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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/1402/2005 - EX[DB]   Date **11/04/2011**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. DELHI I
C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002

C.C.E. DELHI I Appellant

Vs

M/S JAQUAR & CO LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.341/ 2011 EX|DB|** dated 08-4-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
M/S JAQUAR & CO LTD.
D-28,SMA CO-OPWRATIVE
INDUSTRIALESTATE
G.T.KARNAL ROAD NEW DELHI
2. Adv. / Consult SH. D. P. KAUSHIK, ADV.,
C/O RESPONDENT
3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise, I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg, 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file
15. HON'BLE PRESIDENT,

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

Excise Appeal No. 1402 of 2005

[Arising out of the Order-in-Appeal No. 4/CE/DLH/2005 dated 24/01/2005 passed by The Commissioner of Central Excise (Appeals), Delhi – I.]

For Approval and signature :
Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:
3.	Whether their Lordships wish to see the fair copy of the order?	:
4.	Whether order is to be circulated to the Department Authorities?	:

CCE, Delhi – I Appellant

Versus

M/s Jaquar & Co. Ltd. Respondent

Appearance

Shri Nitin Anand, Authorized Representative (DR) – for the appellant.

Shri J.P. Kaushik, Advocate - for the Respondent.

CORAM : **Hon'ble Shri Justice R.M.S. Khandeparkar, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

DATE OF HEARING : 25/01/2011.
DATE OF DECISION : 8/4/2011

Final Order No. 341/2011-EX Dated : 8/4/2011

Per. Rakesh Kumar :-

The respondent manufacture Bathroom fittings and Accessories of Brass chargeable to Central Excise Duty. In respect of Bathroom taps, cocks, showers etc. they were paying duty under sub-heading 8481.80 of the Tariff and there is no dispute about the same. The dispute is about the classification of other bathroom accessories of brass, namely soap dishes, toilet paper holder, tumbler holder, towel ring, towel rack, towel rack with single rail, coat hook, robe hook and for glass shelf. The respondent were paying Central Excise duty on these items by classifying the same under sub-heading 7419.99 of the Central Excise Tariff on their transaction value determined under Section 4 of the Central Excise Act. The Department was of the view that all these items are sanitary ware and parts thereof made of brass and hence the same are classifiable under sub-heading 7418.90 of the Tariff and since Notification No. 13/02-CE (NT) dated 1/3/02, as amended by Notification No. 10/03-CE (NT) dated 1/3/02 issued under Section 4A of the Central Excise Act, 1944, covers "sanitary ware of Copper of sub-heading 7318.90 of the Tariff", according to the Department the duty on these items was required to be paid by the respondent on the assessable determined under Section 4A of the Act on the basis of M.R.P. minus abatement. It is on this basis, that a show cause notice dated 5/3/03 was issued to the respondent for demand of differential duty amounting to Rs. 14,57,613/- alongwith interest, in respect of clearances of brass, soap dishes, toilet paper holder, tumbler holder, towel ring, towel rack, towel rack with single rail, coat hook, robe hook and glass shelf during the period from 1/3/02 to 31/3/03, appropriation of an amount of Rs. 3,86,681/- already paid by the respondent, and also for imposition of penalty on them under Rule 27 of the Central Excise Rules. The show cause notice was adjudicated by the Additional Commissioner vide order-in-original dated 8/7/04 by which the duty demand of Rs. 14,57,613/- was confirmed against the respondent alongwith interest and beside this, penalty of Rs. 5,000/- was imposed on them under Rule 27 of the Central Excise Rules, 2002. Since, the respondent, out of the above duty demand, had already paid an amount of Rs. 3,86,681/-, the same was ordered to be appropriated. The respondent filed an appeal before the Commissioner (Appeals) and the Commissioner (Appeals) vide order-in-appeal dated 24/1/05 held that –

(a) soap dish and toilet paper holders of brass are classifiable under sub-heading 7418.90 and hence would attract the provisions of Section 4A for assessment of duty on the basis of M.R.P. ;

(b) towel ring, towel rack, coat hook, and robe hook are classifiable under heading 83.02 as "articles of base metals" and hence the provisions of Section 4A are not applicable;

(c) tumbler holder of brass are classifiable under sub-heading 7418.10 and hence the provisions of Section 4A are not applicable ; and

(d) glass shelf is classifiable under sub-heading 7015.00 and hence the provisions of Chapter 4A are not applicable.

The Commissioner (Appeals) accordingly confirmed the duty demand of Rs. 3,86,681/- only in respect of soap dishes and toilet paper holders and set aside the remaining duty demand. The penalty of Rs. 5,000/-, however, was upheld. It is against this order of the Commissioner (Appeals) that this appeal has been filed by the Revenue.

2. Heard both the sides.

2.1 Shri Nitin Anand, learned Departmental Representative, assailed the impugned order by reiterating the grounds of appeal in the revenue's appeal and pleaded that the dispute is only about tumbler holder, towel ring, towel rack, coat hook, robe hook and glass shelf, that the respondent in the catalogue of these products printed by them for their marketing, describe these products as meant for bathroom purposes, that since these items are meant for bathroom, the same have to be treated as sanitary fittings and, hence, would be covered by sub-heading 7418.90, that the brass tumbler holder manufactured by the respondent is meant for use in the bathroom and is not a kitchen ware and, hence, its classification under sub-heading 7418.10 is wrong, that glass shelf is correctly classifiable as accessory of bathroom and hence the sanitary fittings under sub-heading 7418.90 of the Tariff, even if it is predominantly made of glass and Commissioner (Appeals)'s finding, that the same being made predominantly made of glass is classifiable under sub-heading 7015.00 is incorrect, that towel ring, towel rack, coat hook, robe hook and being meant for being fitted in the bathroom, are items of sanitary ware made of brass and, hence, the same would be correctly classifiable under sub-heading 7418.90, and that in view of the above, the impugned order is not correct.

2.2 Shri J.P. Kaushik, Advocate, the learned Counsel for the respondent, pleaded that so far as Glass Shelf is concerned, since it is made of glass, it would be correctly classifiable under sub-heading 7015 even if it is meant of use in bathroom, as Chapter 74 of the Central Excise Tariff only covers the copper and articles thereof, that in terms of note 2 to Section XV, articles covered by Chapter 83 are excluded from the purview of Chapter 74, that in terms of HSN Explanatory Notes to heading 83.02, this heading covers hat-racks, hat-pegs, brackets (fixed), hinges, castors and similar fixtures such as coat racks, towel racks, dish-cloth racks, brush racks, key racks etc., that in view of these HSN Explanatory Notes, the towel racks, towel ring as well as robe hook and coat hook would be covered by heading 83.02 and by virtue of Section Note 2 to Section XV, the items like towel ring, towel rack, coat hook, robe hook of brass, even if meant for use in the bathroom, cannot be said to be the items of sanitary ware and parts thereof, and that in view of this, there is no infirmity in the impugned order.

3. We have carefully considered the submissions from both the sides and perused the records.

4. The dispute in this case is only about the classification of brass tumbler holder, brass towel ring, towel rack, coat hook, robe hook and glass shelf being manufactured by the respondent. While the respondent describes all these items as bathroom accessories, so far as glass shelf is concerned, the same being made of glass would be correctly classifiable under sub-heading 7015 of the Tariff and there is no question of its classification under Chapter 74, which covers the copper and the article thereof. As regards, the other items namely robe hook/coat hook of brass, tumbler holder of brass and towel ring/towel rack of brass, while according to the department these items are classifiable under sub-heading 7418.90 of the tariff as brass sanitary ware and parts thereof, according to the respondent and as held by the Commissioner (Appeals), while the towel rings/towel rack/robe/coat hooks of brass are classifiable under 83.02, the brass tumbler holder are classifiable under sub-heading 7418.10.

4.1 Heading 74.18 covers "table, kitchen or other household articles and parts thereof, of copper – pot scourers and scouring or polishing pads, gloves and the like, of copper, sanitary ware and parts thereof, of copper". Sub-heading 7418.10 covers – "table, kitchen or other household articles and parts thereof". Sub-heading 7418.90 covers other items of heading 74.18. There is no dispute that it is sub-heading 7418.90 which covers "sanitary ware and parts thereof" of copper. The heading 7418 of the Central Excise Tariff is identical to heading 7418 of the HSN and, therefore, the scope of heading 7418 of the Central Excise Tariff would be the same as that of heading 7418 of HSN. HSN Heading 73.24 covers "sanitary ware and parts thereof" and as per HSN Explanatory Notes to heading 7418, the explanatory Notes to headings 7323 and 7324 would apply *mutatis mutandis* this heading also. Heading 7323 covers "Table, kitchen or other house hold articles and parts thereof of iron or steel, iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like of iron or steel": and heading 7324 covers - "sanitary ware and parts thereof" of Iron and Steel. As per the explanatory notes to HSN heading 7324, this heading includes - baths, bidets, foot-baths, hip baths, sinks, wash basins, toilet sets; soap dishes and sponge baskets; douche cans, sanitary pails, urinals, bedpans, chamber-pots, water closet pans and flushing cisterns, whether or not equipped with their mechanisms, spittoons, toilet paper holders etc. As per Oxford Advance Learner's Dictionary, the word "sanitary" means things connected with keeping places clean and healthy to live, specially by removing human waste. The items described in HSN Explanatory Notes to heading 7324 are clearly those items which are connected with keeping the places clean and healthy to live in. Accordingly, the expression – "sanitary ware and parts thereof" would cover only those items, which are connected with sanitary functions and their parts. In view of this, we hold that the Commissioner (Appeals) has correctly classified soap-dish and toiler paper holders of brass as sanitary ware of brass classifiable under sub-heading 7418.90. However, the same cannot be said about tumbler holder, robe hook, coat hook, towel ring and towel racks, as these items are not connected with sanitary functions. Moreover, we also find that as per Explanatory Notes of HSN Heading 8302 which covers "base metal mountings", fittings and similar articles specified in it, fixtures such as coat racks, towel racks, dish cloth, racks are classifiable under this sub-heading. The robe/coat hooks and towel rack and towel ring are of the type of articles covered by sub-heading 8302.50 which covers "hat-racks, hat-pegs, brackets and similar fixtures". As regards brass tumbler holder, we are of the view that the same, being not an item of use in connection with the sanitary functions, would be correctly classifiable under sub-heading 7418.10. Just because an item is meant for use in the bathroom, it does not become sanitary ware. The sanitary ware have to be of the class of the items, as described in Explanatory HSN Notes of heading 7324 i.e. bath, bidets, hip-baths, foot-baths, sinks, wash basins, toilet sets; soap dishes and sponge baskets; douche cans, sanitary pails, urinals, bedpans, chamber-pots, water closet pans and flushing cisterns whether or not equipped with their mechanisms, spittoons, toilet paper holders etc., which are connected with sanitary functions. Since, other than soap dishes and toilet paper holder of brass, whose classification has been upheld by the Commissioner (Appeals) under sub-heading 7418.90, none of the other items namely towel ring/towel racks, robe hook, coat hook, tumbler holder and glass shelf are classifiable under heading 7418.90, the duty has been correctly paid in respect of these items on the value determined under Section 4. In view of this, we do not find any infirmity in the impugned order. The Revenue's appeal is dismissed.

(Pronounced in open court on 8/4/2011)

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

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