

(2012) 10 DEL CK 0394
In the Delhi High Court
Case No : CEAC 15 of 2012

Commissioner of Central Excise

APPELLANT

Vs

Diwan Saheb Fashions Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 15-10-2012

Acts Referred:

Central Excises and Salt Act, 1944 — Section 2(f), 5A(1)

Citation : (2012) 9 AD 168 : (2013) 289 ELT 113 : (2013) 18 GSTR 297

Hon'ble Judges : S. Ravindra Bhat, J;R.V. Easwar, J

Bench : Division Bench

Advocate : Kamal Nijhawan, Standing Counsel with Mr. Sumit Gaur, for the Appellant; M.P. Devnath with Mr. Aditya Bhattacharya, Amar Pratap Singh and Mr. Abhishek Anand, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Justice S. Ravindra Bhat

1. This appeal impugns the Final Order 875-883/2011 Ex DB dated 11.10.2011 passed by CESTAT (hereinafter "Tribunal") whereby the Respondents' appeals against the Commissioner's (Central Excise, Delhi-I) Order-in-Original No. 30/2008 were partially allowed. The short question that arises for determination is as follows:

Whether the respondents were liable to pay excise duty in respect of garment (s) stitched by them from fabric either brought by the customers themselves or bought by the customers from the Respondent for stitching purpose?

The facts relevant for answering this question are that respondents are engaged in the manufacture of readymade garments falling under the "Chapter Heading 6201" of the First Schedule of the Central Excise Tariff Act, 1985. The respondents are also engaged in stitching garments out of fabric bought by customers from their shop or brought by the customers from outside. In connection to the latter activity, it is a matter of record that in all such instances,

the fabric is given by the individual customer. On the garments so stitched by the respondents, it affixes the label "Specially Tailored By Diwan Saheb Designs for Men". In cases where the fabric is bought from the respondents only, the stitching takes place after the "sale" of the fabric. Moreover, it is not compulsory for the customer to get the fabric stitched from the respondents. Thus, the dispute pertains to whether the tailoring activity of the respondents, in cases where the fabric is given by the customer, either after being bought from the respondents, or from outside, is liable to excise duty.

Arguments:

2. Learned Counsel for the department emphasized that since what the respondents return to the customers is a finished product, a garment, falling under Chapter 62, the same is excisable. It was urged that the ownership of the raw materials (in this case, the fabric) is irrelevant for deciding who the manufacturer in terms of section 2(f) of the Central Excise Act, 1944 is. Moreover, it was argued that it is settled law that when goods are manufactured through a job worker, the latter is the manufacturer and not those supplying raw material. In this case, counsel submitted, the job worker was the respondent, and not the customers who gave the fabric. The manufacturing activity is done by the respondent, which shall, accordingly, be liable to pay the excise duty.

3. Counsel for the respondents, on the other hand, defended the Tribunal's reasoning and conclusion. Reliance was placed on Rule 7AA, and its successor Rules, Rule 4(1) and 4(3) of Central Excise Rules, 2001 and 2002. It was urged that according to these rules, liability to pay excise duty is that of those who supply the raw materials. Therefore, the excise duty, if any, was payable by the individual customers, and not by the respondents. Counsel also drew this Court's attention to Notification No. 7/2003-C.E. dated 1.3.2003 to contend that garments got stitched from one's own fabric and based on measurements was exempted from excise duty.

Reasoning and Conclusion

4. This Court has considered the submissions of the parties. The Tribunal's reasoning and conclusion on this issue as under:

Under the special provisions made as per Rule 7AA of the Central Excise Rules, 1944 and its successor rules, the responsibility to pay duty on textile articles got manufactured on job-work basis is put on the person who gets goods manufactured on job-work basis. He has to discharge such liability "as if he is the manufacturer". This rule does not say anywhere that the person supplying the raw material would be the manufacturer. The rule only says that such person has to discharge the liability and that in the normal course is done by the manufacturer. So the view that Rule 7AA will upset judicial decisions of the Apex Court is not correct... There is no ruling by the Courts that a Rule cannot be framed to make the supplier of raw material liable to pay duty. This is to say that there is no ruling that a Rules like Rule 7AA and its successor rules are bad in

law. That is to say even when the manufacturer of the goods is the job worker, the liability to pay duty can be on another. This position becomes very clear if the definition of assessee and the Rules prescribing who has to pay duty are scrutinized. Rule 7AA was for making a deviation, for textile goods, from the general rule that manufacturer has to pay duty.

5. The only provision that needs to be referred to is Notification No. 7/2003-C.E. dated 1.3.2003 that has been relied upon by the respondent. The said notification, inter alia, exempts from excise duty the following type of goods:

Article of apparel or clothing accessories manufactured or got manufactured for personal use and not intended for sale

Explanation.- This exemption shall also apply to such article of apparel or clothing accessories knitted or stitched by a tailor from material supplied by the customer for the personal use of the customer.

6. This notification makes it clear that tailoring establishments that stitch garments in a customized manner as per the customer's specification are exempted from excise liability thereon in cases where the fabric is supplied by the customer himself. The notification was made by the Central government in exercise of its powers u/s 5A(1) of the Central Excise Act, 1944, which empowers it to grant exemption from excise duty in public interest. This, in our opinion, settles the matter in favour of the respondent.

7. Before proceeding to the interpretation of the relevant rules, the same are reproduced as under:

Rule 7AA of the Central Excise Rules, 1944

7AA. Recovery of duty on articles of apparel manufactured on job work.-

Every person who gets the goods, falling under Chapter 62 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), produced or manufactured on his account on job work, shall pay the duty leviable on such goods, at such time and in such manner as may be specified under these rules, whether the payment of such duty be secured by bond or otherwise, as if such goods have been manufactured by such person:

Provided that such person may authorise the job worker to pay the duty leviable on such goods on his behalf and the job worker so authorized undertakes to discharge all liabilities and comply with all the provisions of these Rules:

Explanation.- For the purposes of this rule, the expression "job worker" shall be deemed to mean the person who undertakes the process or processes that brings into existence the finished goods, complete in all respects, falling under Chapter 62 of the said First Schedule, in his factory. For the removal of doubt, it is further clarified that the job-worker may also get part of the processing required for the manufacture of the said goods done by another person but should bring back the same for the completion of the manufacturing process in

his factory.

Rule 4(1) and Rule 4(3) of the Central Excise Rules 2001 and 2002:

Duty payable on removal.- (1) Every person who produces or manufactures any excisable goods, or who stores such goods in a warehouse, shall pay the duty leviable on such goods in the manner provided in rule 8 or under any other law, and no excisable goods, on which any duty is payable, shall be removed without payment of duty from any place, where they are produced or manufactured, or from a warehouse, unless otherwise provided:

Provided that the goods falling under Chapter 61 or 62 of the First Schedule to the Tariff Act, produced or manufactured by a job worker may be removed without payment of duty leviable thereon and the duty of excise leviable on such goods shall be paid by the person referred to in sub-rule (3), as if such goods have been produced or manufactured by him, on the date of removal of such goods from his premises registered under rule 9. Explanation.- It is hereby clarified that where such person has authorised the job worker to pay the duty leviable on such goods under sub-rule (3), such duty shall be paid by the job worker on the date of removal of such goods from his registered premises.

(3) Notwithstanding anything contained in sub-rule (1), every person who gets the goods, falling under Chapter 61 or 62 of the First Schedule to the Tariff Act, produced or manufactured on his account on job work, shall pay the duty leviable on such goods, at such time and in such manner as may be specified under these rules, whether the payment of such duty be secured by bond or otherwise, as if such goods have been manufactured by such person:

Provided that such person may authorise the job worker to pay the duty leviable on such goods on his behalf and the job worker so authorised undertakes to discharge all liabilities and comply with all the provisions of these rules.

Explanation I.- For the purposes of this rule, the expression "job worker" shall be deemed to mean the person who undertakes the process or processes that brings into existence the finished goods, complete in all respects, falling under Chapter 61 or 62 of the said First Schedule, in his factory. For the removal of doubt, it is further clarified that the job-worker may also get part of the processing required for the manufacture of the said goods done by another person but should bring back the same for the completion of the manufacturing process in his factory.

Explanation II.- For the purposes of this rule, excisable goods manufactured in a factory and utilised, as such or after subjecting to any process, for the manufacture of any other commodity, in such factory shall be deemed to have been removed from such factory immediately before such utilization.

8. The Tribunal's reasoning and conclusion on this issue are as under:

27. Under the special provisions made as per Rule 7AA of the Central Excise

Rules, 1944 and its successor rules, the responsibility to pay duty on textile articles got manufactured on job-work basis is put on the person who gets goods manufactured on job-work basis. He has to discharge such liability "as if he is the manufacturer". This rule does not say anywhere that the person supplying the raw material would be the manufacturer. The rule only says that such person has to discharge the liability and that in the normal course is done by the manufacturer... There is no ruling by the Courts that a Rule cannot be framed to make the supplier of raw material liable to pay duty. This is to say that there is no ruling that a Rules like Rule 7AA and its successor rules are bad in law. That is to say even when the manufacturer of the goods is the job worker, the liability to pay duty can be on another. This position becomes very clear if the definition of assessee and the Rules prescribing who has to pay duty are scrutinized. Rule 7AA was for making a deviation, for textile goods, from the general rule that manufacturer has to pay duty. The position becomes clear when Rule 4 of Central Excise Rule as it existed prior to 25-3-2000 (After 25-03-03 similar provisions were incorporated as a new rule 12B), is examined.

28. This rule does not state that for textile items job worker is not the manufacturer. It only says that the duty is to be paid by the person supplying the material as if he is the manufacturer... So we are of the view that the Appellant had no obligation to pay excise duty on garments stitched out of fabrics bought or brought by the customers. Thus, the argument that in the case of textile goods got manufactured on job work basis during the period 2001-2004, the job worker has to discharge excise duty liability is not acceptable. Further if duty liability is determined as if the customer is the manufacture he should be eligible for exemption for SSI units also. But this issue need not be determined in this proceeding because the persons to pay duty are not before us.

9. The Tribunal, thus, held that the respondent (appellant before the Tribunal) was not liable to pay excise duty. The same, it held, shall be determined as if the customers were the manufacturers, and that they may be eligible for SSI (small scale industry) exemption. The Court does not discern any fault in the reasoning of the Tribunal. The relevant expression in section 7AA and its successor rules is "person who gets the goods produced or manufactured on his account on job work". In the present case, the customers supply the already purchased fabric to the respondents for stitching. The customers, in that sense, would be the persons who get the textile good manufactured on their account on job work basis. However, the Tribunal - in our opinion - correctly concluded that duty liability had not been cast on the customer.

10. This Court notices that what influenced the Commissioner to hold that the respondent was a manufacturer - and liable to pay duty - was that after procuring orders (either to stitch fabric given by customers or bought by them from the establishment), it handed over the material to others, and provided buttons, thread, labels, etc; yet, in this Court's opinion, that reasoning is not sound, in view of the definition of "job worker" under Explanation to Rule 4 (3),

which postulates that such person must at least undertake a part of the manufacturing process in his (or its) factory. There is no material to suggest that the respondent undertakes any part of such process; the transaction is entirely covered by the exemption Notification. Thus, the question is answered in favour of the respondent, and against the department. The appeal is meritless, and is accordingly dismissed.