
(2012) 03 BOM CK 0266

In the Bombay High Court

Case No : Central Excise Appeal No. 63 of 2011

Jabil Circuit India Private Limited

APPELLANT

Vs

Commissioner of Central Excise, Pune III Commissionerate

RESPONDENT

Date of Decision : 21-03-2012

Acts Referred:

Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 — Rule 10A

Central Excises and Salt Act, 1944 — Section 11AB, 11AC, 4(1)

Citation : (2012) 190 ECR 307 : (2013) 295 ELT 29

Hon'ble Judges : J.P. Devadhar, J;A.R. Joshi, J

Bench : Division Bench

Advocate : V. Shridharan, with Mr. Prakash Shah and Mr. Jas Sanghvi instructed by PDS Legal, for the Appellant; AS Rao with Mr. SD Bhosale, for the Respondent

Final Decision : Dismissed

Judgement

J.P. Devadhar, J.—Whether the CESTAT was justified in directing the appellant - assessee to make predeposit of ` 1 crore for entertaining the appeal filed by the assessee, is the question raised in this appeal. The assessee is engaged in the manufacture of settop boxes, which are sold by the assessee to Thomson Holdings India Private Limited ("Thomson India" for short). Thomson India sold the settop boxes manufactured by the assessee to M/s.Tata Sky Limited, Mumbai, without subjecting the settop boxes to any further activity. Jabil Circuit Inc., USA is the parent company of the assessee. Thomson Hongkong Holdings Limited is the parent company of Thomson India. Pursuant to a Memorandum of Understanding dated 6th March 2006 entered into by and between the aforesaid two parent companies, the assessee was to manufacture and sell the settop boxes to Thomson India in accordance with the specifications and the requirements of Thomson India.

2. As per Section 4(1)(a) of the 1944 Act, the transaction value shall be the value of excisable goods sold by the assessee, for delivery at the time and place

of removal, provided the assessee and the buyer of the goods are not related and the price is the sole consideration. In any other case, Section 4(1)(b) of the 1944 Act provides that the value of excisable goods shall be the value determined in such manner as may be prescribed.

3. Rule 10A of the Central Excise (Determination of Price of Excisable Goods) Rules, 2000 ("2000 Rules" for short) framed by the Central Government provides that where the excisable goods are produced or manufactured by a jobworker on behalf of a person (the principal manufacturer), then, in a case where the goods are sold by the manufacturer for delivery at the time of removal of goods from the factory of jobworker, where the principal manufacturer and the buyer of the goods are not related and the price is the sale consideration, then, the value of the excisable goods shall be the transaction value of the said goods sold by the principal manufacturer. Explanation to Rule 10A provides that the expression "jobworker" for the purposes of Rule 10A means a person engaged in the manufacture or production of goods on behalf of the principal manufacturer from any inputs or goods supplied by the said principal manufacturer or by any other person authorized by him.

4. In the present case, by a showcause notice dated 24th June 2008, the assessee was called upon to showcause as to why the price charged by Thomson India to Tata Sky Limited (instead of the price charged by the assessee to Thomson India) in respect of the goods cleared during the period from 1st April 2007 to 23rd January 2008 should not be treated as the transaction value of the goods sold by the assessee to Thomson India under Rule 10A of the 2000 Rules and the duty be recovered accordingly. The assessee contested the showcause notice by filing a detailed reply. By an order in original dated 31st August 2009, the Adjudicating Authority held that the valuation of the goods sold by the assessee to Thomson India has to be determined as per rule 10A of the 2000 Rules and accordingly confirmed the demand of ` 2.08 crores with interest u/s 11AB and imposed penalty u/s 11AC of the Central Excise Act, 1944.

5. Challenging the aforesaid order, the assessee filed an appeal before the CESTAT with an application seeking waiver of predeposit and by the impugned order, the CESTAT directed the assessee to make predeposit of ` 1 crore for entertaining the appeal. Challenging the aforesaid order, the present appeal is filed by the assessee.

6. Mr. Shridharan, learned Senior Advocate appearing on behalf of the assessee submitted firstly that in the present case, the sale effected by the assessee is governed by the provisions contained in Section 4(1)(a) of the Act and, therefore, the transaction value alone should be the basis for determining the central excise duty liability. Secondly, Mr. Sridharan submitted that the assessee is neither a jobworker nor the assessee is manufacturing settop boxes on behalf of the Thomson India and, therefore, Rule 10A of 2000 Rules has no application in the present case. In support of the above contention, Mr. Sridharan relied upon a decision of the CESTAT Bangalore Bench in the case of 2010 (260) ELT

440 (TriBang) and a decision of this Court in the case of Hyva (India) Private Limited, being Central Excise Appeal No. 150 of 2011 decided on 1st March 2012.

7. Prima facie, we do not find merit in the aforesaid contentions. The first argument of the assessee is that in the present case the valuation of the settop boxes manufactured and sold by the assessee are liable to be valued on the basis of transaction value u/s 4(1)(a) of the 1944 Act. Whether Section 4(1)(a) of the Act applies and whether the Adjudicating Authority was not justified in invoking Rule 10A of the 2000 Rules is a question to be decided at the hearing of the appeal.

8. On the basis of the material on record, the Adjudicating Authority has arrived at a conclusion that the manufacture and sale of settop boxes by the assessee to Thomson India is based on the terms and conditions contained in the Memorandum of Understanding arrived at between the parent company of the assessee and the parent company of Thomson India. The Adjudicating Authority has recorded a finding that the above Memorandum of Understanding was a manufacturing agreement for manufacture of settop boxes under Trademark of Thomson and the raw materials / parts of the settop boxes were required to be procured by the assessee from the vendors approved by the Thomson India as per the approved Vendor List. Under the said Memorandum of Understanding, the inputs requires in the manufacture of settop boxes were classified into three categories, namely Thomson Control Parts, Key Components and the Manufacture Control Parts. The Adjudicating Authority has noticed that the approved Vendor List contains the inputs required in the manufacture of set6 cexa63-11 top boxes. From the statements of the Purchase Manager, Business Unit Manager, Operational Manager and the General Manager of the assessee, the Adjudicating Authority has arrived at a conclusion that all parts required in the manufacture of settop boxes were required to be purchased by the assessee from the vendors specified in the approved Vendors List received from Thomson India and that the assessee had no role to play in the preparation of the approved Vendors List. It is further recorded by the Adjudicating Authority that the price of the inputs supplied by the vendors is the price negotiated by the Thomson India. On the basis of the aforesaid statements, the Adjudicating Authority concluded that the price of the raw materials purchased by the assessee are controlled by the Thomson India and, therefore, Thomson India indirectly supplied the inputs to the assessee through its sister concerns set out in the approved Vendors List at the price controlled / approved by the Thomson India.

9. In these circumstances, the prima facie view of the CESTAT that the Adjudicating Authority was justified in holding that Thomson India supplied the inputs to the assessee by persons authorized by Thomson India and, therefore, the assessee being a jobworker manufacturing goods on behalf of Thomson India would be covered under rule 10A of the 2000 Rules cannot be faulted.

10. Strong reliance was placed by the counsel for the assessee on the Bangalore

Bench decision of the CESTAT in the case of Coromandel Paints Limited (supra) and an unreported judgment of this Court in the case Hyva (India) Private Limited (Supra). In the present case, the specific finding recorded by the Adjudicating Authority is that the inputs were supplied to the assessee through the persons approved by the principal manufacturer and that the prices of the inputs were controlled by the principal manufacturer. No such facts were there in the aforesaid cases. Moreover, in the case of Hyva (India) Private Limited, there was a specific finding recorded (though prima facie) by the CESTAT that Rule 10A of 2000 Rules has no application to the facts of that case. Thus, the aforesaid two decisions do not support the case of the assessee.

11. In these circumstances, the prima facie belief formed by the CESTAT that Rule 10A of 2000 Rules is applicable to the present case cannot be faulted. Accordingly, the predeposit ordered by the CESTAT cannot be faulted. In the result, we see no merit in the appeal and the same is hereby dismissed with no order as to costs. Time to make predeposit is, however, extended for four weeks from today. The Tribunal is directed to hear and dispose of the appeal on merits after the predeposit is made. The CESTAT shall pass the order on merits without being influenced by this order.