CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – III

EXCISE APPEAL NO. 50924 OF 2021

[Arising out of Order-in-Appeal No. 44-45(SM)/CE/JPR/2021 dated 3.3.2021 passed by the Commissioner of (Appeals) Central Excise and CGST, Jaipur]

M/s. Hanon Climate Systems India Ltd. **...Appellant**
SP-812-A, RIICO Industrial Area,
Bhiwadi, District Alwar
Rajasthan

VERSUS

Commissioner(Appeals)Central Excise and CGST **...Respondent**
NCRB Statue Circle,
Jaipur 302005

WITH

EXCISE APPEAL NO. 50925 OF 2021

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M/s. Hanon Climate Systems India Ltd. **...Appellant**
SP-812-A, RIICO Industrial Area,
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VERSUS

Commissioner (Appeals) Central Excise and CGST **...Respondent**
NCRB Statue Circle,
Jaipur 302005

APPEARANCE:

Shri Vinod Kumar Jindal, Representative of the Appellant
Shri Unmesh Kumar, Authorised Representative for the Respondent

Coram:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING : 02.04.2024
DATE OF DECISION: 25.04.2024

FINAL ORDER NO. 55634-55635/2024

P. V. SUBBA RAO

1. M/s. Hanon Climate Systems India Ltd.[1] filed these appeals to assail the Order-in-Appeal[2] dated 3.3.2021 passed by the Commissioner (Appeals) whereby he upheld the Order in Original[3] dated 30.9.2019 passed by the Assistant Commissioner and rejected the appeals filed by the appellant.

2. The appellant manufactures parts of motor vehicles and supplies them to M/s. Maruti Suzuki Ltd. The parts manufactured by the appellant are chargeable to central excise duty under section 4A of the Central Excise Act, 1944[4] except where they are supplied to industrial consumers or institutional consumers.

3. The appellant supplied some parts to Maruti but packed in individual packets with maximum retail sale price printed on them. According to the department, such goods should be assessed to duty under Section 4A but the appellant assessed and paid duty under section 4.

1 Appellant
2 Impugned order
3 OIO
4 Act

4. Two Show Cause Notices[5] dated 3.1.2017 and 16.2.2018 were issued to the appellant covering different periods and duty of Rs.3,20,141/- and Rs. 5,67,983/- was demanded. These demands were confirmed and penalty under Rule 25 of Central Excise Rules, 2002 were imposed on the appellant by the Assistant Commissioner in his OIO which was upheld by the impugned order.

5. Shri Vinod Kumar Jindal, learned representative of the appellant made the following submissions:

(i) The appellant manufactures radiators, intercoolers and cooling modules for Maruti Suzuki;

(ii) During audit, it was found that the appellant packed the automobile parts in individual packets with MRP, which the audit felt must be valued as per section 4A. Accordingly, the SCNs were issued and the demands were confirmed by the Assistant Commissioner and upheld by the Commissioner (Appeals);

(iii) The impugned order of the Commissioner (Appeals) cannot be sustained because Section 4A applies to only to such goods which are notified by the Central Government in relation to which "**it is required, under the provisions of the Legal Metrology Act, 2009 or the rules made thereunder or any other law for the time being in force, to declare on the package thereof, the retail sale price of such goods**";

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5 SCN

(iv) Thus, for section 4A to apply, it must be, in the first place, mandatory under the Legal Metrology Act or Rules to declare the MRP. As per Rule 3(b) of the Legal Metrology Rules, the Rules do not apply to packaged commodities meant for industrial consumers or institutional consumers. This Rule reads as follows:

> **"Rule 3. The provisions of this chapter shall not apply to-**
>
> **(b)** packaged commodities meant for industrial consumers or institutional consumers".
>
> Explanation:- For the purpose of this rule,-
>
> 'Industrial consumers means the industrial consumers who buy packaged commodidites directly from the manufacturer for use by that industry."

(v) Since Maruti Suzuki is an industrial consumer, the provisions of Legal Metrology Rules do not apply and there is no mandate to indicate the MRP on the individual packets. Therefore, Section 4A of the Central Excise Act will not apply and duty has to be paid under section 4 only; and

(vi) Therefore, the demands cannot be sustained and need to be set aside. The impugned order may be set aside and both appeals may be allowed.

6. Learned authorised representative for the Revenue agrees with the legal position pointed out by the appellant but submits that the definition of 'industrial consumer' was amended under the Legal Metrology Rules with effect from 14.5.2015 as below:

> " industrial consumer" means the industrial consumer who buys packaged commodities directly from the manufacturer or from an importer or from wholesale dealer for use by that industry and **package shall have declaration "not for retail sale"** for use by that industry."

7. Since the disputed goods had no declaration that they were not meant for retail sale and on the other hand, had the MRP fixed on them, they are squarely covered by the Legal Metrology Rules and consequently, Section 4A of the Central Excise Act.

8. The impugned order may therefore, be upheld and the appeals may be dismissed.

9. We have considered the submissions on both sides. The appellant's only contention is that in terms of the Legal Metrology Rules, the goods sold by it to Maruti Suzuki qualify as sales to 'industrial consumer" and hence Legal Metrology Rules and Section 4A of the Central Excise Act do not apply.

10. The change in the definition of 'industrial consumer' under the Legal Metrology Rules makes it mandatory for the goods to be marked 'not for retail sale' to qualify as 'sales to industrial consumers'. Thus, for instance, if supplies are made to an automobile company they could be used in the manufacture of automobiles or could be sold as spares by the automobile manufacturer. The amended definition clearly distinguishes between the two and if the goods are marked 'not for retail sale' and sold to the manufacturers, they qualify as sale to 'industrial consumers' and not otherwise.

11. Since the appellant cleared the goods in individual packets with MRP stickers even though they were sold to Maruti Suzuki, they did not qualify as sales to 'industrial consumers'. Therefore, Section 4A was correctly applied by the Assistant Commissioner in the OIO and the Commissioner (Appeals) in the impugned order.

12. The impugned order is upheld and both appeals are dismissed.

[Pronounced in the open Court on **25.04.2024**]

(BINU TAMTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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