IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. III

Excise Appeal No. 534 of 2012

(Arising out of Order-in-Original No. 35/2012 dated 15.10.2012 passed by the Commissioner of Central Excise, Chennai-II Commissionerate, M.H.U. Complex, Nandanam, Chennai – 600 035)

M/s. Inova India, **: Appellant**
No. 96, Nelson Manickam Road,
Aminjikarai, Chennai – 600 029

VERSUS

The Commissioner of Central Excise, **: Respondent**
Chennai-II Commissionerate,
No. 692, Anna Salai, MHU Complex,
Nandanam, Chennai – 600 035

WITH

Excise Appeal No. 529 of 2012

(Arising out of Order-in-Original No. 35/2012 dated 15.10.2012 passed by the Commissioner of Central Excise, Chennai-II Commissionerate, M.H.U. Complex, Nandanam, Chennai – 600 035)

M/s. Roca Bathroom Products Private Limited, **: Appellant**
(Formerly 'M/s. Parryware Roca (P) Ltd.'),
'Dare House', 234, N.S.C. Bose Road,
Parrys Corner, Chennai – 600 001

VERSUS

The Commissioner of Central Excise, **: Respondent**
Chennai-II Commissionerate,
No. 692, Anna Salai, MHU Complex,
Nandanam, Chennai – 600 035

APPEARANCE:

Shri. M.N. Bharathi, Advocate for the Appellant

Shri. L. Nandakumar, Authorized Representative (A.R.) for the Respondent

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NOs. 40675-40676 / 2020

DATE OF HEARING: 03.03.2020

DATE OF DECISION: 03.03.2020

Order Per : Hon'ble Ms. Sulekha Beevi C.S.

Both these appeals being connected, they are disposed of by this common order.

2.1 Brief facts are that the appellant M/s. Inova India (hereinafter referred to as 'M/s. Inova') is engaged in the manufacture of Electronic Flushing System (EFS). During the visit by the officers of the Headquarters Preventive Unit, it was observed that M/s. Inova were manufacturing Electronic Flushing Systems bearing the brand name "Parryware" and were clearing the same on payment of duty.

2.2 On further enquiry, it appeared that M/s. Roca Bathroom Products Pvt. Ltd. (appellant in Appeal No. E/529/2012 - hereinafter referred to as 'M/s. Roca') were supplying the major input viz. urinal casing to M/s. Inova on sale basis. M/s. Inova fixed the Electronic System in the urinal casing in order to provide automated function. The urinal casings with this automated function were then packed as a single unit per carton box and dispatched to various depots of M/s. Roca on sale basis as per the purchase order. The price of the goods was arrived at by M/s. Inova by cost construction method with some profit margin. This cost construction price was subjected to negotiation with M/s. Roca to arrive at the agreed price, on which the duty was paid. All these activities were governed by the conditions laid down in the agreement entered between M/s. Inova and M/s. Roca (previously known as Parryware Division – M/s. EID Parry (India) Ltd.). In March 2006, the Parryware Division was hived off and a new company known as M/s. Parryware Glamourooms Pvt. Ltd. was formed. After entering into a joint venture with M/s. Roca, Spain, the name of the company M/s. Parryware Glamourooms Pvt. Ltd was changed to M/s. Parryware Roca Pvt. Ltd. and thereafter, to M/s. Roca Bathroom Products Pvt. Ltd. The agreement made in 2001 was renewed every year and extended till December 2009 as per the letter dated 15.06.2009 of the appellant M/s. Roca.

2.3 From the terms of the agreement, the Department was of the view that the transactions between M/s. Inova and M/s. Roca were not on principal to principal basis. From investigations the Department was of the view that M/s. Inova were manufacturing as job worker for M/s. Roca on contract basis. The price adopted by M/s. Inova was only the cost of production at their hand as evidenced from the cost sheet prepared. There was a difference of 200 to 250 per cent in the sale price of the goods from M/s. Roca when compared to the sale price of M/s. Inova to M/s. Roca. The brand name "Parryware" was owned by M/s. Roca and M/s. Inova did not have any claim on such trademark. When the brand name is affixed, the ownership of the product rests with M/s. Roca and then M/s. Inova had no right to sell the goods. Consequently, when there is no right to sell the goods, the amount received by M/s. Inova was only compensation of the expenditure incurred by them and received through sales invoices. The Department observed that M/s. Inova was only acting as a job worker for M/s. Roca and that the goods were not ordinarily sold at the factory gate of M/s. Inova and hence, the price adopted for payment of duty by M/s. Inova was not the sole consideration for sale as per Section 4 (1) (a) of the Central Excise Act, 1944. That with effect from 01.04.2007, the valuation of goods manufactured by job workers should be as per clause (ii) of Rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

3. Show Cause Notice dated 24.04.2012 was issued to M/s. Inova raising a demand of differential duty for the period from 01.04.2007 to 31.12.2011 along with interest and also proposing to impose penalties. Show Cause Notice was also issued to M/s. Roca proposing to impose penalty under Rule 26 of the Central Excise Rules, 2002. After adjudication, the Original Authority vide order impugned herein confirmed the demand raised against M/s. Inova along with interest and also imposed equal penalty. The proceedings initiated against M/s. Roca culminated in imposition of penalty of Rs. 25,00,000/- under Rule 26 ibid. Aggrieved by such order, the appellants are now before the Tribunal.

4.1 On behalf of the appellants, Learned Counsel Shri. M.N. Bharathi appeared and argued the matter. He submitted that the entire case of the Revenue is based on the allegation that M/s. Inova is the job worker of M/s. Roca, which is factually incorrect. He pointed out that to determine whether the goods are manufactured as a job worker, the definition given in the Explanation to Rule 10A of the Central Excise Valuation Rules is relevant, which is extracted below :

> *"**Explanation.** - For the purposes of this rule, job-worker means a person engaged in the manufacture or production of goods on behalf of a principal manufacturer, from any inputs or goods **supplied** by the said principal manufacturer or by any other person authorised by him."*

(Emphasis added)

4.2 From the above Explanation, it is very clear that the job worker not only manufactures goods on behalf of the principal manufacturer, but should also manufacture the goods from any inputs/raw materials supplied by the principal manufacturer. In the present case, the urinal casings are not supplied by M/s. Roca. In fact, it is purchased by M/s. Inova from M/s. Roca. No items were supplied free of cost by M/s. Roca. As M/s. Inova purchased the urinal casings, which fact is admitted in the Show Cause Notice, it goes without saying that the urinal casings are then the property of the appellant i.e. M/s. Inova. Thus, even before manufacture takes place, the goods are the property of M/s. Inova and does not belong to M/s. Roca. M/s. Inova is an independent entity having independent infrastructure and they did not manufacture goods on behalf of M/s. Roca. Since the title of these goods belong to the appellant, the conditions for becoming a job worker is not satisfied.

4.3 He relied upon the decision of the Tribunal in the case of *M/s. Sujhan Instruments v. Commissioner of Central Excise, Chennai-II reported in 2019 (368) E.L.T. 135 (Tri. - Chennai)* to argue that the very same facts were considered by the Tribunal in the said case and the Tribunal had relied on the decision in the case of *M/s. Coromandel Paints Ltd. v. Commissioner [2010 (260) E.L.T. 440 (Tri. – Bang.)]* to hold that when the transaction is on principal to principal basis, the allegation that the assessee is manufacturing as a job worker for the principal manufacturer cannot sustain.

4.4 It is also argued by him that for the very same reasons, the penalty imposed under Rule 26 of the Central Excise Rules, 2002 on M/s. Roca, may be set aside.

5. Learned Authorized Representative Shri. L. Nandakumar appeared and argued the matter on behalf of the Department. He supported the findings in the impugned order.

6. Heard both sides.

7. The demand arises out of the allegation that the appellant M/s. Inova has manufactured goods as a job worker on behalf of the principal manufacturer M/s. Roca. It is an admitted fact, as seen from the Show Cause Notice as well as the impugned order, that M/s. Inova has procured the urinal casings from M/s. Roca by transaction of purchase and sale. Merely because the goods manufactured by M/s. Inova bear the brand name of M/s. Roca, the Department has viewed the transaction as a manufacture done by a job worker on behalf of the principal manufacturer.

8. The very same issue was discussed by the Tribunal in the case of *M/s. Sujhan Instruments (supra)* wherein the Tribunal observed as under :

> ***"8.3*** *A perusal of the SCN No. 104/2009, dated 23-10-2009 reveals that department is inclined to treat Sujhan as a job worker of Honeywell primarily on the grounds that supplies of raw materials that required to be approved by the latter, quality control exercised by Honeywell, 99% of the finished goods are sold to the latter and that Honeywell's brand name and MRP stickers are used on the packing. The Rule 10A has been inserted in the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, w.e.f. 1-4-2007. As per this rule, the value at which principal manufacturer sells his goods will be the basis for determining the transaction value for payment of Central Excise duty by the job worker. For the purpose of this rule, the job worker is defined as "….. a person engaged in the manufacturer or production of goods on behalf of a principal manufacturer, from any inputs or goods supplied by the said principal manufacturer or any other person authorized by him". Thus to qualify as job worker, in our view, the following hard sticks require to be satisfied :*
>
> *(i) Job worker should be engaged in manufacture or production of goods on behalf of another manufacturer.*
>
> *(ii) Inputs or goods should be supplied by the said principal manufacturer or by any other person authorized by him.*

(iii) By implication, the inputs or goods so supplied will not be required to be paid for by the job worker.

When we apply these tests to the facts of the appeal at hand, we find that Sujhan does not appear to qualify to be a "job worker" for the purpose of Rule 10A ibid. The inputs or goods are not supplied free by Honeywell, or other persons authorized by Honeywell.

8.4 *On the other hand, Sujhan have to buy these inputs and goods etc. at a price. The goods are not cleared by Sujhan without payment of Central Excise duty. The goods are cleared by Sujhan to Honeywell only after discharge of Central Excise duty on the assessable value and the value indicated in the invoices from Sujhan to Honeywell.*

8.5 *Thus just because the goods manufactured or produced by Sujhan are purchased by Honeywell on contract that should detract from acceptance of the transaction between Sujhan and Honeywell to be one of principal to principal basis. The arrangement between Sujhan and Honeywell, in our view, is on the lines of "contract manufacturing" as distinguished from "job worker". The contract manufacturers are not supplied with the raw material from principal manufacturers, like "job workers", but they are required to purchase them from the market, very often from vendors who are approved by the principal manufacturer for quality point of view. The principal then buys finished products from the contract margin and very often sales them to his core customer, sometimes with enhanced margin. Department has also not unearthed or brought out anything on record to suspect that the contract between Sujhan and Honeywell is only a camouflage for job working. There is also no evidence put forth to indicate that apart from the alue invoices by Sujhan to Honeywell there is an additional value component which is separately paid by the latter to the former or that there is any additional flow back of funds. This being the case, there is no reason on account of invoice value between Sujhan and Honeywell should not be treated as the "transaction value" under Section 4(1)(a) of the Central Excise Act, 1944.*

8.6 *While arriving at this conclusion, we draw sustenance from the ratio of the Tribunal's decision in Coromandal Paints - 2010 (260) E.L.T. 440 (Tri. - Bang.). In that case, the Coromanal Paints and SIPL had entered into agreement for manufacture and supply of paints, with all taxes to be paid on sale price by the latter. The agreement indicated that prices charged by the former are treated as sale to SIPL on which value Central Excise duty and sales tax was being discharged.*

The Tribunal following the ratio already laid down in Gillette Diversified Operations Ltd. v. Commissioner - 2007 (217) E.L.T. 551 (Tribunal) held that by merely indicating vendors of raw materials or by giving advance for procuring raw material or even installing equipment given by SIPL would not render Coromandal as a job worker.

9. *In view of the findings and conclusions herein above and following the ratio already laid down by Tribunal in Coromandal Paints Ltd. (supra), Impugned Order No. 20/2010, dated 3-9-2010 (relating to Appeals E/810/2010 and E/1/2011) are set aside and the said appeals are allowed in toto with consequential benefits, if any, as per law."*

9. The facts being identical, by judicial discipline following the above decision, we hold that the demand cannot sustain. Consequently, the penalty imposed on M/s. Roca also cannot sustain. The impugned order is set aside.

10. The appeals are allowed with consequential reliefs, if any, as per law.

(operative part of the order pronounced in open court)

Sd/-

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

Sd/-

(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

Sdd