

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. III

Excise Appeal No. 40201 of 2016

(Arising out of Order-in-Appeal No.392 & 393/2015 (CXA_II) dt. 26.11.2015 passed by Commissioner of Central Excise [Appeals], No.26/1, Uthamar Gandhi Salai, Nungambakkam, Chennai 600 034.)

M/s. Roca Bathroom Products (P) Ltd.

: Appellant

IV Floor, KGN Towers, 62, Ethiraj Salai,
Chennai 600 105

VERSUS

The Commissioner of GST & Central Excise,

: Respondent

Chennai Outer Commissionerate,
Newry Towers, No.2054, I Block, II Avenue,
12th Main Road, Anna Nagar,
Chennai - 600 040

WITH

Excise Appeal No. 40600 of 2017

(Arising out of Order-in-Appeal No.451 & 452/2016 (CXA-II) dated 16.12.2016 passed by Commissioner of Central Excise [Appeals-II], 26/1, Uthamar Gandhi Salai, Nungambakkam, Chennai 600 034)

M/s Roca Bathroom Products (P) Ltd.

: Appellant

IV Floor, KGN Towers, 62, Ethiraj Salai,
Chennai 600 105

VERSUS

The Commissioner of GST & Central Excise

: Respondent

Chennai Outer Commissionerate,
Newry Towers, No.2054, I Block, II Avenue,
12th Main Road, Anna Nagar,
Chennai - 600 040

WITH

Excise Appeal No. 40202 of 2016

(Arising out of Order-in-Appeal No.392 & 393/2015 (CTA-II) dated 26.11.2015 passed by Commissioner of Central Excise (Appeals-II), Central Excise Building, 26/1, Uthamar Gandhi Salai, Nungambakkam, Chennai- 600 034)

M/s. Inova India

No.96, Nelson Manickam Road,
Aminjikarai, Chennai-29

: Appellant

VERSUS

The Commissioner of Central Excise,
26/1, Mahathma Gandhi Salai,
Nungambakkma, Chennai - 600 034

: Respondent

AND

Excise Appeal No. 40601 of 2017

(Arising out of Order-in-Appeal No.451 & 452/2016 (CXA-II) dated 16.12.2016 passed by Commissioner of Central Excise (Appeals-II), 26/1, Uthamar Gandhi Salai, Nungambakkam, Chennai- 600 034)

M/s. Inova India
No.96, Nelson Manickam Road,
Aminjikarai, Chennai- 600 029

: Appellant

VERSUS

The Commissioner of Central Excise,
26/1, Mahathma Gandhi Salai,
Nungambakkma, Chennai - 600 034

: Respondent

APPEARANCE:

Ms. P. Jayalakshmi, Advocate
For the Appellant

Shri N. Satyanarayanan, Assistant Commissioner (A.R.)
For the Respondent

CORAM:

HON'BLE MRS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER Nos. 40056-40059/ 2024

DATE OF HEARING: 04.01.2024

DATE OF DECISION: 16.01.2024

Order : [Per Mrs. Sulekha Beevi C.S.]

This issue involved in all these appeals being similar and connected, they were heard together and are disposed of by this common order.

2. The brief facts in Appeal Nos. E/40202/2016 and E/40601/2017 are that the appellants viz; M/s. Innova India are engaged in the manufacture of electronic flushing systems (EFS) falling under Chapter Heading 69 of CETA, 1985. On verification, it was found that the appellants were manufacturing the EFS system bearing the brand name “parryware” and clearing the same on payment of duty. The appellant was manufacturing the said products for M/s. Rocca Bathroom Pvt. Ltd. Chennai (commonly known as M/s. Parryware Rocca Pvt. herein after referred to M/s. Rocca). These parties had entered an agreement on 10.2.2012 and effective for a period of two years from 1.1.2012 to 31.12.2013.

3. It was found that M/s. Rocca were supplying the major input namely urinal casing to the appellant on sale basis enabling fixing the electronic system in the urinal casing by the appellant. The appellant fixes the EFS system in the urinal casing in order to make it have an automated function. The urinal casing with this automated function is called electronic flushing system. These finished goods are packed as single unit per carton box and dispatched to various depots of Rocca on sale basis as per the purchase order. The price for the said goods is arrived at by the appellant by cost constructing method with some profit margin. Such price is subjected to negotiation with Rocca to arrive at the agreed price and duty is paid accordingly. All these activities are governed by the conditions laid down in the agreement made between Rocca and the appellant. In March 2006, Parryware Division was hived off and a new company M/s. Parryware Glamour Rooms Pvt. Ltd. was found. After entering in to a joint venture with M/s. Rocca, Spain, the name of the company i.e. M/s. Parryware Glamour Rooms Pvt. Ltd. was changed to M/s. Parryware Rocca Pvt. Ltd. The agreement was being renewed periodically.

4. It appeared to the Department that the transactions between the appellant and M/s. Rocca were not on principal to principal basis as reflected in the declaration submitted to the

Department. The Department was of the view that the appellant is acting as a job worker for M/s. Roca Bathroom in as much as, the entire manufacturing activities were controlled by M/s. Roca in their capacity as a principal manufacturer who fixes the ordinary selling price of the impugned goods. Being the branded goods of M/s. Roca, the goods are not ordinarily sold at the factory gate of the appellant. It therefore appeared that the value adopted for payment of duty by the appellant is not the sole consideration for sale as per Section 4(1)(a) of the Central Excise Act, 1944, since the branded goods belong to the principal manufacturer M/s. Roca. The Department entertained the view that the goods ought to have been valued as per Rule 10A of the Central Excise Valuation (Determination of Price of the Excisable Goods) Rules, 2000, under Section 4(1)(b) of the Central Excise Act, 1944. The Show Cause Notice was issued to the appellant M/s. Inova India demanding the short paid duty along with interest and also for imposing penalties.

5. On the similar set of facts, Show Cause Notice was issued to M/s. Roca Bathroom alleging that they have connived along with M/s. Inova (appellants in the above appeals) and thus proposing to impose penalties. Appeal Nos. E/40201/2016 & E/40600/2017 have been filed by M/s Roca aggrieved by the penalties imposed.

6. The Ld. Counsel Ms. P. Jayalakshmi appeared and argued for the appellant. It is submitted that the Department has raised the duty demand against M/s. Inova India Ltd. and imposed penalties on M/s. Roca Bathroom on a wrong presumption that M/s. Roca Bathroom has supplied free of cost the urinal casing required for the manufacturing of flushing system. It is submitted that the appellant M/s. Roca has not supplied any material free of cost to M/s. Inova India Ltd. and therefore the M/s. Inova Indian Ltd. cannot be said to be a job worker of M/s. Roca Bathroom. The Ld. counsel adverted to the definition of job work which reads as under:-

“Job work means processing or working upon a material or semi-finished goods supplied to the job worker so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for aforesaid process and the expression “job worker” shall be construed accordingly,”

6.1 The lower authorities have failed to see that no items was owned by M/s. Roca Bathroom Products Ltd (called RBPPL) which was supplied by M/s. RBPPL on sale and this item was not supplied free of cost to the appellants. This factual position is not disputed in the impugned order. Hence, the manufacture of goods by the appellants was only on the materials owned by themselves.

6.2 At para 9 of the impugned order-in-appeal, the Commissioner takes objection in purchasing this item ‘urinal castings’ from M/s. RBPPL themselves and not from any other person but he has not given a finding as to under which provision there is a prohibition for purchasing, an input from the buyer himself. So long as M/s. RBPPL had sold such goods and paid sales tax on the same it cannot be said the final product was manufactured by the appellants from the inputs/materials supplied by the customer and the transaction was one of ‘job work’. Both the lower authorities have failed to note that in a job work transaction, the product is manufactured on the materials supplied by principal manufacturer. Materials supplied are owned by the supplier/ principal manufacturer himself.

6.3 About 35 items (apart from urinal casings purchased from M/s. RBPPL) had been procured and owned by the appellants themselves which had been used in the manufacture of goods. Thus, there is no item supplied free of cost by M/s. RBPPL to the appellants for manufacture. Thus it cannot be alleged that the appellants had manufactured their goods on “job work”.

6.4 At para 9 of the impugned order the Commissioner arrives at a finding to the effect that the relationship between the appellants and M/s. RBPPL is not on principal to principal basis but it is on ‘principal’ to ‘job worker’.

6.5 Fixing of 'urinal casing' to the product of fixing of final product to the urinal casing as per instructions of the buyer M/s. RBPPL is not relevant as the final product manufactured by the appellants is purchased by M/s. RBPPL and being buyers of the product M/s. RBPPL had to give instructions on such fixing of product to urinal casing.

6.6 It is a settled law that person actually manufacturing will be the manufacturer as held in Madras High Court decision in Abdul Lateef vs. CCE 1985 (22) ELT 758 (Mad.HC) and confirmed by Supreme Court 1990(47) ELT A101 in CCE vs. Kerala State Electricity Board when confirming the decision of Tribunal 1990 (47) ELT 62. There is no allegation of selling 'urinal casing' at a depressed price to the appellants and even then there can be a case for mis-declaration of value but does not make M/s. RBPPL as Manufacturer.

6.7 Even if product manufactured are supplied and sold by appellants under the brand name of M/s. RBPPL it cannot be said that goods were not manufactured on 'principal to principal basis'. The Department have raised the issue indirectly to the effect that M/s. RBPPL are the real manufacturers and not the appellants by laying down the factors referred to earlier, which are not relevant to decide the issue whether valuation adopted by the appellants on the basis of transaction value is correct or not, Supreme court in Cibatul Ltd vs. UOI 1978(22) ELT 302 (SC) have held that even if the goods are produced with customers brand name and under his quality control it does not mean that customer is manufacturer. The quality testing and control by the customer, affixing of his brand and monitoring of activity cannot render the customer as manufacturer.

6.8 The Ld. Counsel submitted that the issue stands squarely covered the decisions rendered in the appellant's own case as reported in *[2020 (3) TMI 308-CESTAT-CHENNAI]*. The Ld. counsel prayed that the appeal may be allowed.

7. The Ld. Authorised Representative Shri N. Satyanarayanan appeared for the Department and reiterated the findings in the impugned order.

8. Heard both sides.

9. The issue that arises for consideration is whether the appellant M/s. Inova India is a job worker of M/s. Roca or whether the transaction between the above two is on principal to principal basis. To understand the issue, the relevant part of the Agreement is reproduced as under:-

4. BASIS

4.1 It is specifically agreed and understood by and between the Parties that the sale of the said products by INOVA to RBPPL is on the basis of principal to principal and INOVA is fully responsible for manufacture, sale and supply of products and nothing contained herein shall constitute or deem to constitute either of the parties as the agent of the other. Further INOVA shall discharge all liabilities under various statutes with reference to manufacture, supply and/or sale of products to RBPPL and undertake to indemnify RBPPL against all costs, consequences, claims etc. in the event of non-compliance, breach, contravention of laws, with reference to said products.

4.2 It is further agreed and understood by and between the parties that INOVA is at liberty to manufacture and sell similar or other products without affecting the business interests, market position, and brand image or intellectual property rights or RBPPL. It is also mutually recognized by the parties that RBPPL is at liberty to approach other Vendors in India or abroad for manufacture of the similar or other products as may be specified by RBPPL.

10. From the above stipulation in the Agreement, it can be seen that the transaction is on principal to principal basis. Further, the very same issue was considered by the Tribunal in the appellant's own case reported in *2020(3) TMI 308 CESTAT Chennai* and the Tribunal followed the decision in the case *Sujhan Instruments Vs. Commissioner of Central*

Excise, Chennai – II [2019 (368) ELT 135 (Tri.-Chennai)] to set aside the demand as well as the penalties. The relevant paragraphs read as under:-

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.

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 manufacture 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 value 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) ELT 440 (Tn. Bang). In that case, the Coromandal 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) ELT 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.

11. The facts and issues being identical, by judicial discipline, we follow the decision rendered in the appellant's own case and hold that the duty demand or penalties imposed on M/s. Inova India Ltd., cannot be sustained and require to be set aside. So also, the penalties imposed on M/s. Roca cannot be sustained and requires to be set aside.

12. In the result, the impugned orders are set aside. The appeals are allowed with consequential reliefs, if any, as per the law.

(Order pronounced in the open court on 16.01.2024)

Sd/-

(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-

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