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

Application(s) Involved:

E/CROSS/79/2011 in E/84/2010-DB, E/1139/2009-DB

Appeal(s) Involved:

E/84/2010-DB, E/1139/2009-DB

[Arising out of Order-in-Original No. 1/2009 to 12/2009
dated 24/08/2009 passed by Commissioner of Central Excise
(Adjudication), Bangalore]

Commissioner of Central Excise,Customs and Service Tax Bangalore-i
POST BOX NO 5400...CR BUILDINGS,
BANGALORE, - 560001

Appellant(s)

Versus

Shri. A.dayanithi, MD
M/s. Monolisa Interior Decorators Pvt. Ltd.,
No.19, St. john S Road, Bangalore.-42

Respondent(s)

Monalisa Interior Decorators Pvt. Ltd
No.19 St., john`s Road, Bangalore-42

Respondent(s)

Appearance:

Dr. J. Harish, Joint Commissioner, AR

For the Appellant

Shri K.PARAMESWARAN, ADV
FLAT NO.101, SURAJ SADAN, NO.23, II CROSS, (RAMACHANDRA ROAD)
GANDHINAGAR, BANGALORE -560 009

For the Respondent

Date of Hearing: 20/02/2019
Date of Decision: 20/02/2019

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER

HON'BLE MR. SANJIV SRIVASTAVA, TECHNICAL MEMBER

Final Order No. 20184-20185 / 2019

Per : SANJIV SRIVASTAVA

These two appeals have been filed by the Revenue against the Order-in-Original No. 01/2009 to 12/2009 dated 24.08.2009 passed by the Commissioner of Central Excise (Adjudication), Bangalore.

2.1 By the said order, the Commissioner passed in remand proceeding as per CESTAT Final Order No. 878 to 890/2008 dated 25.07.2008 dropped all the SCNs issued to the respondents.

2.2 The Revenue has filed these appeals challenging the order of the Commissioner stating as follows:

"*In the case of M/s. Craft Interior Vs. Commissioner of Central Excise, Bangalore vide its order 852-868/2008 dated 24.06.2008, the Tribunal allowed the appeal of the noticee on satisfying the test laid down by the Hon'ble Supreme Court, i.e. the items cannot be dismantled without cannibalization. The CESTAT is the final fact finding authority and the issue was decided in favour of the party only on verification of the facts in that particular case. Therefore, the ratio of the Craft Interior case cannot be made applicable to all the instances wherein items are assembled at the customers' premises. The CESTAT after verifying the facts of that particular case before the Bench had come to the conclusion that the goods in question in that particular case could not have been dismantled without cannibalization. This ratio is applicable only to that case since the facts of each case can be different. In fact, even if the same category of goods belonging to the same party that were impugned before the Tribunal, were assembled in another premise, and if such goods would have been dismantled without cannibalization, then, even such goods would have been liable to duty. This is on account of the fact that the test as laid down by the Hon'ble Supreme Court has not been fulfilled. As such, the Commissioner (Adjudication) should have examined each and every item and subjected these items to the test as laid down by the Supreme Court. On examination of the findings of the order under review, it is seen that the Commissioner (Adjudication) has not followed this test. The findings of the*

Commissioner (Adjudication) in this connection regarding various items manufactured by the noticee are reproduced below:

Workstation:

Regarding the excisability of workstations the learned adjudicating authority has held the following:

"The workstations do not come within the ambit of furniture as understood in trade parlance. It is more a part of the immovable structure. They cannot be removed without cannibalizing them. Therefore, I hold that the demand on such workstations does not sustain."

From the above, it may be seen that the basis for holding as to how the workstations are immovable or cannot be removed without cannibalization, is not explained by the Commissioner (Adjudication). It is not at all clear as to how the test laid down by the Supreme Court has been satisfactory with respect to the workstations. The Commissioner (Adjudication) has not explained as to how he has satisfied himself of the fact that the workstations in question cannot be removed without cannibalization.

Credenza:

When the Commissioner (Adjudication) remarks that there are three versions of the assessee as to what is the item credenza, he has not given any findings to establish whether this would satisfy the test laid down by the Supreme Court. That apart, he has further held that these are bought out items and should be excluded. However, bought out items if supplied along with other items should form part of the value of assessment for the purpose of levy of Central Excise duty.

Bought out items:

The adjudicating authority has held that sofas, stands, keyboard trays, drawer unit, tables and parts of furniture like panels table tops and drawer units being bought out items cannot be excisable. As for such items manufactured by the noticee the same are entitled to SSI exemption, held the adjudicating authority.

A bought out item cannot be non-excisable. The only question is the includability or otherwise of these items in the transaction value. If the bought out items are supplied along with other items manufactured by an assessee, then the value of such bought out items should also be included in the assessable value. Therefore the adjudicating authority has erred in concluding that the bought out items are not excisable and are outside the purview of levy of Central Excise duty. As for such items manufactured by the noticee, the adjudicating authority has held that though liable to duty, these items are entitled to exemption notification issued on the basis of value of *clearances. When the other items are chargeable to duty as held herein before, there is no question of extending the benefit of such a notification to the items manufactured by the assessee which are akin to the bought out items.*

2.3 Though the appeal separately discusses each of the item separately, we have only taken discussion in the appeal in respect of three items for testing the preposition made by the appeal in respect of consideration and non-verification on sample basis.

3.1 We have heard Dr. J.Harish, Ld. AR for the Department and Shri K. Parameswaram, Advocate for the respondents.

3.2 Arguing for the Revenue, the Ld. AR reiterated the submissions made in the appeal and stated that Commissioner had passed the order without verifying the relevant facts as we need to be done in terms of the Supreme Court Judgment in Civil Appeal Nos. 5823-5832 of 2005, decided on 31.10.2006 in the case of M/s. Craft Interiors Pvt. Ltd and remand the order of the Tribunal. Since Commissioner has not caused necessary verifications, the order of the Commissioner proceeding to be set aside.

3.3 Arguing for the respondents, the Ld. Counsel took us to various paragraphs in the order to show that Commissioner has caused necessary verifications even by getting things verified at the premises of the respondents. Since necessary verifications have been caused, in his view, the order of Commissioner is well-reasoned and should be sustained in law. Accordingly, he requests that appeals should be dismissed.

4.1 We have considered the submissions made in appeal and during the course of arguments.

4.2 As indicated in the para 2.3 supra few items have been considered in the appeal filed by the Revenue. The findings of the Commissioner in respect of three items referred in para 2.3 are as follows:

> *"It would be necessary to examine the process of manufacture of the disputed items as M/s. Monalisa contended that the workstations, partitions, storage units, tables etc. Came into existence, piece by piece, at the site of the customers and were permanently embedded/fixed to the ground etc. And were in the nature of immovable property. As the investigation has not given the process of manufacture, I am relying on the process of manufacture as given by the company in their replies to the SCN issued by the DGCEI. The statements given under Section 14 of the Central Excise Act and the photographs & CDs provided by them and other evidence on record. I consider any alteration to the facts at a later date as an afterthought, which does not reflect the true and correct factual position. Also, as the items fabricated and installed were of varied sizes and dimensions, while dealing with the process of manufacture as given by the company, I shall be taking up only illustrative examples as it would not be possible to refer to the manufacturing process with reference to all of the articles fabricated at all the sites."*

WORKSTATIONS:

To the question as to what is a workstation, Shri Parashuraman, Manager at the factory in his statement dated 27.6.2000 stated as follows: "Workstation refers to office furniture system. It consists of tables, partitions, and drawers. The tabletop removed from the factory will be placed on panels as per the design of the workstation. The drawer units are also placed as per design. The tabletops, panels and drawer units are placed to constitute workstation". From the records before me, it is seen that a workstation can be broadly defined to be a work area separately enclosed by low height partitions / panels which contains a work desk / table top / work surface, with or without drawer units, cabinets, key board trays or pin up boards etc. One grievance of M/s. Monalisa is that the department has not made an effort to distinguish between modular workstations and site made workstations. M/s. Monalisa contends that a modular workstation is one which is completely factory made and is brought to the site as different components to be assembled overnight. It is their contention that they are not manufacturers of Modular workstations. In their opinion, few supplies made of workstations which are modular workstations cannot be considered as excisable goods and in any case the said turnover including with the other goods would be below the SSJ Exemption limit as was relevant at that point of time. In their final reply dated 27.7.2009, the Company has argued that the dismantling of workstation would result merely in scrap. Workstations which are site made cannot be considered as excisable as they cannot be removed from the place where they are fabricated and installed as permanent fixtures and if they are to be removed they will have to be dismantled by cannibalization and hence cannot be considered as excisable goods or for that matter as furniture, but would be clearly in the nature of fixtures. They have placed reliance on the decision rendered in the case of Craft Interiors Ltd. Vs. CCE, 2005 (70) RLT 445 wherein it was held *that such site made workstations have been clearly and categorically held as not excisable. Further, it is only the assessee who went in appeal and the department did not file any appeal against the said order. And for this reason alone, it will become clear that all the workstations erected at site cannot be considered as furniture, since they are permanently fastened to the buildings/floors/walls and are not excisable goods. The Noticee Company has also submitted various evidences including the affidavit of independent architect, the concerned personnel of the customers who are involved with the project etc., thereto. Further, the record of cross examination and even the fact that an officer of the department was deputed to a few of the sites and also other evidences in the form of photographs, CDs etc., would establish prima facie that the site made workstations cannot be considered as excisable goods but would be only in the nature of fixtures thereto. Moreover, no evidence of any nature has been adduced by the Revenue/Department to consider them as excisable goods. The site-made workstations cannot be considered as furniture as they are in the nature of fixtures which can be dismantled by cannibalization and not in any other manner thereto and hence are not excisable in view of the Supreme Court Judgment in the case of M/s. Craft Interiors Ltd. Vs. CCE, 2006 (203) ELT 529 (SC), wherein such site-made workstations have been clearly and categorically held as not excisable.*

CREDENZA:

*A credenza according to the Oxford Dictionary is **a** sideboard or **a** Clipboard. M/s Monalisa have in their reply to the SCN No. 150/2001 dated 18.12.2001 submitted that the same was small in size and was a loose item of furniture, movable but not marketable. At other places they have replied that we credenza was an integral part of the table and since they were site made &*

Permanently to the floor etc., they were not excisable. They have submitted in their reply dated 27.7.2009 that it is a bought out item which have l)en supplied as part of interior decoration jobs undertaken and cannot be considered as excisable in the hands of the Noticee Company as they have *been only bought out and sold. Thus the entire value relating to such bought out items will have to be totally excluded thereto.*

The Noticee argued that the item is permanently fixed and considering the sic and nature of the items involved cannot be considered as furniture which is movable or marketable and no evidence of any nature which can be considered as furniture which is movable or marketable can be considered as fulfilling the Lest laid down by the Hon'ble CESTAT in the case ***of Craft Interiors Vs. CCE reported in 2006 (203) ELT 529,*** *has been adduced by the department to substantiate this aspect. They argued that, credenza counters etc, could not be equated with general articles of furniture available in the market with the same name and this aspect of the matter accordingly should have been considered as vital and determinative test and the same not having done would itself establish that they cannot become excisable goods which are movable there. They argued that broad and practical principle should be adopted in respect of the each item, as they cannot be considered as excisable goods merely based on the nomenclature.*

BOUGHT OUT ITEMS:

such as sofas ***stands, keyboard trays, drawer unit, tables & par furniture like panels, tabletops, drawer units*** *being bought but item cannot be excisable again. As for such items manufactured by the noticee, the same are entitled to SSI exemption.*

"33. The workstations, storage units, tables, sofas, stands, key board trays, drawer units, shelf and panels, table tops, drawer units which are parts of interior decoration job undertaken by the noticee and are part and parcel of the complete structure which are un-removable without cannabilization. All these items have not been procured for further sale. Therefore, I agree with the contention of the Noticee and hold that the above bought out items are in the nature of fixtures and the entire value relating to such bought have been excluded. Their activities amounted to

Service as Interior Decorators/ Construction Service as evidenced by the assessee by submitting a copy of the Service Tax Registration dated 28.9.2004 and a copy of the TR 6 Challan dated 28.2.2005 for having paid service tax for the period from 1.9.2004 to 3 1.1.2005 for the impugned types of jobs as works contract, ***as also accepted by the Department by registering them as Interior Decorators/ Construction*** *Service* ***Providers. As for the Service Tax, I am not in a position to say whether the same was alternatively safeguarded or not, Nor the same subject matter of the impugned show cause notices."***

5.1. From the above examination on sample basis, we find that Commissioner has aptly considered the items for purpose of holding whether the processes under taken amount to manufacture as per the test laid down in the order of Hon'ble Supreme Court in case of Craft Interiors referred above. However in their appeal revenue has failed to consider the complete findings recorded by Commissioner in respect of each item.

5.2. Accordingly, we do not find any merits in the appeals filed by the Revenue and dismiss the same upholding the order of the Commissioner.

(Operative portion of the Order was pronounced
in Open Court on **20/02/2019**)

SANJIV SRIVASTAVA
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

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