CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH, MUMBAI

Excise Appeal No. 89528 of 2018

(Arising out of Order-in-Original No. 12/Bhiwandi/SM/2018 dated 26.03.2018 passed by the Commissioner of GST & Central Excise, Bhiwandi.)

M/s Tarz Distribution India Pvt. Ltd. ....Appellant
A-5, A-9, Globe Complex,
Owali Village, Bhiwandi,
Thane-421 302

VERSUS

Commissioner of CGST, Bhiwandi ....Respondent
11th & 12th Floor,
Lotus Infotech Centre,
Station Road, Parel (East),
Mumbai – 400 012

APPERANCE:

Shri Rajesh Ostwal, Advocate for the Appellant

Shri N.N. Prabhudesai, Superintendent, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/87026 / 2021

Date of Hearing: 27.08.2021
Date of Decision: 29.10.2021

Confirmation of redemption fine of Rs 25,00,000/- in lieu of confiscation of the seized goods under Section 34 of the Central Excise Act, 1944 by the Commissioner of GST & Central Excise, Bhiwandi in his order dated 26.03.2018, while dropping demand on already cleared imported goods made during the period 01/01/2009 to 09/07/2009, is assailed in this appeal.

2. Facts of the case, in a nutshell, is that appellant was engaged in the activity of labelling, relabeling, packing, repacking of perfumes, cosmetics and skin care imported products. Basing on information, raid was conducted by the Officers of the Central Excise at Appellant's Bhiwandi warehouse and apart from recording statements of people working over there, seizer of certain goods including MPR labels, stickers, cartoon boxes, scotches tape of "Tarz" (appellant brand) including computer printers, ribbons etc. were made. Appellant was put to show-cause for carrying out manufacturing activities as per Chapter Note 5 of Chapter 33 of the Central Excise Tariff Act. Matter was adjudicated upon and it was held by the Commissioner that clearance of goods under payment of CVD being revenue neutral situation, no central excise duty is payable but since affixing of MRP/relabeling of the goods taken place at Bhiwandi warehouse that was seized by the Respondent-Department was a manufacturing activity, in the absence of proof of specific payment of CVD against those and absence of goods which were released to the appellant upon execution of bond, redemption fine is imposable as appellant was not registered under Central Excise Act and therefore he imposed redemption fine of Rs.25,00,000/- on goods seized that was valued at Rs.16,43,89,691/-. The redemption fine imposed in lieu of

confiscation of the above goods under Section 34 of the Central Excise Act is assailed in this appeal.

3. During the course of appeal, learned Counsel for the appellant Mr. Rajesh Ostwal submitted that when adjudicating authority had dropped the demand of excise duty on goods already cleared, the same principle would have been applied on the seized goods, since the entire excise is revenue neutral in view of payments of CVD and no negative inference should have been drown from the statements of warehouse operators. In support of his argument he also submitted judicial decisions reported in *2002 (142) ELT 515 (SC)* in the case of *Nagpur Alloy Castings Limited Vs. CCE, 2016 (335) ELT 51 (Tri.-Chennai)* in the case of *20 Micron Ltd. Vs. CCE & ST* and mainly placed his reliance on the reported in *2004 (174) ELT 25 (Tri-LB)* in the case of *Godrej Soaps Vs. CCE,* decision of the Larger Bench of this Tribunal, wherein it has been held that when demand gets dropped on any account, penal provisions cannot survive against the assessee, for which confirmation of redemption fine by the Commissioner is required to be set aside, since it is penal in nature.

4. Learned Authorised Representative for Respondent–Department Mr. N.N. Prabhudesai, on the other hand submitted that ample evidence was collected by the Respondent-Department Officials including photographs and confessional statement of the staff of the appellant working in the warehouse at Bhiwandi, which

place was also clearly held by the Commissioner as a not a bonded warehouse for which he segregated the duty demand made in two components and gave a finding that only the seized goods of Bhiwandi warehouse was dutiable as no evidence could be produced by the appellant to correlate CVD payment on those articles and labelling including affixture of MRP was being done which is a manufacturing activity as per Chapter 33 Note 5 and that activity was carried out undoubtedly without any central excise registration, for which interference by the Tribunal in the order passed by the Commissioner is uncalled for. He also submitted a case law of this Tribunal at Delhi reported in *2020-TIOL-1326-CESTAT-DEL* in the case of *M/s All True Components Vs. Principal Commissioner Central GST* to support his stand that manufacturing activity is done without registration justify penal action.

5. I have heard from both the sides at length and perused the case record, relevant provision of law and written note of submissions made by both the parties. Not only the appellant's staff during investigation but appellant through its synopsis submitted on 17/03/2020 admitted that in few cases where there was upward revision in MRP, the appellant on their own paid the differential CVD. This admission is sufficient to establish that there was manufacturing activity undertaken by the appellant like upward revision of MRP and its affixture on repacked goods. It is a settled rule that CVD is paid to counter balance the central excise component, so as to protect the indigenous manufacturer and it is refunded after the imported goods

are sold in the local market upon payment of VAT/GST. Therefore, it is mainly a level playing event and not a tax collection activity. Appellant being not a registered concern is liable for penal action only on this count. Apart from this, such manufacturing activities as per definition content in Section 2(f) of the Central Excise Act read with Chapter 33 Note 5 of the Central Excise Tariff Act, 1985 as has been noted during recording of un-rebutted statements of the operators and office bearer of the appellant would clearly go to say that seized goods had lost its nature as imported goods alone and had undergone a manufacturing process. This being the facts on record and in view of admission of appellant itself which needs no further proof in view of Section 56 of the Indian Evidence Act, that in some cases the MRP has been charged with upward revision. I am of the considered view that interference in the order passed by the commissioner imposing redemption fine would not be in conformity to the law. Hence the order.

ORDER

6. The appeal is dismissed and the order passed by the Commissioner of GST & Central Excise, Bhiwandi vide Order-in-Original No. 12/Bhiwandi/SM/2018 dated 26.03.2018 is here by confirmed.

(Order pronounced in the open court on 29.10.2021)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad