CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

REGIONAL BENCH - COURT NO. 01

Excise Appeal No. 1302 of 2012

(Arising out of Order-in-Appeal No. YDB (34 to 37) MV/2012 dated 29.05.2012 passed by Commissioner of Central Excise (Appeals), Mumbai Zone-I)

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M/s. Sandeep Enterprises **....Appellant**
Old Collector compound,
Plot No. 24, Malwani, Malad (W)
Mumbai-400095

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-400051

WITH

(i) Excise Appeal No. 1303 of 2012 (Lachhmandas & Sons) (Arising out of Order-in-Appeal No. YDB (34 to 37) MV/2012 dated 29.05.2012 passed by Commissioner of Central Excise (Appeals), Mumbai Zone-I); **(ii) Excise Appeal No. 1304 of 2012 (K. Ashok Kumar & Co.)** (Arising out of Order-in-Appeal No. YDB (34 to 37) MV/2012 dated 29.05.2012 passed by Commissioner of Central Excise (Appeals), Mumbai Zone-I)**; (iii) Excise Appeal No. 1305 of 2012 (M. Lachhamandas & Co.);** (Arising out of Order-in-Appeal No. YDB (34 to 37) MV/2012 dated 29.05.2012 passed by Commissioner of Central Excise (Appeals), Mumbai Zone-I)

Appearance:

Shri P.K. Shetty, Advocate for the Appellant
Shri N.N. Prabhudesai, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87287-87290/2021

Date of Hearing: 10.12.2021
Date of Decision: 10.12.2021

PER : S.K. MOHANTY

Heard both sides and perused the records.

2. The issue involved in all these appeals is identical and accordingly, the same are taken up for hearing together and a common order is being passed.

3. Briefly stated, the facts of the case are that the appellant M/s. Sandeep Enterprises is engaged in manufacture of Cuff & Collar, Belts Rolls etc., falling under Chapter 6202 of Central Excise Tariff Act, 1985. The appellant manufactures the said goods on job work basis and during the relevant period, was not registered with the Central Excise Department on the ground that the said goods manufactured on job-work basis was exempted from payment of Central Excise duty, in terms of Notification No.12/2001-C.E., dated 01.03.2001. The period involved in these appeals is from March to April, 2001. Since, the appellant had used the brand name/logo of different companies; the department had stated that the benefit of the said exemption notification is not available to the appellant. Accordingly, show cause proceedings were initiated against the appellants for confirmation of duty demand along with interest and for imposition of penalties under various provisions of the Central Excise Act, 1944 and the rules there under. The show cause notices issued to the appellants were adjudicated vide Order dated 20.02.2012 wherein, the original authority had confirmed the duty demand of Rs.2,25,707/- along with interest and also imposed equal amount of penalty on M/s. Sandeep Enterprises under Section 11AC *ibid*. Besides, the said order also imposed penalties on the other appellants under Rule 209A of the Central Excise Rules, 1944 read with Section 38A *ibid.* On appeal against the said adjudication order, the learned Commissioner (Appeals) vide the impugned order dated 29.05.2012 has rejected the appeal and upheld the adjudged demands confirmed on the appellants. Feeling aggrieved with the impugned order, the appellants have preferred these appeals before the Tribunal.

4. Shri P.K. Shetty, learned Advocate appearing for the appellants, at the outset, submitted that the appellants are not contesting the issue regarding confirmation of duty demand and such amount along with interest and 25% of penalty imposed in the adjudication order have already been deposited by the appellant. He further submitted that since as per the requirement of Section 11AC *ibid*, 25% of penalty amount has already been paid by the main appellant M/s. Sandeep

Enterprises, the benefit of waiver of remaining amount of penalty under such statutory provisions should be available. He also submitted that penalty imposed on M/s. M. Lachhmandas & Co. should not stand for judicial scrutiny inasmuch as the show cause notice had not impleaded them as a party for receipt of the alleged goods manufactured by M/s. Sandeep Enterprises during the disputed period.

5. On the other hand, Shri N.N. Prabhudesai, learned AR for revenue reiterated the finding recorded in the impugned order and supports the stand of Revenue in confirmation of the adjudged demands.

6. Heard both side and examined the case records.

7. With regard to the adjudged Central Excise duty and interest demand confirmed on the appellant M/s Sandeep Enterprises, we find that the authorized person of the said company in his statement dated 25.07.2002, recorded under summon had *inter alia*, deposed that the manufactured goods were stamped with brand name along with monogram in their premises. In view of such voluntary statement, the benefit of duty exemption provided under Notification dated 01.03.2001 should not be available to the appellant inasmuch as goods of Chapter Heading No. 6202.00 bearing a registered brand name or sold under a registered brand name were falling outside the scope and ambit of the notification dated 01.03.2001 (supra) for grant of the duty exemption. Further, the learned Advocate for the appellant has also specifically stated that the appellant is not contesting such demand. Thus, the impugned order, insofar as it has upheld confirmation of the duty demand along with interest confirmed on M/s Sandeep Enterprises sustains and the appeal to such extent is liable for dismissal.

8. The provisions for imposition of penalty for short levy or non-levy of duty are contained in Section 11AC *ibid.* The said statute provides that if the adjudged amount of duty and interest is paid within 30 days of communication of the order of the Central Excise Officer, then the amount of penalty liable to be paid shall be 25% of the duty so determined. In the present case, it is an admitted fact on record that the appellant had discharged the entire duty liability, interest and 25% of penalty within 30 days from the date of passing of the adjudication order. Since, the statutory provisions contained under Section 11AC

ibid have been duly complied with by the appellant M/s. Sandeep Enterprises, we are of the view that confirmation of equal amount of duty as penalty in the adjudication order and upheld in the impugned order cannot be sustained. Thus, the remaining amount of penalty (over and above the limit of 25%) should be waived and the benefit provided in terms of Section 11AC *ibid* should be available to the appellant. Therefore, the impugned order is required to be modified to the extent of reducing the quantum of penalty to 25% of the adjudged duty amount.

9. We find that the annexure to show cause notice had not made the appellant M/s. Lachhmandas & Sons as a party, to whom the goods were allegedly supplied by the other appellant M/s. Sandeep Enterprises during the disputed period. Thus, in absence of any specific allegation with regard to the alleged supply of goods, we are of the considered view that imposition of penalty on M/s. Lachhmandas & Sons cannot be sustained. Thus, the impugned order, insofar as it has imposed penalty on the said appellant M/s. Lachhmandas & Sons is liable to be set aside.

10. With regard to the other appellants namely, M/s. Ashok Kumar & Co. and M/s. M. Lachhamandas & Co., we are of the firm view that imposition of penalty cannot be interfered with at this juncture inasmuch as the main appellant M/s. Sandeep Enterprises had admitted supply of goods without payment of duty to such appellants and also voluntarily deposited the duty along with interest attributable to such clearance of goods. Therefore, there is no infirmity in the impugned order insofar as it has imposed penalty on the said appellants.

11. In view of the above discussions, the appeals filed by the appellants are disposed of in following manner:

(a) the impugned order sustains insofar as it has upheld confirmation of the duty demand along with interest on M/s. Sandeep Enterprises. Accordingly, appeal to such extent is dismissed;

(b) with regard to imposition of penalty under Section 11AC *ibid,* the impugned order is modified to the extent of reducing the quantum of penalty to 25% of the duty amount confirmed therein.

(c) impugned order passed in the case of M/s. Lachhmandas & Sons is set side and the appeal is allowed in favour of the appellant.

(d) the impugned order sustains insofar as it has imposed penalty on M/s. Ashok Kumar & Co. and M/s. M. Lachhamandas & Co. and accordingly, the appeals filed by them are dismissed.

(Dictated and pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

(Raju)
Member (Technical)

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