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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/3139/2010 - EX[DB], E/M/148/2011-EX
E/S/2924/2010-EX

Date **03/01/2012**

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

To :
M/S PARRYWARE ROCA PVT. LTD.,

223-226, MIA ALWAR.

M/S PARRYWARE ROCA PVT. LTD., Appellant

Vs

C.E. JAIPUR I **MISC ORDER NO. 779/2011-EX** Respondent
STAY ORDER NO. 1682/2011-EX

I am directed to transmit herewith a certified copy of **Final order No.1058/ 2011 EX|DB|** dated 27-12-11

passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.
2. Adv. / Consult MS. SEEMA SINGH, ADV.,
SH. NANDA KUMAR, ADV.,
SUANDALAYA, OLD #4, NEW #7,
JUSTICE SUNDARAM ROAD,
MYLAPORE, CHENNAI-600004
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 (Harvana)
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

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB

Excise Misc. Appn. No. E/ Misc./148/2011
Excise Stay Appn. No. E/S/2924/2010 in
Excise Appeal No. E/3139/2010

M/s.Parryware Roca Pvt. Ltd. ...Appellant

Vs.

CCE, Jaipur ... Respondent

Present for the Appellant : Ms. Seema Singh, Advocate & Sh. Nanda Kumar, Advocate
Present for the Respondent : Shri N. Pathak, DR

Coram: HON'BLE MR.D.N.PANDA, JUDICIAL MEMBER
HON'BLE MR. MATHEW JOHN, TECHNICAL MEMBER

Date of decision/Hearing: 19.12.2011

MISC ORDER No. 779/2011-EX
STAY ORDER No. 1682/2011-EX
FINAL **ORDER NO.** 1058/2011-EX **DATED:** ______

PER: D.N.PANDA

Ld. Counsel says that Misc. application No.148/11 has been filed for change of title of the appellant to be read as Roca Bathroom Products Private Ltd. instead of M/s. Parryware Roca Private Limited. This has been done with the amendment of the certificate of incorporation of the company. There is no objection from Revenue. Application is allowed. Registry is directed to effect necessary changes to the cause title while issuing notice and appeal memo. Ld. Counsel shall assist the Registry for this change of name in the record.

2. Ld. Counsel says that there was no erroneous claim of cenvat credit of service tax paid for availing services in respect of traded goods. What that credit taken was only in respect of services utilised for manufacture of the goods. While show cause notice proceeded on the controversy of erroneous claim of cenvat credit of service tax related to traded goods, the appellate authority proceeded otherwise and has stated that the credit availed in respect of tax paid by head office is not permissible to the appellant. There was a gap of distance between head office and appellant. He relies on page 48 to buttress his claim.

3. Ld. DR on the other hand supports the order of the authorities below.

4. We heard both sides and also perused para 9 of the reply to show cause notice existing at page 48 of the appeal folder. We are not satisfied as to whether authorities have occasion to know the controversy raised by the appellant and whether the evidence was led in support of the claim. Rather, we find an evasive reply filed by the appellant which could not come to rescue of the appellant for defence.

5. We have perused the adjudication order where the authority has underlined portion at page 42 in the appeal folder reading as under:-

> *"As regards the service tax credit on amount of service tax taken by the assessee for the services which are directly or indirectly attributable to the trading activities would not be eligible as credit as the definition of input services indicates that the credit is eligible only in respect of manufacture of the final product and clearance of the final product from the place of removal. The question of manufacturing the final product, in the case of trading activity does not arise as it is an admitted fact that the assessee indulged in trading activity also and their Head Office was also directly and regularly involved in such trading activities."*

6. The aforesaid observation demonstrates how the appellant intended to operate. We have also perused the appellate order and particularly para 7.2 thereof. We find that there was no evidence before the authority to entertain claim of the appellant. We do appreciate that if the adjudicating authority gets proper opportunity with the evidence laid before him, the appellant may get justice. We make it clear to the adjudication authority that the adjudication should be based on the premises of the show cause notice only.

7. Primafacie, we notice that the appellant failed to adduce evidence and plead its defence. The demand raised has been to protect interest of revenue. During pendency of the appeal, when ld. Counsel says that he can better satisfy the authority, we do not propose the appeal to be kept pending here to safeguard interest of Revenue. We direct the appellant to make deposit of Rs.5.00 Lakhs within 8 weeks from today and Produce the challan before the adjudicating authority by 15^{th} March, 2012 alongwith the application for fixation of date of hearing. If such a course is followed, the authority shall fix the date of hearing and the appellant shall get opportunity to lead its defence and reconcile the defence on the proposition in the show cause notice and claim the appellant makes. If the appellant does not comply to the aforesaid order, the appeal shall stands dismissed.

8. In the result, both stay application and appeal disposed in the above terms.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

(MATHEW JOHN)
TECHNICAL MEMBER

Anita