CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNALSOUTH ZONAL BENCH CHENNAI

Appeal No.E/297/2008

[Arising out of Order-in-Appeal No.52/2008-CEx dt. 26.3.2008 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore]

Macro Print Engineers (India) P. Ltd. Appellant

Versus

Commissioner of Central Excise & Service Tax, Coimbatore Respondent

Appearance:

Shri J. Shankarraman, Advocate
For the Appellant

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

CORAM :

Hon'bleShriD.N. Panda, Judicial Member
Hon'bleShriMadhu Mohan Damodhar, Technical Member

Date of hearing / decision :07.02.2017

FINAL ORDER No. 40200/2017

PerD.N. Panda

Appellant says that prior to 10.05.2008, mere manufacture does not make the goods excisable. Only if the goods satisfy twin test, that becomes "excisable" goods following the ratio laid down by the Apex Court in the case of *Board of Trustees Vs CCE, A.P* – 2007 (216) ELT 513 (SC). The first test is that the goods in question must have been manufactured and find place in the Central Excise Tariff Act. The second test is marketability in the common parlance. The goods

Customs, Excise & Service Tax Appellate Tribunal manufactured by the Coimbatore unit of the appellant was only intermediate product and not marketable in the common parlance as tradable commodity. Therefore, the goods came from Coimbatore to Pondicherry being used for manufacture of finished goods in its own unit shall not make the appellant liable in respect of the intermediate product.

3. Revenue, on the other hand, says that when the intermediate product was manufactured, they are liable to duty.

4. It does not appeal to common sense how non-excisable goods shall be dutiable without meeting the twin tests as has been held by the Apex Court in the case of *Board of Trustees* (supra). Added to that, show cause notice exhibits that Revenue has not discharged its burden of proof to bring the goods to be called as "marketable" and "traded commodity".

5. In view of above, adjudication having no foundation in law is liable to be unsustainable for which appeal is allowed.

6. To reach to the above conclusion, we have also been guided by the Apex Court in the case of *Cipla Ltd. Vs CCE Bangalore* – 2008 (225) ELT 403 (SC) holding that manufacture does not *ipso facto* bring the goods to the fold of excisability without meeting the twin test.

(Dictated and pronounced in open court)

14.02.2017   8/2/2017

(Madhu Mohan Damodhar)
Technical Member

(D.N. Panda)
Judicial Member

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Customs, Excise & Service Tax Appellate Tribunal

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