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IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Central Excise]

ORIGINAL SIDE

CEXA/18/2011
COMMISSIONER OF CENTRAL EXCISE KOLKATA V, COMMISSIONERATE
VS
M/S SREE LEATHERS

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
Date : 25th August, 2025

Appearance :
Mr. Uday Shankar Bhattacharya, Adv.
Mr. Tapan Bhanja, Adv.
...for the appellant.

Mr. J.P. Khaitan, Sr. Adv.
Mr. Indranil Banerjee, Adv.
Mr. Sumanta Biswas, Adv.
Mr. Bikash Shaw, Adv.
...for the respondent.

The Court : This appeal filed by the revenue under Section 35G of the Central Excise Act, 1944 (the Act) is directed against a common order passed by the Customs, Excise & Service Tax Appellate Tribunal, East Zonal Bench, Kolkata (the Tribunal) in a batch of appeals, namely, Excise Appeal Nos. E/472-473/2010, E/629-631/2010, E/488-489/2010 and E/21-23/2010 dated 28.7.2011.

Though the impugned order has been passed in a batch of appeals, the present appeal relates only to the partnership firm and its partners, namely, the appeals which were filed by the assessee, partnership firm before the Tribunal in Appeal No. 629 of 2009, the appeals filed by the partners Appeal Nos. 22 of 2010 and 23 of 2010 and appeal filed by the firm in Appeal No. 472 of 2010 and the appeal filed by Revenue in Appeal No. 488 of 2010. The appeal was admitted on 23.11.2011 on the following substantial questions of law:-

- i) Whether affixing of bar code in the footwear could amount to an activity which would attract the mischief of provision of Section 2(f)(iii) of the Central Excise Act, 1944; In other words, whether exercise of affixing bar code amounts to manufacturing within the definition of the aforesaid Act or not;

The appeal having not been admitted with regard to the relief granted to the partners by setting aside the imposition of penalty cannot be considered as no substantial question of law has been admitted. Accordingly, the order passed by the learned Tribunal in Appeal Nos. 22 of 2010 and 23 of 2010 are dismissed.

The short question which falls for consideration is whether affixing a bar code on the goods, namely, footwear received from the suppliers or the assessee would amount to manufacture as per provisions of Section 2(f)(iii) of the Act. The Hon'ble Supreme Court in the case of *Collector of Central Excise, Bombay Vs. S. D. Fine Chemicals Pvt. Ltd* reported in 1995(77) E.L.T. 49(S.C.) held as to what is the clear meaning of the definition of the expression 'manufacture' under Section 2(f) of the Act. It was pointed out that

the expression 'manufacture' as contained in Section 2(f) is not confined to its natural meaning of the expression 'manufacture' but is an expansive definition. Certain processes which may not have otherwise amounted to manufacture, also brought within the purview of and placed within the ambit of the said definition by the Parliament.

It was further held that not only the processes which are incidental and ancillary to the completion of a manufactured product but also those processes as are specified in relation to any particular goods in the Section or Chapter Notes to the Tariff Schedule to the Central Excise Tariff Act, 1985 or also brought within the ambit of the definition.

Further, it was pointed out that the question whether a particular process does or does not amount to 'manufacture' as defined under Section 2(f) is always a question of fact to be determined in the facts for a given case applying the principles enunciated by the Hon'ble Supreme Court. One of the main tests verified by the Hon'ble Supreme Court is whether on account of the process employed or applied by the assessee the commodity so abandoned is no longer regarded as the original commodity but is, instead, recognized as a definite and new article that has emerged as a result of such process. In this regard, we take note of the decision of the Constitutional Bench of the Hon'ble Supreme Court in *M/s. Ujagar Prints & Ors. Vs. Union of India & Ors.* reported in 1988 (38) E.L.T. 535= 1989 (3) S.C.C. 488.

Thus, we are required to examine the factual position which has been dealt with by the Tribunal bearing in mind the meaning of the word 'expression' occurring in Section 2(f) of the Act. As noted above, the question is whether affixing a bar code on

the goods by the assessee received from their suppliers would amount to 'manufacture'. The Tribunal has examined the factual matrix and found that it is an admitted fact that the assessee does not indulge in activity of packing or repacking, labelling or re-labelling of the footwear and it is also admitted that the assessee does not adopt any treatment of the goods to render the product marketable to the consumer which is evident from the fact that they purchased the footwear from individual suppliers on negotiated prices to deliver the same to the assessee in boxes with printing of MRP on boxes and footwear and description in the form of a bar code etc. This process was examined by the Tribunal and it was rightly pointed out that bar code is nothing but optical machine readable representation of the data which shows certain data on certain products and such bar code can be read only by an optical scanner, called as the bar code readers using special software by affixing a bar code on the goods but does not give any additional information to the customers as the said bar codes are only readable by machine.

Further, it was pointed out that it is a matter of record that a bar code which is affixed by the assessee is only representing the data which is already present on the card board box supplied by the supplier and in the absence of such a bar code the footwear is marketable to the customers, more particularly to the shops in the rural areas which do not have bar code scanner and the said footwear are sold without scanning of the said bar code.

The learned Tribunal followed a decision of the Coordinate Bench of the Mumbai Tribunal in the case of *Rafique Mallick Vs. Commissioner of Central Excise, Mumbai-I*

reported in 2006 (193) E.L.T. 200(Tri-Mumbai) wherein the learned Tribunal followed the decision in the case of *Commissioner of Central Excise Vs. Manisha International* [2003(152) E.L.T. 345], & *Avon Beauty Products (India) P. Ltd.* reported in [2002(83) ECC 522] & *Panchsheel Soap Factory* reported in [2002(145) E.L.T. 527], *Lal International Pvt. Ltd.* reported in [2003(154) E.L.T. 520]; which were relied on by the Revenue and it was held that those decisions will not assist the case of the Revenue as in the said case of *Rafique Mallick*(Supra). It is only MRP simplicitor with bar code, labels and logos were being placed.

The decision in *Rafique Mallick*(Supra) was appealed against before the High Court of Bombay and we are informed that this issue was not one of the questions which were admitted for consideration in the said appeal.

Thus, considering the undisputed facts as noted by the learned Tribunal, we are fully convinced that the learned Tribunal rightly allowed the assessee's appeal and granted relief.

Thus, we find no grounds to interfere with the impugned order.

Accordingly, the appeal fails and is dismissed.

Substantial question of law is answered against the Revenue.

When the appeal was admitted, the interim order passed on 23.11.2011 directing the bank guarantee furnished by the assessee to be returned by the authority and the money which is so refunded will be received by the assessee and the amount has to be said apart and should not be appropriated.

In the light of the above order dismissing the appeal, the interim direction given by the Hon'ble Division Bench in the order dated 23.11.2011 stands vacated and the assessee is free to appropriate the said amount which was refunded and set apart.

(T.S. SIVAGNANAM, CJ.)

(CHAITALI CHATTERJEE (DAS), J.)