CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH
COURT No. 5

Excise Appeal No. 90042 of 2014

(Arising out of Order-in-Original No. 35-AC-COMMR/Th-II-2014 dated 28.08.2014 passed by the Commissioner of Central Excise, Thane-II)

Deepak Chawla **Appellant**
Flat No.61, Diamond Queen,
West Avenue Road, Santacruz (W),
Mumbai 400 054.

Vs.

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

AND

Excise Appeal No. 90043 of 2014

(Arising out of Order-in-Original No. 35-AC-COMMR/Th-II-2014 dated 28.08.2014 passed by the Commissioner of Central Excise, Thane-II)

Leo Pack **Appellant**
C/o Deepak Chawla,
Flat No.61, Diamond Queen,
West Avenue Road, Santacruz (W),
Mumbai 400 054.

Vs.

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

<u>Appearance:</u>

Shri D.H. Nadkarni with Shri C.S. Biradar, Advocates, for the Appellant
Shri Vinod S. Chettiparambil, Assistant Commissioner, Authorised Representative for the Respondent

<u>CORAM:</u>

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

Date of Hearing: 07.02.2024
Date of Decision: 07.03.2024

FINAL ORDER NO. 85271-85272/2024

PER: ANIL G. SHAKKARWAR

Above stated two appeals are taken together for decision since they are arising out of common impugned order-in-original dated 28.08.2014.

2. M/s. Leo Pack was engaged in the activity of cutting, slitting and punching of PVC rigid rolls supplied by M/s. MEC Engineers and to make cut PVC rolls ready for display of imitation jewellery over it and in trade parlance such cut pieces of PVC rigid rolls having perforation for display of jewellery are called inlay cards. M/s. MEC Engineers used to supply PVC rigid rolls to M/s. Leo Pack and M/s. Leo Pack used to cut them into appropriate sizes and punch them so that the pieces of PVC rigid roll become inlay cards for display of jewellery. After performing such activity on PVC rigid rolls, M/s. Leo Pack used to return the inlay cards to M/s. MEC Engineers. Revenue initiated investigations against M/s. Leo Pack and on the basis of certain documents recovered and a few statements recorded, issued M/s. Leo Pack with a show cause notice dated 02.11.2010 for the period from 2005 to 2006 and for the period from 2006 to 2007. It was alleged in the said show cause notice that M/s. Leo Pack did not register with Central Excise nor maintained any record nor filed any returns nor paid central excise duty on inlay cards and, therefore, central excise duty amounting to Rs.51,02,240/- was demanded from M/s. Leo Pack. The said show cause notice also had a proposal for imposition of penalty on the other appellant who was partner of M/s. Leo Pack. M/s. Leo Pack contested the said show cause notice stating that they were merely doing job work for M/s. MEC Engineers and after job work, inlay cards where returned to M/s. MEC Engineers and M/s. MEC Engineers were paying central excise duty on the same and, therefore, as job worker, M/s. Leo Pack was not having any liability to pay excise duty. As an alternate pleading, they also pointed out that the quantification adopted for raising the demand was on the basis of the inlay cards being sold by M/s. MEC Engineers and that cannot be the value for demand of central excise duty from M/s. Leo Pack. The show cause notice was adjudicated through order-in-original dated 31.03.2012 which was challenged before this Tribunal. The said order was challenged by M/s. Leo Pack and Shri Deepak Chawla. The said

appeals were decided through final order dated 10.10.2012. Through the said final order, order-in-original dated 31.03.2012 was set aside and the issue was remanded to the original adjudicating authority to decide afresh after taking into consideration the issues raised in the appeal before this Tribunal after affording an opportunity of being heard. Subsequent to the said final order, the impugned order is passed through which central excise duty of Rs.49,70,181/- is confirmed against M/s. Leo Pack with equal penalty. Shri Deepak Chawla has been imposed with a penalty of Rs.5,00,000/- under Rule 26 of Central Excise Rules, 2002. Aggrieved by the said order, both the appellants are before this Tribunal.

3. Heard the learned counsel for the appellant. Learned counsel for the appellant has submitted that the direction of this Tribunal in the final order dated 10.10.2012 to the original adjudicating authority was to take into consideration the issues raised in the appeal which was decided through the said final order dated 10.10.2012. The issue raised in the said appeal at serial No.V is reproduced below:-

"RAW-MATERIAL SENT BY PRINCIPAL MANUFACTURER AFTER AVILING THE CENVAT CREDIT - NOT TO BE TAKEN AS JOB WORKERS MANUFACTURE

Without prejudice to the above submission, the Appellant submit that the material required for manufacture of Inlay Card i.e. PVC rigid rolls for processing of slitting and cutting and use in manufacture of inlay/display cards for ear-rings were sent by M/s. MEC Engineers as stated in the statement of Mr Deepak Chawla and Mr Rajkumar Arora. Therefore, the manufacture of the goods out of the material supplied by the Principal is a pure job work on labour basis. The Appellant has charged 04-05 paise per piece as a job work charges. Hence, the material is a movement of job work and cannot be treated as a product of the Appellant in view of the judgments reported in:

- *2010 (262) ELT 342 (Tr) - D.K. ELECTROMECH*
- *2009 (235) ELT 332 (Tr) - J.H. KHARAWALA (P) LTD.*

- *2008 (225) ELT 282 (Tr) - J.H. KHARAWALA (P) LTD.*
- *2006 (203) ELT 248 (Tr) - SREE RAYALASEEMA"*

He has submitted that during the material time there was a notification bearing No.83/94-CE dated 11.04.1994 which stipulated condition for exemption of goods, provided the supplier gives an undertaking to the proper officer having jurisdiction over the factory of job worker for carrying out job work and simultaneously for seeking exemption for job worker. Such supplier was also under an obligation to file an undertaking with the proper officer having jurisdiction over his factory under Notification No.84/94-CE dated 11.04.1994 and the said notifications were applicable in the transaction between M/s. MEC Engineers and M/s. Leo Pack for the reason that M/s. MEC Engineers was sending goods for job work to M/s. Leo Pack and M/s. Leo Pack was carrying out activities on the material supplied by M/s. MEC Engineers and returning the processed material back to M/s. MEC Engineers who was clearing the manufactured goods under invoice issued under Rule 11 of Central Excise Rules, 2002 and one such invoice issued on 04.03.2006 is available at page 297 of appeal paper book which indicates that M/s. MEC Engineers was clearing the goods on payment of central excise duty. He has submitted that in view of Notification No. 83/94-CE dated 11.04.1994 and Notification No.84/94-CE dated 11.04.1994, appellant was job worker and was not required to pay central excise duty. He has submitted that this aspect was not taken into consideration by the original authority and the demand was confirmed against the appellant. He has pleaded that the impugned order is not strictly in accordance with the directions of this Tribunal.

4. Heard the learned AR. Learned AR has submitted that in the absence of any documentary evidence to prove that the goods were manufactured on job work basis for M/s. MEC Engineers, there is no force in the contention in this regard.

5. We have carefully gone through the record of the case and submissions. We have perused the statement of Shri Deepak Chawla recorded on 19.12.2006 wherein he has stated that he

was manufacturing inlay cards on job work basis for M/s. MEC Engineers and also stated that for the said purpose Shri Rajkumar Arora was supplying the material. We have also perused few invoices issued by M/s. MEC Engineers. One among them being invoice dated 04.03.2006 which has been issued under Rule 11 of Central Excise Rules, 2002 wherein inlay cards were described as imitation jewellery part plastic card and cleared on payment of central excise duty. We have perused Notification No.83/94-CE dated 11.04.1994. The explanation in the said notification states that for the purpose of the said notification, the expression 'job work' means processing of or working upon raw materials or semi-finished goods supplied to the job worker so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or for operation which is essential for the aforesaid process. M/s. Leo Pack was a job worker to whom raw materials were supplied by M/s. MEC Engineers for cutting the PVC rigid roll into smaller pieces and piercing the same to make it ready for display of jewellery and, therefore, we are satisfied that the activities carried out by M/s. Leo Pack was job work. We have also gone through the said Notification No. 83/94-CE which exempts the goods manufactured in a factory at job work from the whole of the duty of excise leviable thereon provided that the procedures set out in the said notification and in Notification No.84/94-CE are complied with. The said two notifications have cast responsibility on the main manufacturer who supplies material for job work to give undertaking to the jurisdictional Central Excise officer that the goods after receipt after having completed job work shall be used in the manufacture of goods on which central excise duty shall be paid. From the invoice placed at page 297 of appeal paper book of appeal No. E/90043/2014, we have noted that central excise duty was stated to have been paid when the goods were cleared from M/s. MEC Engineers. We, therefore, hold that M/s. Leo Pack was job worker for M/s. MEC Engineers and M/s. Leo Pack was not required to pay central excise duty on the job work. We, therefore, hold that the impugned order is not sustainable insofar as the same relates to confirmation of demand and imposition of penalty on M/s. Leo

Pack. Since this confirmation of demand on M/s. Leo Pack does not sustain, the question of imposition of penalty on Shri Deepak Chawla does not arise.

6. In view of our above finding, we set aside the impugned order and allow both the appeals.

(Order pronounced in the open court on 07.03.2024)

(Anil G. Shakkarwar)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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