IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE

TRIBUNAL, KOLKATA

EASTERN ZONAL BENCH: KOLKATA

1-5) Appeal Nos. E/499, 500, 501, 502 & 504/10

(Arising out of Order-in-Original No.CCE/COMMR./KOL-I/ADJN./NO.3/2010 dated 30.03.2010 passed by the Commissioner of Central Excise, Kolkata-I.)

1) M/s.Hitachi K.K.Manufacturing Co.

2) Shri Rajendra Prahladka, Partner

3) Shri Om Prakash Prahladka, Partner

4) Shri Vijay Prahladka, Partner

5) Shri Chandra Prakash Prahladka, Partner

Applicant (s)/Appellant (s)

Vs.

Commissioner of Central Excise, Kolkata-I

Respondent (s)

Appearance:

Shri A.K.Bhattacharjee, Consultant for the Appellant (s)

Shri S.S.Chattopadhyay, Supdt.(AR) for the Revenue

CORAM:

HONBLE SHRI JUSTICE (DR.) SATISH CHANDRA, PRESIDENT

HONBLE SHRI DEVENDER SINGH, MEMBER(TECHNICAL)

Date of Hearing/Decision :- 20.03.2017

ORDER NO.F/O/75293-75297/2017

Per Shri Justice (Dr.) Satish Chandra.

Present appeals have been filed against Order-in-Original No.CCE/COMMR./KOL-I/ADJN./NO.3/2010 dated 30.03.2010. The period of dispute is 2004-05 to 2006-07.

2. Brief facts of the case are that during the period under consideration, the appellant firm was engaged in the manufacturing and sale of handcraft items. Few items were given on the job-work basisto outside units/individuals. A few items were manufactured by the appellants. The lower authorities had combined the value of both the items which were manufactured by themselves and also which were obtained from outside on the basis of job-work. Thus, by clubbing the turnover, the S.S.I. Exemption was denied. Being aggrieved the appellant has filed the present appeal.

3. With this background, we heard Shri A.K.Bhattacharjee and Shri S.S.Chattopadhyay, ld.Counsels for the parties.

4. After hearing both the parties and on perusal of record, it appears that during the period under consideration, the appellant was manufacturing salable goods. Some goods were obtained by supplying the raw materials to outside individuals/units. Thus the items were obtained on job-work basis.

5. It may be mentioned that Honble Supreme Court in the case of Ujagar Prints, ETC. ETC. v. Union of India & Others [1988 (38) ELT 535 (SC)] has observed that :-

37. One more aspect will have to be reiterated. Computation of the assessable-value is one question and as to who should be liable for the same is another. Duties of excise are imposed on production or on manufacture of goods and are levied upon the manufacturer or the producer in accordance with the relevant rules. This is quite independent of the ownership of goods. It is, therefore, necessary to reiterate that the value for the assessment under Section 4 of the Act will not be the processing charge alone but the intrinsic value of the processed fabrics which is the price at which the fabrics are sold for the first time in the wholesale market. The rules are clear on the computation of that value. If the valuation is made according to the rules as adumbrated in Empire Industries (supra) and as clarified by my learned brother in this judgment no difficulty should arise.

6. From the above, it is evident that job-worker has been considered as manufacturer and the value of the goods will be considered in his hand.

7. Hence, as per the ratio laid down by the Honble Supreme Court, the value of the goods obtained on the job-work basis cannot be included into the turnover of the appellants. By excluding this value the items manufactured by the appellants comes below the limit prescribed for the S.S.I. Exemption. When it is so, then we set aside the impugned order.

7. In the result, the appeals filed by the appellants are allowed with consequential relief, if any.

(Dictated and pronounced in the open court.)

Sd/

(Justice Dr. Satish Chandra)

President

Sd/

(Devender Singh)

Member(Technical)