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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/2699/2005 - EX[DB]

Date **02/05/2011**

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

To :
C.C.E.JAIPUR

N.C.R.B.STATUE CIRCLE C-SCHEME JAIPUR

302005

C.C.E.JAIPUR Appellant

Vs

M/S TELEMATS INDIA LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.379/ 2011 EX[DB]** dated 06-4-11

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 TELEMATS INDIA LTD.
(NOW KNOWN AS M/S HAVELLS INDIA LTD., S.P.-215, MIA ALWAR RAJASTHAN)

2. Adv. / Consult

NONE

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. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House.1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file
14. HON'BLE PRESIDENT,

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

DATE OF HEARING : 06/04/2011.
DATE OF DECISION : 06/04/2011.

Excise Appeal No. 2699 of 2005

[Arising out of the Order-in-Appeal No. 154 (MPM)/CE/JPR-I/2005 dated 24/05/2005 passed by The Commissioner (Appeals-I), Central Excise, Jaipur.]

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?	: Yes
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	: No
3.	Whether their Lordships wish to see the fair copy of the order?	: Seen
4.	Whether order is to be circulated to the Department Authorities?	: Yes

CCE, Jaipur – I] Appellants

Versus

M/s Telemats India Ltd.] Respondent
(now known as M/s Havells India Ltd.)]
Alwar, Rajasthan.

Appearance

Shri S.R. Meena, Authorized Representative (DR) – for the Appellants.

None – for the Respondent.

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

FINAL Order No. 379/2011-EX Dated : ____________

Per. Shri Justice R.M.S. Khandeparkar :-

Heard DR for the appellants and none present for the respondent though served. A letter has been placed on record received from M/s Havells India Ltd. The letter is dated 5th April 2011. It has been stated in the said letter that notice addressed to respondent was received in their office at SP-215, MIA, Alwar (Rajasthan). It is further stated in the letter that the said premises are purchased by M/s Havells India Ltd. under sale deed dated 11th August 2004. They have also informed that the notice received by them was sent to M/s Telemats India Ltd. by speed post at their address available with the said company. They have further stated that at the time of purchase of the premises they were issued certificate by M/s Telemats India Ltd. that M/s Havells India Ltd. would not be responsible for payment of any dues pertaining to Central Excise Duty in the matter in hand pending before the Tribunal. Letter thus clearly discloses clear intimation of the date of the hearing to the respondents.

2. The present appeal arises from order dated 24th May 2005 passed by Commissioner (Appeals). By the impugned order, the Commissioner (Appeals), Jaipur has set aside the order passed by the Adjudicating Authority. By order dated 28th January 2005, the Deputy Commissioner, Alwar had confirmed the demand of Rs. 12,15,081/- against M/s Telemats India Ltd. presently M/s Havells India Ltd. The operative portion of the order clearly read as under :-

> "I confirm the demand of Rs. 12,15,081/- (Rupees Twelve Lakh Fifteen Thousand and Eighty One only) against the assessee viz. M/s Telemats India Ltd. (now known as M/s Havells India Ltd.), SP-215, MIA, Alwar, SP-215, M.I.A., ALWAR, under Section 11A of the Central Excise Act, 1944. Since an amount of Rs. 3,00,000/- (Rupees Three Lakh) has already been deposited by the assessee vide TR-6 challan dated 12/09/2003, therefore, the same stands appropriated towards recovery in the Government account."

3. In order to confirm the demand, as above, the Deputy Commissioner on analysis of the materials on record and after taking into consideration the defence raised by the respondent had concluded as under :-

> "In view of the aforesaid discussion & findings, I, thus conclude that the items in question were nothing but *'Towers and Lattice Mast'* made of Iron & Steel, falling under sub-heading No. 7308.20, which is found to be most appropriate sub-heading for the purpose of Classification of "Tower and Lattice Masts". I, thus, hold that the product cleared by the assessee during the period in question was classifiable under Chapter sub-heading No. 7308.20 attracting therein Central Excise Duty @ 15% instead of 13% as paid by the assessee. I, accordingly find that the differential duty @ 2% Adv. is recoverable from the assessee. Hence, I find no force in the contention made by the assessee in this regard, as well as case laws relied upon by them."

4. The Commissioner (Appeals) while relying upon the decisions in the matter of **Elcon Engg. Co. Ltd. vs. CCE, Chandigarh** reported in **1999 (107) E.L.T. 337 (Tribunal), Executive Engineer, Central Workshop Division vs. CCE, Raipur** reported in **2004 (60) R.L.T. 874 (CESTAT-Del.), Executive Engineer, M.P. Electricity Board vs. Additional Collector of Central Excise, Indore** and **CCE, Raipur vs. Executive Engineer, M.P. Electricity Board** reported in **2003 (55) R.L.T. 28 (CEGAT – Del.)** held that the goods in question manufactured by the appellants were not towers at the time of removal from the factory premises of the appellants, but were the parts of the towers as the towers were not manufactured in factory but were erected at the site of the work and, therefore, were not liable to the duty of excise as no new goods come into existence at the time of removal of the goods from the factory premises of the appellants.

5. The DR while assailing the impugned order drew our attention to the decision of the Larger Bench of the Tribunal in the matter of **Mahindra & Mahindra Ltd. vs. CCE, Aurangabad, Chandigarh, Kanpur & Chennai** reported in **2005 (190) E.L.T. 301 (Tri. – LB)**, as well as of the Division Bench in the matter of **RPG Transmission Ltd. vs. CCE, Bhopal** reported in **2010 (258) E.L.T. 151 (Tri. – Del.)** and submitted that considering the facts of the case in hand the decisions in those matters squarely apply to the facts of the case and, therefore, the decision of the Commissioner (Appeals) needs

to be set aside and that of the Adjudicating Authority to be confirmed.

6. In Mahindra & Mahindra Ltd. case, Larger Bench had held thus :

"10. There can be no dispute over the proposition that immovable property, be it immovable steel structure embedded in earth or a constructed building, cannot be subjected to excise duty which applies to excisable goods, i.e. to movables. In the making of an immovable structure or building are used a variety of movable. Raising iron and steel structures like sheds involves fabrication work and many of the articles used in raising the structure come into existence through fabrication as per the pre-determined design to be fitted into the structure that is to be raised. For example, roof frame may be fabricated for the roof structure of a shed. Such fabrication of frames may be done at the construction site or at some factory premises. The iron and steel frames fabricated at the factory premises away from the site of construction would be brought to the site for their use in erecting the structure. The frames pre-fabricated and brought at the site and frames fabricated the site of erection both are goods manufactured. There will be variety of parts of structures of iron and steel, that can be fabricated either at the site or at some factory premises away from the site. The iron and steel raw material, such as angles, plates, tubes, etc., are used in making parts of structures and they acquired a distinctly different shape to suit the structural designs. For example, if iron or steel angles and plates are cut to make a steel table or chair which can be dismantled, it cannot be said that there are no goods manufactured because the iron and steel angles or plates remain such angles and plates though of different sizes, and merely holes are punched and screws fitted. Unlike in liquid mixtures, the raw material of iron and steel or wood will retain their identity, but it is precisely their being cut, and designed, punched and fitted to make an article commercially known that involves manufacture of an article distinct from the angles, sheets, tubes etc. used in it. Mere drilling holes or mere cutting jobs in isolation may not by themselves involve manufacture of an article, but, converting raw material like angles, tubes, plates etc. to bring about a distinct commodity will surely amount to manufacture as it is not "mere" drilling holes or cutting, but the activity is aimed at bringing about a distinct commodity. Thus, making of porta cabin from iron and steel angles with, roof frame-work i.e. trusses, doors, windows, ladders in it made by drilling holes and cutting the raw material, will be a movable structure having identity as a distinct marketable commodity. When the porta cabin is dismantled it nonetheless remains the manufactured products i.e. porta cabin dismantled or disassembled. The material such as angles, rods, shades, sections plates, tubes, etc. of such designed structure in their pre-assembled or disassembled form are prepared for use in the said structure, namely porta cabin. One cannot, with any conviction or authority, say that these dismantled parts of the structures are raw material used in its original form and that mere cutting or drilling holes has made no difference. The items in the parenthesis of Heading 7308 described as excisable goods include roofs, roofing frame-work, doors, windows and their frames, thresholds for doors, shutters, pillars, column, balustrades pillars, sheets of iron and steel, each one of these items has a complete distinct identity. The contractor undertaking the works contract for erecting a structure may not himself manufacture all such items used for structure. He may order the doors and windows to be made by a particular manufacturer and roof frame-work by the other, depending on the specialization and expertise of the manufacturer of different items. The contractor may supply designs and raw material for various parts of structures and get the work done on job work basis. To save time and expenses he may get the fabrication done at the site of construction instead of getting it done at some distance in a factory. When the required parts are fabricated they will be fixed as per the designed structure and will continue to be moveable object until made immovable by permanently fixing them in the designed immovable structure. To say that no parts of the structures came into existence as distinct commodities because ultimately they got permanently fixed into an immovable structure will run counter to the legislative intent to impose excise duty on such excisable goods at a stage when they have a separate identity as marketable goods anterior to their being permanently fixed in the immovable structure".

7. Matter involving similar facts came up for hearing in RPG Transmission Ltd. case and relying upon the Larger Bench decision the activities in the nature of erection of tower were held to be amounting to manufacture.

8. For erecting Tower and Lattice Mast by the appellants, the inputs used include M.S. Round, Bar, Pipes, Steel Tubes, Flats, Angles Shapes & Sections, Plates, Sheets, Strips etc. These materials are cut to the required sizes and punching, drilling and wielding are done and thereafter stamping, straightening, followed by galvanisation and lastly finishing work is carried out and then the structure comes into existence which is called

Tower/Lattice Mast classifiable under chapter subheading No. 7308.20 of the schedule to the Central Excise Tariff Act, 1985.

9. As rightly submitted by DR, the case in hand is fully covered by the decision of the Larger Bench in Mahindra & Mahindra Ltd. case as well as of the Division Bench in RPG Transmission Ltd. case. The decisions of Division Benches contrary to the decision of Larger Bench cannot be held as laying down correct proposition of law. Being so, the impugned order is liable to be set aside and the order of the Adjudicating Authority is to be confirmed. Accordingly, the appeal succeeds, the impugned order is hereby quashed and set aside and the order passed by the Adjudicating Authority is confirmed.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

PK