CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NO.26,Sashtri Bhavan Annexe Building,Haddows Road,Chennai-600006

OFFICE OF THE COMMISSIONER (AUTHORISED REPRESENTATIVE) CESTAT
24 AUG 2017
SHASTRI BHAVAN ★ CHENNAI-6 ★

18

Order Forwarding Letter

Final Order No. 41370 / 2017

MISC Application No : E/MISC/40173/2017
Appeal No. : E/468/2007-DB

Appellant :
Whirlpool India Ltd

Respondent :
Commissioner of Central Excise - Puducherry

I am directed to send herewith a certified copy of the **Final Order No. 41370 / 2017** dated **27/07/2017**, passed by the Tribunal under Section 129 B of the Customs Act 1962/Section 35C of the Central Excise Act 1944/Section 86 (7) of the Finance Act 1994.

Assistant Registrar
CESTAT - Chennai

Dated: 05/08/17
To:

Whirlpool India Ltd
Thirubhuvanai
Puducherry - 605107

Lakshmi Kumaran V & Sridharan
No. 2, 2nd Street, Wallace Garden
Chennai - 600006

Copy forwarded to:

Commissioner of Central Excise - Puducherry

Commissioner of Central Excise - Chennai (Appeals)

The Commissioner (AR), CESTAT Chennai.

Indirect Tax Bar Association CESTAT, Chennai

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

E/Misc./40173/2017 and E/468/2007

(Arising out of Order-in-Appeal No.70/2007 (P) dated 30.4.2007 passed by the Commissioner of Central Excise (Appeals), Chennai)

M/s.Whirlpool India Ltd., Puducherry — Appellant

Vs.

Commissioner of Central Excise, Puducherry — Respondent

Appearance

Shri Raghavan Ramabhadran, Advocate for the Appellant
Shri B. Balamurugan, AC (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 / Decision: **27.07.2017**

Final Order No. 41370/2017

Per Bench

The appellants are manufacturers of washing machines falling under Chapter Sub Heading 8450.10 and are registered with the Central Excise Department. They have sales depots all over India and clear their goods to these branches / depots. The appellants were discharging the duty liability on the washing machines in respect to MRP with abatement @ 40% as provided under section 4A of Central Excise Act, 1944 read

Customs, Excise & Service Tax Appellate Tribunal with relevant Notification. On verification of the accounts, for the period 12.5.2000, it was seen that the appellant had adopted different prices for different branches / areas where the washing machines are to be sold and thus appellants had discharged duty liability on different assessable value. That washing machines cleared to one area had subsequently stock transferred to another area on inter branch transfer. The appellants had initially discharged the duty liability on the lower MRP and when the goods were cleared to a particular area, had failed to pay consequential differential duty along with interest where higher MRP was applicable to that area when compared to area which the goods were originally cleared. A show cause notice was issued for the period from 12.5.2000 to 13.5.2003 and after due process of law, the original authority confirmed the duty demand along with interest and imposed equal penalty. In appeal, Commissioner (Appeals) upheld the same. Hence this appeal.

2. On behalf of the appellant, learned counsel Shri Raghavan Ramabhadran explained that the show cause notice has been issued on erroneous interpretation of the amendment dated 14.5.2003 brought to sub-clause (4) of Section 4A of Central Excise Act, 1944. That prior to 1.3.1999, washing machines were assessable under section 4 and with effect from 1.3.1999, these goods became notified and were assessable on

the basis of MRP under section 4A. Accordingly, the appellants had assessed the value of the goods at MRP after deducting 40% abatement. The appellant sold washing machines at different MRP for different regions in India. Prior to 12.5.2003, the appellant was required to pay duty at highest MRP prevalent in India. With effect from 12.5.2003, section 4A was amended so as to pay excise duty on the MRP applicable to different regions and appellant had discharged duty liability accordingly. The appellants sometimes moved the washing machines from one depot to another by inter branch transfer depots for commercial reasons such as market demand, non-moving of a particular model in a particular region etc. such inter branch transfers were made both from higher MRP region to lower MRP region and vice-versa. The department alleges that when the washing machines are transferred from one depot to another and wherever the MRP at the recipient depot is higher than the MRP at which the washing machine was cleared originally, then appellant has to pay differential excise duty. He stressed on the point that the appellant have not altered with the MRP and there was only inter branch transfer of the washing machines/goods. There is no allegation in the show cause notice that the appellant has altered with the MRP. He adverted to the show cause notice as well as the impugned order and submitted that though there was no allegation in the show cause notice that appellant had altered with MRP, the Commissioner (Appeals) has travelled beyond the show cause notice to uphold the confirmation of demand stating that the appellant have sold the goods in another area by altering the declared price after removing. That this is factually wrong. There is no finding by adjudicating authority that appellant had altered the MRP. He drew our attention to the synopsis filed by them at the time of personal hearing before the adjudicating authority and also to the relevant provisions of Section 4A as it stood for the period from 12.5.2000 to 13.5.2003 (disputed period) as well as the amendment brought forth in sub-clause (4) of section 4A applicable with effect from 14.5.2003. He submitted that the Commissioner (Appeals) has erroneously come to the conclusion that in such transfer, the appellant has altered the MRP and that the amendment dated 14.5.2003 is applicable. That though in such inter branch transfer, the appellant has not only moved goods from lower MRP region to higher MRP region but also vice versa. The amount of duty paid in the second instance (from higher MRP to lower MRP) would be much more. But department has only picked up the instances of transfer of goods from lower MRP to higher MRP region to raise the demand by simply brushing aside the excess duty paid, if the departments' case is to be accepted. As there was no physical alteration of MRP and also for the reason that the Explanation 2(b) brought forth to sub-clause (4) of Section 4A having come into effect on 14.5.2003 only, the demand for the period 12.5.2000 to 13.5.2003 is not sustainable legally or factually.

3. The learned AR Shri B. Balamurugan reiterated the findings in the impugned order. He submitted that during the disputed period, the appellants were moving the goods from one depot to another and in such inter branch transfer, they were clearing the goods at a lower MRP, even though for that particular region, a higher MRP was applicable.

4. We have heard the submissions made by both sides.

5. The affixation of Maximum Retail Price (MRP) is mandated on specified commodities sold in packaged form under the Standards of Weights and Measures Act, 1976 (now Legal Metrology Act) and Rules made thereunder. The consumer cannot be charged a price higher than the MRP. Assessment value of such commodities for the purpose of discharge of Central Excise duty is governed by the provisions of Section 4A of the Central Excise Act, 1944.

6. On perusal of the records, we understand that there is no allegation in the show cause notice that the appellants have altered the MRP. There is also no allegation or evidence that the goods which were transferred from lower MRP to higher MRP branches, they were sold to customers only on the higher

MRP. This being so, there is a clear observation and finding in the impugned order by Commissioner (Appeals) that the appellants have altered the MRP and therefore is liable to pay differential duty which in our view is factually wrong. Further, the law as it stood during the disputed period clearly states that where different retail sale price was declared on different packages in different areas each, such retail price shall be the retail sale price for the purpose of valuation of excisable goods intended to be sold in that area. The said provision has under gone amendment with effect from 14.5.2003 so as to provide that where retail sale price declared on the packet is altered to increase the retail sale price, such altered retail sale price shall be deemed to be the retail sale price. The said amendment having come into effect on 14.5.2003, the demand made for the period prior to 13.5.2003 is not sustainable. The learned counsel has also argued on the ground of limitation, we do not think it necessary to delve in this issue. We, therefore, find that the demands are unsustainable. The impugned order is set aside and the appeal is allowed with consequential relief, if any.

7. The department had filed a miscellaneous application for change of cause title. Since the appellant-company was under LTU, it is submitted by learned AR that after coming into effect of GST, the concept of LTU has no existence and the said

application has become infructuous. He submitted that he is not pressing the miscellaneous application. The miscellaneous application is dismissed as not pressed.

(Operative portion of the order was pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

Sulekha Beevi

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

Rex