

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
SCO 147-148, SECTOR 17-C, CHANDIGARH-160017

DIVISION BENCH

Court-I

Appeal No.E/31-33/2009 & E/1232/2009

(Arising out of OIA No.244-246/ANS/GGN/2008 dt.7.11.2008 and
OIA No.100/ANS/GGN/2009 dt.6.4.2009 passed by the Commissioner
of Central Excise, Delhi-III, Gurgaon)

Date of hearing/Decision: 22.02.2019

M/s. Hero Honda Motors Ltd.

Appellant

Vs.

CCE, Delhi-III

Respondent

Present for the Appellant: Shri P.K.Ram , Advocate

Present for the Respondent: Shri H.Singh, AR

Coram: Hon'bleMr. Ashok Jindal, Member (Judicial)

Hon'bleMr.Bijay Kumar, Member (Technical)

FINAL ORDER NO. 60255-60258/2019

PER: ASHOK JINDAL

The appellant is in appeal against the impugned order wherein the duty has been demanded from the appellant, namely, M/s. Hero Honda Motors Ltd. and penalty on all the appellants have been imposed.

2. The facts of the case are that the appellant is spare parts division of M/s.Hero Honda Motors Ltd. The appellant is procuring spare parts of motor cycle namely, fuse, relay complete winker, relay complete starter, socket complete, socket assembly of head light, position light, tail light, left and right winker in bulk and selling them after packing in individual packets with their brand and logo and putting the MRP of the item on each pack. The appellant purchases these spare parts from the manufacturers and also sells

the spare parts to its dealers by re-packing, labelling and declaring the retail sale price. A show cause notice dt.15.5.2006 for the period 1.3.2003 to 30.11.2005, was issued to classify the spare parts under sub heading 85.36 of the Tariff Act as spare parts division does re-packing, labelling and it amounts to manufacture under Section 2(f) (iii) of Central Excise Act, 1944 read with the Third Schedule (Serial No.92) and assessment on the basis of MRP under Section 4A of the Act. The show cause notice was adjudicated, demand of duty alongwith interest and penalties on all the appellants were imposed. Against the said order, the appellant are before us.

3. Ld. Counsel for the appellants submits that the classification cannot be changed at the buyer end. To support his contention, he relied on the following decisions:-

- (a) Sarvesh Refractories Pvt.Ltd. vs. CCE-2007 (218) ELT 488 (SC)
- (b) Tata Oil Mills Co.Ltd.vs.CCE-1997 (91) ELT 144 (Tri.)
- (c) CCE vs. Hindustan Lever Ltd.-2000 (121) ELT 437 (Tri.)
- (d) CCE vs. Pawan Ispat Udyog-2007 (213) ELT 134 (Tri.).

4. He further submits that it is settled law that the classification of a product has to be done by the jurisdictional officer in charge of the manufacturing unit. The officer in charge of recipient unit cannot be allowed to sit in judgment over the classification already determined by the officer in charge of the manufacturing unit. To support his contention, he relied on the decision of this Tribunal in the case of Shankarrao Mohite SSG Ltd. vs. CCE, Pune-2014 (314) ELT 649 and CCE vs. GKW Ltd.-2014 (308) ELT 759. Therefore,

he prayed the impugned order is to be set aside and appeals are to be allowed.

5. On the other hand, Ld.AR reiterated the findings in the impugned order.

6. Heard the parties and considered the submissions.

7. On careful consideration of the submissions made by both sides, we find that the fact which has not been disputed by the appellant that the appellant is doing packing, repacking and affixing MRP on the spare parts received after manufacturing by the suppliers. In terms of Section 2(f) (iii) of Central Excise Act, 1944, the activity undertaken by the appellant amounts to manufacture, when the activity undertaken by the appellant amounts to manufacture, therefore, after manufacturing the goods which emerge to be classified. Therefore, it is not the question of change of classification of the goods. In fact, when the activity undertaken by the assessee amounts to manufacture then the goods are to be classified correctly as per Third Schedule. Therefore, we hold that the adjudicating authority has correctly re-classified the goods.

8. We further take note of the fact that the Ld. Counsel for the appellants relied on various decisions to say that classification cannot be changed at the buyer's end. In fact, the buyer himself is a manufacturer, therefore, the decision relied upon by the Ld. Counsel are not applicable to the facts of this case.

9. We further take note of the fact that the Ld. Counsel for the appellants submits that the classification of the product cannot be changed at the recipient end, in fact, recipient itself is

manufacturer in terms of Section 2(f) (iii) of Central Excise Act, 1944. Therefore, the contention raised by the Ld. Counsel for the appellant has no force. In that circumstance, the decision relied upon by the Ld. Counsel has no relevance to the facts of this case.

10. As we already held that the appellants are themselves are manufacturers and their goods are to be valued in terms of Section 4A of the Act, therefore, we do not find any infirmity with the impugned order and the same is upheld.

11. In the result, the appeals filed by the appellants are dismissed.

(operative part of order was pronounced in the court)

(BIJAY KUMAR)
MEMBER (TECHNICAL)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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