CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Excise Appeal No. 21133 of 2015

(Arising out of Order-in-Original No. BEL-LTUNT-000-COM-003-2014-15 DT. 19/01/2015 passed by Commissioner Of Central Excise and Service Tax, LTU, Bangalore)

ABB India Limited,
Relabelling Factory,
Shed No.1, SY. No.64 and 72/2,
Opp. Himalaya Drugs, Golden SPA Road,
Heggadevanapura Village,
Bangalore 562 123.

Appellant(s)

VERSUS

Commissioner of Central Excise and Service Tax,
LTU,
Bangalore 560 085.

Respondent(s)

AND

Excise Appeal No. 21197 of 2015

(Arising out of Order-in-Original No. BEL-LTUNT-000-COM-004 & 005-2014-15 DT. 21/01/2015 passed by Commissioner Of Central Excise and Service Tax, LTU, Bangalore)

ABB India Limited,
SY. No.88/3 and 88/4,
Basavanahalli Village, Kasaba Hobli,
Nelamangala Taluk,
Bangalore 562 123.

Appellant(s)

VERSUS

Commissioner of Central Excise and Service Tax,
LTU,
Bangalore 560 085.

Respondent(s)

APPEARANCE:

Ms. Neethu James, Advocate for the appellant.
Shri Dyamappa Airani, Dy. Commissioner(AR) for the respondent.

CORAM:
HON'BLE Dr. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE Mrs. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20566-20567 / 2023

Date of Hearing: 16/05/2023
Date of Decision: 16/05/2023

Per : DR. D.M.MISRA

These two appeals are filed by the appellant against respective impugned orders passed by the Commissioner of Central Excise LTU, Bangalore. Since the issue involved in these appeals are common, even though pertaining to different units, these are taken up together for hearing and disposal.

2.1. The facts, common in all these appeals, are that the appellants are engaged in the manufacture of AC/DC drives, low voltage panels / switchgear and parts, Air Circuit Breakers (ACB), Miniature Circuit Breakers (MCB), Moulded Case Circuit Breakers (MCCB) etc. falling under Chapter 85 of Central Excise Tariff Act, 1985. The said goods are imported in bulk in large cartons called as Master Boxes and each of these large cartons contains several small boxes which in turn contains a unit number of product. On receiving the goods in their factory, the small boxes are removed from the big cartons for carrying out physical tests and thereafter these goods are packed in small boxes affixed a label on it and several such small boxes put together in separate cartons / master boxes and also affixed a label on the master box. The activity of repacking and relabelling carried out by the appellant in their factory amounts to manufacture in terms of Section 2(f)(iii) of the Central Excise Act, 1944 read with Sl.No.93 of the Third Schedule to the CETA, 1985. The appellant discharged duty at the time of clearance of the said goods from their factory wherever applicable.

2.2. Some of the packages bear the declaration that the same are meant for industrial consumers when cleared to industrial consumers. In respect of packages weighing more than 25 kgs, the appellant discharged duty under Section 4 of the CEA, 1944 on the transaction value and wherever packages weighing less than 25 kgs, the appellant cleared the goods on its MRP as per Section 4A of the CEA, 1944. Alleging that the goods weighing more than 25 kgs being sold through dealers, distributors and not directly to industrial consumers goods are assessable to duty under MRP under Section 4A, demand notices were issued to the appellants to their respective units viz. Heggadevanapura Village (appeal E/21133/2015) for the period from October 2013 to March 2014 demanding duty of Rs.51,46,131/- and Nelamangala Unit (appeal E/1197/2015) for the period from April 2013 to September 2013 and October 2013 to March 2014 demanding duty of Rs.1,83,20,947/- and Rs.2,29,26,789/- respectively. On adjudication, the demands have been confirmed for both these units by the respective orders passed by the Commissioner of Central Excise along with penalty and interest. Hence, the present appeals.

3. Learned advocate at the outset submitted that the goods such as AC/DC drives, ACBs, MCBs, relays etc. are meant only for industrial consumers which are cleared to the said consumers either directly or through the channel partners / distributors. The goods cleared to industrial consumers through channel partners if weighing less than 25 kgs, the same are assessed to MRP based assessment and wherever the weight was more than 25kgs, the duty was paid on the transaction value. It is her contention that merely because the goods are cleared to industrial consumers through channel partners but not directly cannot be subjected to MRP based assessment. She has further submitted that this issue has been considered by this Tribunal in their own

case of Nelamangala Unit for the period January 2008 to March 2012 and following the judgment of the Hon'ble Karnataka High Court in the case of EWAC Alloys Ltd. Vs UOI [2012 (275) ELT 193 (Kar.)], the demands were droped.

4. Learned AR for the Revenue reiterated the findings of the learned Commissioner.

5. Heard both sides and perused records.

6. The short issue involved for determination in the present case is whether the goods i.e. AC/DC drives, low voltage panels / switchgear and parts, Air Circuit Breakers (ACB), Miniature Circuit Breakers (MCB), Moulded Case Circuit Breakers (MCCB) etc. packed in cartons weighing more than 25 kgs and cleared to industrial consumers through channel partners / distributors be assessable under Section 4 or 4A of CEA, 1944.

7. The said issue need not dwell in much as after considering the relevant notifications and case laws on the subject in the appellant's own case for Nelamangala Unit, this Tribunal by order dt. 28/04/2022 held as follows:-

> *18. We find that it is not disputed that the impugned goods are intended for industrial*

consumers; the endorsement that they are for industrial use only is made on the packets and that they weigh more than 25 kg. The contention of the department is that when the clearance is through the channel partners, they are not excluded from the provisions of Legal Metrology Rules/Act. The appellants contend that as it is impossible for the manufacturers to reach all industrial and institutional costumers in every nuke and corner of the country, the goods are made available through their channel partners, in addition to direct sale to the consumers. We find that the dealer is not a individual consumer and the goods are routed through them to the industrial consumers. The department had no objection in case of very same goods cleared directly to the industrial consumers. Thus, there is an ambiguity in the treatment of the impugned goods by the department. It is the very same goods that are sold directly to the industrial consumers and also through channel partners. We find that such a treatment by the department defies logic as the nature of the goods is not changed just by the way they are sold. The characteristics, the usage and the users are not changed. We find that Hon'ble High Court of Karnataka has dealt with this issue in an elaborate manner and have concluded, as discussed above, that routing of the goods through dealers or intermediaries would not change the nature of the goods as long as they are not put to use by individual consumers. Going by the Technical Literature and the submissions of the appellant, we find that the goods are for industrial use only. Department has not shown any contrary evidence to show that the goods are used by individual consumers. Under the circumstances, we find that the ratio of the judgment of Hon'ble High Court of Karnataka in the case of Ewac Alloys (supra) is squarely applicable. Moreover, the appellants have contended that the amendment carried out in 2015, to include the sales through dealers also, was by way of substitution and that it has to be construed as if the words had been written into the Act or Rules ab initio. The appellants have also contended, relying on some decisions, as above, that when the goods are sold by weight, the Legal Metrology Rules would not apply even if they are sold otherwise in numbers. However, the issue being decided squarely by the Karnataka High Court as discussed above, there

> *is no need to go into the interpretations and other legal issues. In due deference to the same, we hold that the impugned goods having more than 25 kg in weight, are to be treated to be meant for industrial use, notwithstanding the fact that some of the sales are routed through channel partners.*

8. We do not find any reason to deviate from the above judgment of this Tribunal delivered in the appellant's own case for a different period in similar facts and circumstances. Consequently, the impugned orders are set aside and appeals are allowed with consequential relief, if any, as per law.

(Order Pronounced in open court on conclusion of hearing)

(Dr. D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

Raja...