction of deemed credit scheme and they were undertaking the job work for MIPL. The prices at which the appellant sold the processed products to MIPL and MFP is similar to the prices at which the processed fabrics are sold to other buyers. Hence, there was no suppression of facts in arriving at the job charges for the alleged related persons. Therefore, the job charges which are on principal to principal basis cannot be described. In support, they have referred to the judgment of Hon'ble Supreme Court in the case of *Commissioner of Central Excise-II, Chennai V/s Beacon Neypric Ltd. – 2006 (193) ELT 16 (SC).* Therefore, differential duty in respect of clearances made to MIPL is not sustainable.

5. Further, the learned Advocate has submitted that the Rule 9 of the Central Excise (Valuation) Rules, 2000, cannot be made applicable to the present case since the entire sales are not through or to their related persons. In support they have referred the judgment in the case of *Ispat Industries Ltd. V/s Commissioner of Central Excise 2007 (2009) ELT 185 (T-LB).* Further he has submitted that the appellant are a division of MIPL and the value of the processed fabrics cleared by them is arrived at adopting the method prescribed in M/s Ujagar Prints' case, which is known to the department since beginning. Therefore, there has been no suppression of facts nor misinformation to the department and accordingly invoking of extended period of limitation and confirmation of the demand is unsustainable. They have placed relevant correspondences with the department dated 25.06.1988, Nov 1999, 10.10.2000, price declarations filed from time to time, letter dated 09.04.2003 written by the Deputy Commissioner and Registration Certificate dated 17.08.1994 in support of their submission no facts was suppressed from the department. Further they have submitted that during the period under dispute various judgments have been delivered supporting the stand taken by the appellants that even though the goods are processed on job work basis, the value of job worked goods are to be determined following the principle of law laid down in the M/s Ujagar Prints's case.

6. Learned Advocate has further submitted that denial of deemed credit availed and utilized by them is bad in law. He has submitted that the deemed credit of Rs.1,94,83,918/- availed by them is not hit by para 6 of the said notification. The deemed credit

was allowed on the value of the finished goods, whereas demand of differential duty is raised by enhancing the assessable value; Para 6 of the notification would hit only that portion of the deemed Credit pertaining to the enhanced value only and not more. Further they have submitted that no penalty is impossible nor interest is payable. Learned Advocate also submitted that the personal penalty imposed on other appellants under Rule 26 of Central Excise Rule, 2002, is unsustainable in law.

7. Per contra, learned AR for the Revenue has submitted that the appellants MIPL and MFP are related persons within the meaning and definition of related persons prescribed under Section 4(4)(c) of Companies Act, 1956. He has submitted that Shri Purushotam Mandhana in his statement dated 24.05.2003 admitted that separate Balance Sheets have not been prepared in respect of different divisions of MIPL even though all these divisions are engaged in different activities. He has further disclosed that whenever Shri Mandhana was in need of funds, MIPL transferred money from Bank to Bank against job charges. Further, since common Profit & Loss Account and Balance Sheet are prepared, payment of job work charges, is nothing but merely paper transactions as the person making the payment and receiving the payment is not different. Further he has submitted that for preparation of Profit & Loss Account and Balance Sheet, Company letters and Sales Tax, the Appellant, MIPL and MFS are considered as one body. Thus they are associated with each other and have interest directly or indirectly in the interest of one another since all these three units are considered as single unit only. Hence, there is mutuality of interest among these units. In support, learned

Advocate referred to the judgments of the Hon'ble Supreme Court in the case of *Commissioner of Central Excise, Ahmedabad, V/s ITEC Pvt Ltd – 2002 (145) ELT 280 (SC).* It is his contention that since these units are inter-connected undertakings, the value of the goods shall be determined in the manner prescribed under Rule 9 of Central Excise (Valuation) Rules. Further he has submitted that since the appellants are related persons, the principle laid down in determining the value in M/s Ujagar Prints' case cannot be adopted in the present case. In support, he has referred to the judgment of Hon'ble Supreme Court in the case of *Commissioner of Central Excise V/s M/s S. Kumars Ltd – 2005 (195) ELT 145 (SC).* It is his contention that since the appellants could not provide the sale prices and prices of comparable goods at which they received goods from the appellants and thereafter sold to MIPL, the average value was adopted by the department. He has further submitted that the clearances made by the appellants, M/s MFP (Export Division), was assessed by adopting the Rule 8 of Central Excise (Valuation) Rule, 2000, by the department since these goods were consumed in the premises for manufacturing of other finished goods.

8. Rebutting the argument that on facts and circumstance of the case extended period of limitation cannot be invoked, Learned AR for the Revenue submitted that from the Registration Certificate dated 17.08.1994 it is noticed that the same was issued in the name of M/s Mandhara Textiles Ltd. and the endorsement was made indicating change in the name of the company as M/s Mandhana Industries Ltd with effect from 02.05.1996. It is evident from these documents that Mandhara Dyeing is a division of

Mandhana Industries Ltd. Similarly, all other correspondences with the department do not clearly reveal the fact that the appellants are undertaking job work for their other two divisions. The appellants and two other Units are related each other which came to the knowledge of the department only during the audit of the financial accounts. Besides their records, on scrutiny, it revealed that the transactions among these three units were not on principal-to-principal basis and price was not the sole consideration for the sale.

9. Heard both sides and perused the records.

10. The issues involved for determination are whether the appellants are related to M/s Mandhana Industries Pvt. Ltd. (MIPL) and M/s Mandhana Fashion Port (Export Division) (MFP) for whom they undertake the job work; the appellants are entitled for deemed CENVAT Credit under Notification No. 6/2002-CE (MT) dated 01.03.2002 and whether the demand is barred the limitation.

11. It is not in dispute that the appellants are one of the Divisions of MIPL and the other Division is MFP. The Revenue's argument is that since the appellants and the other two Units for whom they undertake the processing of fabrics on job work basis being related to them, the principles of job work valuation laid down by the Hon'ble Supreme Court in Ujagar Print's case (supra) is inapplicable. In the impugned order, learned Commissioner while analyzing the evidence on record held that since all Units belongs to the same management and separate Balance Sheets are not prepared for individual units, the transactions between the appellant and other two Units are not on principal to principle basis and price is not the sole consideration, they are inter-connected

undertakings and accordingly are related within the meaning and definition of related persons prescribed under Section 4(3)(b) of Central Excise Act, 1944. The appellants in the course of argument have fairly submitted that all these three Units could be termed as interconnected undertakings. However, there is no mutuality of interest and hence the definition of related person as prescribed under Section 4(3)(b)(iv) of Central Excise Act, 1944 is not satisfied.

12. It is difficult to appreciate the arguments of the appellant in as much as the Profit & Loss Accounts maintained by all the three Units are not separate but common and also the Balance Sheets prepared is common for all these Units. Besides, all these three Units are particularly functioning as single Unit and hence cannot be called as independent to each other and the transactions between them are on principal to principal basis. Therefore, the findings of the learned Commissioner that three Units are related persons within the Section 4 (3) (b) of Central Excise Act, 1944 is correct and sustainable.

13. The Learned Advocate has vehemently argued that the demand is barred by limitation in as much as in their communications/ correspondences with the department they have informed the department that the appellants are undertaking job work for MIPL and MFP (Export Division) which are Divisions of Mandhana Industries Pvt Ltd (MIPL). In the declarations filed with the department as required under notification No. 27/92-CE it is clearly indicated thereunder that M/s Mandhana Dyeing is a Division of MIL. Therefore, the department was fully aware of the fact that

M/s Mandhana Dyeing, the Appellant is a Division of MIPL who undertake processing of goods for MIPL on job work basis and supplied the same to the said after completion of the processing of fabrics supplied to them. The communications between the Appellant and the department commencing from 04.06.1998 clearly indicate that while responding to the objections on valuation of job work of fabrics for their other units, the appellant had clearly mentioned that M/s Mandhana Dyeing is a Division of MIPL. In these circumstances, invoking the extended period of limitation cannot be sustained.

14. In the result, even though on merit, we find that M/s Mandhana Dyeing, the Appellant are related to MIPL and MFP (Export Division) and the valuation of processed goods on job work cannot be determined adopting the principles laid down in the case of M/s Empire Industries' case. However, the demand confirmed invoking the extended period of limitation cannot be sustained. In the result, the impugned order is set aside on the ground of limitation and the appeal is allowed.

(Dictated and pronounced in open court)

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

(P. Anjani Kumar)
Member (Technical)

Sidharth