CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 21.12.2016
Date of Pronouncement: 09.01.2017

Appeal No. E/755/2011-EX[DB]

[Arising out of the Order-in-Appeal No. 364/CE/MRT/II/2010 dated 29.10.2010 passed by the Commissioner of Central Excise, Meerut]

C.C.E. Meerut-II	…	Appellant
Vs.		
M/s. Eureka Forbes Ltd.	...	Respondent

Appearance:

Present Shri Yogesh Agarwal, A.R. for the appellant
None present for the respondent

Coram: **Hon'ble Mr. Justice (Dr.) Satish Chandra, President**
Hon'ble Mr. V. Padmanabhan , Technical Member

FINAL ORDER NO. 50182/2017

Per V. Padmanabhan:

The present appeal is filed by Revenue against the order in appeal dated 29.10.2010 passed by the Commissioner (A) Meerut. The respondent is a manufacturer of vacum cleaners and its accessories.

2. The brief facts of the case are that the product "Vacuum Cleaners" was attracting ad-valorem rate of central excise duty. The Respondent was not selling these goods in the wholesale trade from their factory gate at 'Bhowali' but they were clearing the goods to their branch offices / sale depots located in different parts of the country from where these goods were being sold to different dealers. The price of vacuum cleaners sold by these dealers to the ultimate buyers was inclusive of the value of these accessories but the same had not been included in the assessable value of their products cleared by the respondent from their factory gate to their depots / sales network.

3. There was no sale of these goods in the course of wholesale trade at factory gate. The goods in question were stock transferred to their various branches or sales depots and in accordance with the provision of section 4 of the Central Excise Act 1944 the time and place of removal / sale by the Respondent to a buyer in course of wholesale trade for delivery may alone be considered the actual sale points i.e. depots not the factory gate.

4. The Department noticed that the respondent was issuing two sets of invoices to their dealers / buyers. The first invoice pertains to sale of main unit and the second invoice, which was also sent along with the first one, was raised for the sale of the so called "optional accessories". These optional accessories were not brought to the factory but did not accompany the main unit at the time of said transfer of the goods from factory to sales depots. Show cause notice was issued to the respondent proposing to charge excise duty by including the value of the optional accessories with that of the vacuum cleaner. However, both the original authorities as well as Commissioner (A) held that such demand of excess duty is not justified. Aggrieved by the above orders Revenue has filed the present appeal.

5. Heard Shri Yogesh Agarwal, A.R. for the appellant and nobody appeared for the Respondent.

6. On perusal of records we find that the issue which is the subject matter of the present appeal was already decided by the CEGAT New Delhi for an earlier period reported as ***Eureka Forbes Ltd. Vs. CCE Meerut 1996 (83) ELT 334 (Tri.).*** The appeal filed by the Department against the above final order was also dismissed by the Hon'ble Supreme Court. Since the issue stands decided in favour of the respondent the authorities below have found no reasons to uphold the demand. Having gone through the records in

the case we find no reasons to take a different view in the matter in as much as the issue has been finalized by the Hon'ble Supreme Court.

7. In view of the above, the impugned order is upheld and Revenue's appeal is dismissed.

[Order Pronounced in the open court on 09.01.2017]

(Justice Dr. Satish Chandra)
President

(V. Padmanabhan)
Technical Member

Bhanu