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

Excise Appeal No. 87320 of 2013

(Arising out of Order-in-Appeal No. BR(11)MV/2013 dated 26.02.2013 passed by the Commissioner of Central Excise (Appeals), Mumbai-I)

Ginza Industries Ltd. **Appellant**
A-501/502, Lotus Corporate Park,
Jay Coach Lane, Off Western
Express Highway,
Goregaon (E), Mumbai 400 063.

Vs.

Commissioner of Central Excise, Mumbai-V **Respondent**
5th Floor, Utpad Shulk Bhavan,
Plot No. C-24, Block 'E',
Bandra Kurla Complex,
Bandra (E), Mumbai 400 051.

Appearance:

Ms. Pooja Reddy, Advocate, for the Appellant
Shri C.S. Vinod, Assistant Commissioner, Authorised Representative for Respondent

CORAM:

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

Date of Hearing: 24.09.2024
Date of Decision: 25.10.2024

FINAL ORDER NO. 86253/2024

PER: ANIL G. SHAKKARWAR

Brief facts of the case are that the appellant was engaged in the manufacture of branded readymade garments. The same were exempted from payment of central excise duty through a notification bearing No. 30/2004-CE dated 09.07.2004. The said notification was amended through Notification No.12/2011-CE dated 01.03.2011 by which the branded readymade garments became leviable to central excise duty. After the said goods were brought into levy of central excise duty, on 04.03.2011, appellant registered themselves with Central Excise Department. On 26.04.2012 appellant was issued with a show cause notice stating that during the course of scrutiny of ER-1 returns filed by the appellant for the months of April, May June and July 2011, it was observed that the appellant had effected clearance of branded readymade garments without payment of central excise duty. Therefore, enquiries were initiated. Appellant through their letter dated 22.12.2011 mentioned the details of the goods which were manufactured before 28.02.2011 and informed that the said goods were cleared during the months of April to July 2011 and since they were manufactured before issue of Notification No.12/2011-CE dated 01.03.2011 they did not pay any central excise duty. Not appreciating the contention of the appellant, the said show cause notice was issued to the appellant demanding central excise duty amounting to Rs.12,71,692/- in respect of goods that were cleared by the appellant without payment of duty during the months of April 2011 to July 2011 which were claimed by the appellant of having been manufactured before 28.02.2011 when there was no levy of central excise duty on branded readymade garments. On contest, the said show cause was adjudicated. Learned original authority has taken date of removal into consideration and not the date of manufacture and confirmed the demand and imposed penalty of Rs.6,35,846/-. Aggrieved by the said order, appellant preferred appeal before Commissioner (Appeals) who did not interfere with the original order. Aggrieved by the said order-in-appeal, appellant is before this Tribunal.

2. Heard the learned counsel for the appellant. Learned counsel for the appellant has submitted that the goods which were manufactured before 28.02.2011 were divided into two groups. One group was cleared on payment of duty of Rs.2,11,576/- during the month of March 2011. Subsequently the appellant filed application for refund of the said duty paid, which was rejected by the original authority and ultimately the matter was carried before this Tribunal which was decided through final order No. 87076/2023-CE dated 01.11.2023 and further stated that ultimately this Tribunal through the said final order had directed to pay the refund holding that there was no authority to levy duty and, therefore, eligibility for refund was upheld. Learned counsel for the appellant has submitted that the other group is subject matter of this appeal and on the similar grounds the goods which are subject matter of present

appeal are also not required to be subjected to levy of central excise duty in view of the fact that they were manufactured before the date on which levy of central excise duty was extended to branded readymade garments. Learned counsel has further submitted that the goods were manufactured before introduction of levy and, therefore, did not attract central excise duty.

3. Learned AR has supported the impugned order.

4. We have carefully gone through the record of the case and submissions made. There is no dispute that the subject goods were manufactured before 28.02.2011 and the branded readymade garments were brought into central excise levy with effect from 01.03.2011. Central excise duty is on manufacture. The collection of duty is deferred from the point of incidence till the goods are cleared from the factory for the purpose of administrative convenience. Undoubtedly subject goods were manufactured during the period when there was no levy of central excise duty on the said goods. We, therefore, set aside the impugned order and hold that the subject goods were not leviable to central excise duty in terms of exemption Notification No.30/2004-CE dated 09.07.2004.

5. We, therefore, allow the appeal.

(Order pronounced in the open court on 25.10.2024)

(Anil G. Shakkarwar)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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