IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI
[COURT III : Division Bench B1]

Appeal Nos.: E/684/2010 & E/184/2011

Sl. No.	Appeal No.	Appellant	Respondent
1.	E/684/2010	M/s. Titan Industries Ltd., Watch Division, Hosur	The Commissioner of G.S.T. & Central Excise, Chennai North
Arising out of Order-in-Appeal No. 92/2010 (M-III) dated 02.08.2010 passed by the Commissioner of Central Excise (Appeals), Mahatma Gandhi Road, Chennai.			
2.	E/184/2011	M/s. Titan Industries Ltd., Precision Engineering Division, Hosur	The Commissioner of G.S.T. & Central Excise, Chennai North
Arising out of Order-in-Appeal No. 01/2011 (M-III) dated 25.01.2011 passed by the Commissioner of Central Excise (Appeals), Mahatma Gandhi Road, Chennai.			

Appearance:-
Ms. Radhika Chandrasekhar, Advocate
for the Appellant

Ms. T. Usha Devi, DC (AR)
for the Respondent

CORAM:
Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing: 27.02.2019

Date of Pronouncement: 18.03.2019

Final Order Nos. 40524-40525 / 2019

Per Bench :

The issue involved in all these appeals being the same and also connected, they are heard together and disposed of by this common order. The parties are hereinafter referred to as 'assessee' and 'Department' for the sake of convenience.

2.1 Brief facts are that the assessee is engaged in the manufacture of watches. The assessee requested the Department vide letter dated 21.04.1999 for permission to assess their goods (watches) under Section 4 of the Central Excise Act, 1944, as they were not covered under the Standards of Weights and Measures Act ('SWM Act' for short). Vide letter dated 15.07.1999, the Assistant Commissioner rejected the request of the assessee and held that the valuation has to be under Section 4A.

2.2 An appeal was preferred before the Commissioner (Appeals) against such decision of the Assistant Commissioner. The Commissioner (Appeals) rejected the appeal of the assessee vide Order-in-Appeal No. 209 to 211/1999 dated 17.09.1999 stating that since the appeal is filed against a decision in the form of a letter, the appeal is not maintainable. The assessee then filed an appeal before the Tribunal and vide Final Order No. 1002-1003/2006 dated 01.11.2006, the Tribunal set aside the order passed by the Commissioner (Appeals) and remanded the matter to the lower authority to consider the matter afresh after giving notice to the assessee for personal hearing. The Assistant Commissioner, after issuing notice for personal hearing, vide Order-in-Original No.

03/2009 dated 05.03.2009 held that the valuation is to be done under Section 4A and not under Section 4 of the Act.

2.3 Against this, the assessee filed appeal before the Commissioner (Appeals) and vide Order-in-Appeal No. 01/2011 dated 25.12.2011, the Commissioner (Appeals) upheld the decision of the adjudicating authority and held that the valuation has to be done under Section 4A of the Central Excise Act, 1944. Hence, the present Appeal No. E/184/2011.

3. Similarly, against the order passed by the Commissioner (Appeals) dated 17.09.1999, an intimation was issued to the assessee after almost four years for personal hearing and after adjudication, the Original Authority vide order dated 11.11.2008 held that the valuation has to be done under Section 4A of the Central Excise Act, 1944. In appeal, vide Order-in-Appeal No. 92/2010 dated 02.08.2010 which is impugned herein, the Commissioner (Appeals) upheld the decision of the adjudicating authority. Hence, the assessee has filed Appeal No. E/684/2010.

4. Thus, it can be seen that in both these appeals, the issue is with regard to orders passed by authorities below holding that the

valuation has to be done under Section 4A of the Central Excise Act, 1944.

5. Section 4A of the Central Excise Act, 1944 provides for valuation of excisable goods with reference to retail sale price. Sub-Section (1) of Section 4A ibid states that the Central Government may, by notification in the Official Gazette, specify any goods in relation to which it is required under the provisions of the Standards of Weights and Measures Act, 1976 or the rules made thereunder or under any other law for the time being in force, to declare on the package thereof the retail sale price of such goods to which the provisions of Sub-Section (2) shall apply. Thus, the law contained in this Section provides that when the goods are notified under the SWM Act and Rules thereunder, the valuation of such goods would be under Section 4A of the Central Excise Act, 1944. The Department has contended that the goods have been notified under Notification No. 20/99 dated 28.02.1999.

6.1 The Ld. Counsel for the assessee has however argued that the goods have not been notified under Section 4A at all. On perusal of records, in the letter issued by the appellant dated 21.04.1999, it is stated by the appellant as under :

"Sir,

Sub: Assessment of Watches under Sec. 4A of Central Excise Act, 1944.

Ref: Notn. 20/99 CE(NT) dt. 28.02.99 and CBEC letter F. No. 341/64/97-TRU Dt. 11.08.97 & 411/44/98-CX (F. No. 103/1/98-CX-3) dt. 31.07.1998.

1. *In the recent Union Budget Notification No. 20/99 CE (NT) dt. 28.02.99 was issued under Section 4A of the Central Excise Act, 1944. Sl. No. 44 of the table to the said Notification refers to watches falling under Chapter sub-heading 9101.90 and 9102.90. Accordingly, for watches removed from the factory from 01.03.99 onwards, we have been adopting a maximum retail price and the permitted abatement percentage for the purpose of arriving at the assessable value.*
2. *In this connection, kind attention is invited to CBEC's letter F.No. 341/64/97-TRU dt. 11.08.97, wherein it has been observed inter alia that :-*

> *Sec.4A applies only when there is statutory requirement of affixing the MRP. Accordingly, in case a manufacturer voluntarily affixes MRP which is not statutorily required, then, Excise Duty on goods in such packings shall not be charged on the basis of Sec.4A of the Central Excise Act, 1944."*

6.2 Thus, it is seen that the appellants themselves admit that the watches falling under 9101.90, 9102.90 have been notified under Notification No. 20/99-CE (NT) dated 28.02.1999. This is the letter which is the genesis for the present appeals. In the said letter, the appellant has stated that though it is notified under Section 4A of the Central Excise Act, 1944, as per Rule 3 of the Packaged Commodity Rules, the watches cleared by them do not fit into the definition of "commodities in packaged form" and therefore, the retail sale price is not required to be affixed on the goods. They have thus contended that the assessment should fall under Section 4 of the Act.

7.1 The letter dated 21.04.1999 is issued by the appellants raising the above contentions and requesting the Department to allow them to assess the watches under Section 4 of the Central Excise Act, 1944 in spite of Notification No 20/99.Though several adjournments were given, either side had not produced before us the copy of Notification No. 20/1999.

7.2 However it is seen that the said Notification No. 20/1999 –CE (NT) dated 28.02.1999 was superseded by Notification No. 09/2000-CE (NT) dated 01.03.2000 and by subsequent supersession of Notifications later, Notification No. 05/2001 dated 01.03.2001 was superseded by Notification No. 13/2002-CE (NT) dated 01.03.2002. In Notification No. 13/2002, Sl. No. 89 refers to watches. These Notifications show that watches were notified goods during the relevant period of dispute. When the goods are notified under Sub-Section (2) of Section 4A of the Central Excise Act, 1944, then, the valuation can only be under Section 4A of the Central Excise Act. The contention of the appellants that the goods do not fall under the category of packaged commodities, etc., cannot be accepted.

8. The said issue was settled by the Hon'ble Supreme Court in the case of ***M/s. Whirlpool of India Ltd. Vs. Union of India – 2007***

(218) E.L.T. 167 (S.C.). The Hon'ble Supreme Court held that use of the term "or otherwise" in the definition of "commodity in packaged form" would suggest that a commodity if packed in any manner in units suitable for sale, whether wholesale or retail, becomes "commodity in packed form". Therefore, Section 2(b) of the Standards of Weights and Measures Act, 1976 would apply. The contentions raised by the appellants in their letter dated 21.04.1999 is settled by the decision in the case of *M/s. Whirlpool of India Ltd. (supra).* Thus, the goods having been notified items, are definitely assessable under Section 4A of the Act.

9. The appeals filed by the assessee contending that the goods are to be assessed under Section 4 of the Central Excise Act, 1944, are without merits. The impugned Orders do not call for any interference.

10. The appeals filed by the assessee are dismissed.

*(Pronounced in open court on **18.03.2019**)*

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S.)
Member (Judicial)

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