IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

E/628/2007

(Arising out of Order-in-Appeal No. 49/2007 (M-III) dated 13.06.2007 passed by the Commissioner of Central Excise (Appeals), Chennai).

M/s. Joy Foam (P) Ltd. | Appellant

CCE, Chennai-III | Respondent

Appearance

Shri R.J, Pillai, Consultant,
for the appellants

Shri B. Balamurugan, AC (AR)
for the Respondent.

CORAM :

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing/Decision: 28.06.2017

FINAL ORDER Nos. 41102 / **2017**

The brief facts of the case are that the proceedings have been initiated against the appellants on the following allegations:-

a) Replacing new goods for the returned/rejected goods

b) Sales incentives and sales commissions are not include in the value for the purpose of assessment.

The appellant is not in appeal against the second issue since that has been held in favour of the appellant by the Commissioner (Appeals) in an order No. 49/2007 (M-III) dated 13.06.2007, which although was appealed against the Tribunal, was subsequently withdrawn by the department, as evidenced by CESTAT order No.41118/2016 dated 13.07.2016. The only issue that now remains for adjudication in the present appeal concerns demand of duty in respect of alleged clearance of goods as replacement of goods without payment of duty.

2. The Ld. Advocate appearing on behalf of the appellant contends that in the entire show cause notice the period of demand in respect of the alleged clearance of goods without payment of duty is not brought out. He relies upon the ratio of the order of CESTAT, Chennai in the case of *ALRK Interiors Pvt. Ltd. Vs. CST, Chennai* – 2016-TIOL-2684-CESTAT-MAD, wherein it was held that in the absence of period of demand in the show cause notice, the demand is not sustainable.

3. On the other hand, the Ld. AR supports the impugned order.

4. Heard both sides and gone through the submissions made by both sides.

5. I find for a fact that there is no mention of the period of demand in the show cause notice while proposing demand of differential duty liability either in the relevant para-12 or elsewhere in the notice or in its annexures. In the circumstances, the ratio of

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the Tribunal decision in the case of ALRK Interiors Pvt. Ltd. (supra) cited by the ld. Advocate would apply on all fours to this case also. Hence, without going further in to the merits of the case, following the ratio of ALRK Interiors Pvt. Ltd.. decision, the appeal is allowed with consequential relief, if any, as per law.

(Order dictated and pronounced in the open Court)

28/06/2017

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

BB

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति/Certified True Copy
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अपील अधिकरण/(CESTAT)
चेन्नै/Chennai