

**Rule 10A of Valuation Rules .... Appellants purchased raw materials for manufacture of moulded furniture from approved suppliers of the customers ..... Prima facie appellant is not covered by definition of 'job worker'..... Stay granted: CESTAT**

**NEW DELHI, FEB 27, 2013:** THE appellant manufactures plastic moulded furniture for *M/s. Neelkamal Limited* . In terms of agreement moulds for manufacture of furniture are supplied by *M/s. Neelkamal Limited* and the appellant procures raw materials from the manufacturer specified and approved by *M/s. Neelkamal Limited* . Plastic furniture is supplied by the Appellant to *M/s. Neelkamal Limited* at the price determined in terms the of pricing formula as specified in the agreement which is based on the cost of raw material including freight plus conversion cost at the rate of Rs.9.50 per kilograms weight of the moulded furniture plus excise duty as applicable. The appellant were discharging duty liability on the plastic moulded furniture manufactured by them and supplied to *M/s. Neelkamal Limited* on the above mentioned contract price.

The department took a view that the valuation has to be arrived at in terms of Rule 10A of Valuation Rules, 2000 inasmuch as the appellant is required to pay duty on the price at which the moulded furniture was sold by *M/s. Neelkamal Limited* .

Two demand notices dated 23.12.2010 and dated 27.01.2011 were issued to the appellant for demands of short paid duty amounting to Rs.96,89,812/- and Rs.16,98,957/- for the period March, 2007 to December, 2009 and January, 2010 to September, 2010 respectively along with proposal for penalty and interest. The SCNs also proposed imposition of penalty on *Shri Gopal Krishan Gupta*, Director of the appellant company under Rule 26 of the Central Excise Rules, 2002.

Interestingly, although the provisions of rule 10A came into effect from 01.04.2007, the department applied the same even in respect of the clearances made during the month of March, 2007. Quite likely that they missed the fine print that the notification 9/2007-CE(NT) dated 01.03.2007 inserting this rule 10A was to come into force from 01.04.2007.

Fortunately, the adjudicating authority viz. *CCE, Chandigarh-II* had his fundamentals clear to this extent and hence he dropped the demand raised for the month of March, 2007 of a whopping Rs.56,20,736/- (out of the demand of Rs.96,89,812/-) and confirmed the balance amounts involved in the two demand notices totalling Rs.57.68 lakhs. Equal penalty was also imposed along with interest. The Director of the company also saw a penalty of Rs.5 lakhs imposed upon him u/r 26 of the CER, 2002.

So, the appellant manufacturer and the Director are before the CESTAT with stay applications.

The appellant submitted that it is evident from the agreement between appellant and *M/s. Neelkamal Limited* that the appellant is principal manufacturer and is not

covered by the definition of "job worker", as given in explanation to Rule 10A of Central Excise Valuation Rules, 2002; that the transactions between and the appellant and *M/s. Neelkamal Limited* were on principal to principal basis; though plastic moulds were supplied by *M/s. Neelkamal limited*, and the appellant had taken CENVAT credit of duty paid in respect of those moulds, the moulds were later on returned to *M/s. Neelkamal Limited* after reversing of CENVAT credit; that though raw materials were being purchased by the appellant from the suppliers approved by *M/s. Neelkamal Limited* it is the appellant who were paying for raw material and hence in terms of definition of 'job worker', as given in the explanation to Rule 10A, the appellant cannot be treated as job worker, as they were not manufacturing plastic moulded furniture out of inputs supplied by the principal manufacturer or any person authorised by them. The Tribunal decision in *CCE, Hyderabad vs. M/s. Innocorp Ltd. and M/s. Dart Manufacturing India Pvt. Ltd.* was relied upon to buttress their contention that Rule 10A of the Valuation Rules could not be applied to the facts on hand and that they had a strong prima facie case for waiver of pre-deposit.

The Revenue representative referred to the various clauses of the agreement and submitted that the agreement had been deliberately drafted to give an impression that the transaction between the appellant company and *M/s Neelkamal Limited* was on principal to principal basis. Inasmuch as he submitted that the appellant should be made to make a pre-deposit.

The Bench observed -

*"5. We have considered the submissions from both sides and perused the records. Provisions of Rule 10A of Central Excise Valuation Rules are applicable to the excisable goods manufactured or produced by a job worker on behalf of principal manufacturer. Explanation to this Rule defines the term 'job worker' as a person engaged in the manufacture or production of goods on behalf of a principal manufacturer, from any inputs or goods supplied by the said principal manufacturer or by any other person authorised by him. Prima facie, we find that in terms of agreement, the appellant are required to purchase the raw materials for the manufacture of moulded furniture from the persons approved by M/s Neelkamal Limited and it is the appellant who make payment for the raw material. Therefore, it cannot be said that the raw materials have been supplied by M/s. Neelkamal Limited or their authorised persons. Therefore, prima facie, we are of the view that the appellant company are not covered by the definition of 'job worker' under Rule 10A and the provisions of this Rule would not be applicable. In similar circumstances, the same view has been taken by the Tribunal in the case of CCE, Hyderabad vs. M/s Innocorp Ltd. and M/s. Dart Manufacturing India Pvt. Ltd . (supra)."*

Holding that the appellants had made a case for waiver of pre-deposit, the Bench waived the same and stayed the recovery. The Stay applications were thus allowed.