CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

1st Floor, WTC Building, FKCCI Complex, K. G. Road, BANGLORE-560009

Regional Bench COURT-2

Excise Appeal No.1924 of 2012

[Arising out of the Order-in-Original No.19/2012 dated 28.03.2012 passed by the Commissioner of Central Excise, Bangalore.]

M/s. H&R Johnson (India) Pvt. Ltd., **.......Appellant**
7th Floor, Windsor, CST Road,
Kalina, Santacruz (East)
Mumbai – 400 098.

Versus

Commissioner of Central Excise, **.....Respondent**
Bangalore-II Commissionerate,
Central Revenue Buildings,
Bangalore – 560 001.

Appearance:
Mr. Syed Peeran, Advocate Appeared for Appellant
Mr. Mohammad Ibrahim, Advocate
Mr. Tushar Sharma, Advocate
Mr. Neeraj Kumar, Authorized Representative for Respondent

Coram:

Hon'ble Mr. P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

FINAL ORDER No. 20691 of 2024

Date of Hearing: 16.07.2024
Date of Decision: 16.07.2024

Per: P.A. Augustian

The issue in the present appeal is whether the method of valuation to be adopted for clearance of excisable goods to be under Section 4 or Section 4A of the Central Excise Act, 1944.

2. The Appellant is manufacturing ceramic glazed tiles falling under Chapter 69 of Central Excise Tariff Act, 1985. Alleging that the method of valuation adopted by the Appellant for the goods which are sold to industrial/institution buyers under MRP based valuation as per Section 4A of the Central Excise Act+, proceedings were initiated and Adjudicating authority confirmed demand of Rs.27,89,261/- with interest and also imposed penalty under different provisions of Central Excise Act, 1944. Aggrieved by the impugned order, present appeal is filed.

3. When the matter came up for hearing, learned counsel for the Appellant submits that the Appellant is manufacturing glazed Ceramic Tiles and the MRP for tiles sold by the Appellant is uniform, whether for sale to dealer or any person other than dealer. The MRP is uniform across all categories of buyers. There is no difference between products and MRP for sale to dealers and to any other persons including alleged industrial/institutions concerned. The Learned Counsel further submits that the issue is nor more Res-Integra and settled in favour of Appellant in their own case in **M/s H & R Johnson (India) Ltd Vs CCE, Raigad (2014 (306) E.L.T 465)** wherein it is held that:-

> *"5. We have carefully considered the submissions made by both the sides. We have also perused the sample purchase orders placed by some of the institutional buyers. From these documents, it is seen that the goods are required to be supplied in standard packages consisting fixed number of specified tiles. These packages are the same in respect of retail sale also and on these packages the appellant has declared the MRP. In other words, there is no difference in respect of packages of tiles sold to retail consumers or to the so-called institutional buyers and all of them are in standard packages, having MRP declared on them. It is also not in dispute that, on the packages, the appellant has not made any declaration that "the packages are not meant for retail sale or the packages are meant for use by any specified industry in the absence of such markings on the packages, it cannot be said that the goods supplied*

were not in retail packages. In their letter dated 23-2-2012 the Dy. Controller of Legal Metrology, Maharashtra has clarified that according to Rule 3 of Packaged Commodities Rules, 2011 the provision regarding mandatory declaration on retail packages are not applicable to the packages meant and marked as industrial/institutional consumers. Similarly, the Assistant Controller of Legal Metrology, Government of Karnataka, vide letter dated 24-2-2012 has clarified that institutional/industrial package does not bear the MRP marking but will have marking as meant for industrial/institutional consumer and not meant for retail sale. Similarly, Controller of Legal Metrology, Government of Gujarat has clarified that the only packages which bear clear markings meant for industrial consumer or meant for institutional consumer are excluded from the provisions of Packaged Commodities Rules and such packages should have a further marking that they are not meant for retail sale From these clarifications, which have been issued by the authorities implementing the Legal Metrology (Packaged Commodities) Rules, 2011, it is absolutely clear that the supplies made by the appellant to the various institutional buyers are not excluded from the declaration of MRP under the Packaged Commodities Rules. We cannot disregard these clarifications given by the competent authorities in the matter

5.1. We further observe that the Hon'ble Apex Court in the case of Jayanti Food Processing (P) Ltd. v. Commissioner of Central Excise, Rajasthan (supra), had clearly held that to come under the purview of Section 4A, the following conditions should be satisfied:

(i) The goods should be excisable goods:

(ii) They should be such as are sold in the package;

(iii) There should be requirement in the SWM Act or the Rules made thereunder or any other law to declare the price of such goods relating to their retail price on the package,

(iv) The Central Government must have specified such goods by notification in the Official Gazette; and

(v) The valuation of such goods would be as per the declared retail sale price on the packages less the amount of abatement.

In the said decision, the Hon'ble Apex Court further held that the material consideration for assessment under Section 4A is not the nature of sale but such sale should be in a package and there should be a requirement in the SWM Act or the Rules made thereunder for displaying MRP on such packages.

5.2 In the present case, the above stipulations are completely satisfied. This decision of the Hon'ble Supreme Court was also followed by the Tribunal in the case of Sagar Cements Ltd. (supra) where there was a bulk supply of cements in retail packages on which MRP was declared. This Tribunal held that such bulk supply would also come under the purview of Section 4A and the duty *liability has to be discharged under the said provision. The said decision was also affirmed by the Hon'ble Apex Court in ITEL Industries Pvt. Ltd. v. Commissioner of Central Excise-2004 (163) E.L.T. 219 case, telephones were supplied in bulk for exclusive use of the Department of Telecom, this Tribunal held that duty liability discharged under Section 4A is correct as there was no exemption from packaging indicating special use by any industry.*

5.3 In view of the above, we are of the considered view that, in the present case also, the same ratio would apply. Accordingly, we hold that the discharge of duty liability tiles supplied in retail packages to real estate developers/developers, etc., has to be made under Section 4A of the Central Excise Act, 1944. Therefore, the impugned demands are not sustainable in law and accordingly, we set aside the same".

4. The Tribunal held that discharge of duty liability of tiles supplied in retail packages to real estate developers/developers, etc., has to be made under Section 4A of the Central Excise Act, 1944. Further, the above decision of the Tribunal was upheld by the Supreme Court reported in - **2015 (319) ELT A227 (S.C.)**.

5. The Learned Counsel relied on various decisions including following :-

a. Unipatch Rubber Ltd. v. CCE, Indore
[2017 (347) ELT 315(Tri-Del)]
b. Mexim Adhesive Tapes Pvt. Ltd. vs. CCE, Daman
[2013(291) ELT 195(Kar)]
c. Daenyx International Pvt. Ltd. vs. CCE, Noida
[2008(229) ELT 682(Tri.-Del.)].

6. Learned Authorized Representative (AR) reiterated the finding in the impugned order and also relied the decision of the Hon'ble Supreme Court in the matter of **M/s Jayanthi Food Processing Pvt Ltd -2007 (215) E.L.T 327 (SC).**

7. Heard both sides, and perused the records.

8. The issue is squarely covered by the Tribunal in Appellant's own case, where the Tribunal held that discharge of duty liability of tiles supplied in retail packages to real estate developers/developers, etc., has

to be made under Section 4A of the Central Excise Act, 1944, which was upheld by the Hon'ble Supreme Court.

9. Following the same, the appeal is allowed with consequential relief if any, in accordance with law.

(Dictated & pronounced in the open court)

(P.A. Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

Ganesh