CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

E/319/2008-DB

[Arising out of Order-in-Appeal No. 20/2008-CE dated 30/01/2008 passed by the Commissioner of Central Excise, Customs and Service Tax (Appeals), Cochin.]

M/s. STAR PLASTICS
MULLURKKARA P.O
THRISSUR DIST – 680 583

Appellant(s)

Versus

Commissioner of Central Excise,
Customs and Service Tax CALICUT
CENTRAL REVENUE BUILDING,
MANANCHIRA, CALICUT,
KOZHIKODE, - 673001
KERALA

Respondent(s)

Appearance:

None
VMJ ASSOCIATES
#79, 17TH CROSS,
MALLESWARAM,
BANGALORE - 560003
KARNATAKA

For the Appellant

Mr. N. Jagadish, AR

For the Respondent

Date of Hearing: 04/07/2018
Date of Decision: 04/07/2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 20894 / 2018

Per : P. ANJANI KUMAR

The appellants had cleared PVC adhesive to different states adopting different Retail Sale Price (RSP) values for each state. The Department has raised a demand of Rs.7,96,148/- and also imposed equal penalty under Section 11AC alleging that the highest value of all the retail sale price should be adopted for the assessment. The show-cause notice was confirmed vide Order-in-Original No.23/2006 dated 25.9.2006 and was upheld by Order-in-Appeal No.20/2008-CE dated 30.1.2008. Hence, the present appeal.

2. None appeared on behalf of the appellants but they have submitted the written submissions.

3. The appellants have contended that they are selling goods in different states depending on the sales tax and other local taxes structure in the different states and the RSP would understandably different in different states. However, in cases where the RSP was differently used for the same state, they are acceptable to the contention of the Department and had voluntarily paid the differential duty of Rs.3,53,148/- and Education Cess of Rs.7,063/- along with interest on account of showing sales tax extra on the containers for the period June 2005 to August 2005. They have prayed that duty to the extent of Rs.4,43,000/- and Education Cess of Rs.6,739/- along with

interest and penalty of Rs.7,96,148/- must be set aside. They have relied upon the following judgments:

- *Gujarat Gold Coin Ceramics Ltd. s. CCE: 2008 (223) ELT 556*
- *CCE vs. Vadodara vs. BELL Granito ceramics Ltd.: 2009 (235) ELT 171*
- *AMTREX Hitachi Appliances Ltd. vs. CCE, Vapi: 2009 (236) ELT 203*
- *CCE, Vapi vs. Godrej Appliances: 2009 (237) ELT 341*

3. The Departmental Representative has reiterated the findings of Order-in-Original and Order-in-Appeal.

4. On perusal of records, it is seen that in the instant case the appellants have been given a notice as to why duty on Maximum Retail Price (MRP) basis under Section 4A of the Central Excise Act, 1944 should not be demanded on the highest of such MRPs used by them. We find that in terms of Explanation (b) under sub-rule (4) of Section 4A where different retail sale prices are declared on different packages for the sale of any excisable goods in packaged form in different areas, each such retail sale price shall be the retail sale price for the purposes of valuation of the excisable goods intended to be sold in the area to which the retail sale price relates. We find that as long as the area to which such retail sale price relates is mentioned on the packages, different retail sale prices for different areas can be allowed. To this extent, we find that the appellant's contentions are

acceptable. Regarding the duty liability already accepted by the appellants, we find that in terms of Explanation 2(a) to Section 4A(4) where on the package of any excisable goods more than one retail sale price is declared, the maximum of such retail sale prices shall be deemed to be the retail sale price for the purpose of this Section. Wherever the appellants have used more than one MRP for a specific state, we hold the department's contention that highest of such MRP should be taken into account for charging the duty. The appellants have pleaded that duty to the extent of Rs.4,43,000/- and Education Cess of Rs.6,739/- along with interest and penalty of Rs.7,96,148/- be set aside. However, looking into the fact that the appellants have accepted the duty liability of Rs.3,53,148/- and Education Cess of Rs.7,063/- and have paid it along with interest and have not raised any objection on the extended period involved in the show-cause notice, we find that the appellants are liable to pay duty of Rs.3,53,148/- and Education Cess of Rs.7,063/- along with interest and equivalent penalty under Section 11AC of the Central Excise Act, 1944.

5. In view of the above, the appeal is allowed to the extent of setting aside the duty of Rs.4,43,000/- and Education

Cess of Rs.6,739/- and penalty imposed under Section 11AC to the extent of Rs. 4,43,000/-.

(Operative portion of the Order was pronounced
in Open Court on **04/07/2018**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

rv...