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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/224 /2005 - EX[DB]

Date 02/04/2012

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

To :
TITAN INDS. LTD.
MOHABEWALA INDS. AREA, DEHRADUN (UA)
248110

TITAN INDS. LTD. Appellant
Vs
C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/387/ 2012 EX[DB]** dated 12-3-12 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. MEERUT I
EXCISE CHOWK, UNIVERSITY
ROAD, MANGAL PANDEY
NAGAR, MEERUT - 250005.

2. Adv. / Consult
MR.V.SWAMINATHAN
G-50, IIND FLOOR, LAJPAT NAGAR-III, NEW DELHI-24

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-3
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

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 224 of 2005

Date of Hearing/decision : 12.3.2011

[Arising out of Order-in-Appeal No. 615/2003 dated 29.11.2004 passed by the Commissioner (Appeals), Central Excise, Meerut]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Member (Technical)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	Yes
3. Whether Their Lordships wish to see the fair copy of the Order?	:	Seen
4. Whether Order is to be circulated to the Departmental authorities?	:	Yes

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M/s. Titan Industries Ltd. — Appellants

Vs.

Commissioner of Central Excise
Meerut — Respondent

Appearance:

Shri V. Swaminathan, Advocate for the Appellants
Shri N. Pathak, DR for the Respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Member (Technical)

FINAL **ORAL ORDER NO.** A/387/2012-EX(BR)

Per Archana Wadhwa (for the Bench):

The appellants are engaged in the manufacture of wrist watches which are being cleared by them to their C & F agents with their brand name duly printed on the dial. The said clearances were on payment of duty of excise. In some cases, during festival season some companies insist on their name on the dial as the watches are required to be gifted by them. Some bulk orders are placed by them with the companies. The watches purchased by the client in bulk are sent back to the appellants for dial printing and in some cases for change of strap, As such procedure under Rule 57H of the erstwhile Central Excise Rules, 1944 was being ~~violated~~ followed by the appellants.

2. The appellant was served with the show cause notice dated 8.1.97 proposing demand of duty of Rs. 8,56,417/- on the ground that by undertaking the dial printing and change of strap on the already duty paid watches, they have undertaken the manufacture of new watches. As such, provisions of erstwhile Central Excise Rules, 173H were not applicable to them and they should have cleared new watches on payment of duty.

3. The appellants contested the demand on the ground that they are only reprinting the dial with name of their customers and in some cases changing the s~~c~~trap. The said activity undertaken by them cannot be held ~~quoted~~ as manufacturing activity inasmuch as no new product came into existence. As such, they contended that the provisions of Rule 173H are available to them, which stand duly followed.

4. However, the above contention of the appellant was not accepted by the original adjudicating authority as also by Commissioner (Appeals). The appellate authority however, set aside the penalty imposed upon the applicant but confirmed the demand of duty. Hence, the present appeal.

5. After hearing both the sides and after going through the impugned order, we find that the issue required to be addressed by us is as to whether reprinting of dial and change of s~~c~~trap on the duty paid watches is a repair activity or the same amounts to manufacture of a new wrist watches so as to attract duty liability again. The reasons adopted by Commissioner (Appeals) for holding against the appellant are being reproduced below for ready reference :

> *"It is important to look into the manufacturing process adopted in respect of watches. Watches are assembly of different parts, when various parts and components are put together in a unit case or container i.e. Attached to a Dial, a watch comes into the existence. In the instant case duty paid watches were brought back into the factory, they were subjected to dismantling and dis-assembly i.e.*

their parts and components were used to be separated thus the watches were no more watches and were reduced to dials, hands, straps, needles and so on. After re-printing on the dials, change of monograms, changing old parts, change of hands, straps, change of name etc., various parts and components were put together i.e. assembled to manufacture the watch. Besides original parts were mixed with the new parts and after fresh assembly hands, straps may not go in those original watches and such re-assembly amounts to manufacture These watches now emerged in the form of new watches bearing different name and character and had a new attractive form capable of attracting more price/ value as compared to its original form and design and thus had a distinct entity compared to the original watch. If the original and reassembled watch are alleged to be of same name, character & use then why has enduser asked for changes. Section 2(f) of Central Excise Act, 1944 defines manufacturing to include any process incidental or ancillary to the completion of manufactured product. Re-assembly in my opinion is incidental and ancillary to manufacture."

6. As is seen from the above, there is no denial of fact that apart from putting their customers logo on the dial and change of strap, no other process is undertaken on the said wrist watches. The appellate authority has held that there is intermixing of various other parts and a particular part which was originally with a particular wrist watch may find its place in another wrist watch. However, we find that the above cannot be made the basis for holding that the activity amounts to manufacture. The duty paid cleared watches were received back by the

appellants and after undertaking some process on the same, wrist watches were cleared from the factory. No new product having a different name, use and character comes into existence. Wrist watches remains wrist watches inspite of dial of the watch having been embossed with the customers logo.

7. Though ~~the~~ a number of decisions stand ~~purchased~~ produced before us, but we would like to refer to a majority decision in the case of Sudhir Engineering Co. vs. CCE, Daman [2006 (206) ELT 481 (Tri-Mum)] wherein the law declared by various precedent decision of the Tribunal as also ~~of~~ by the Courts was considered. It was held that replacing the engine and / or alternator in the old DG sets with the new engine / alternator does not amount to manufacture inasmuch as the same does not result in production of a new article. Reference was also made to the Tribunal's decision in the case CCE Meerut vs. Samtel Colour Lab. [2001 (135) ELT 288(Tri-Del)] wherein on the issue of intermixing of identical parts taking place between old and new ~~took~~ parts & picture tube was ~~also~~ considered. It was observed that at the end, serviceable picture tube emerges in place of defective picture tube and the same cannot be held to be a manufacturing activity. The Hon'ble Supreme Court decision in the case of Tecumesh Product India Ltd. vs. CCE, Hyderabad [2004 (167) ELT 498 (SC)] relied upon by the learned DR was also considered and was differentiated on facts.

8. In view of the above, we hold that activity undertaken by the appellant does not amount to manufacture. As such, confirmation of demand of duty against them on the said ground is not sustainable. The impugned order is accordingly set aside and appeal allowed with consequential relief to the appellants.

(Pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(Rakesh Kumar)
Member(Technical)

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