IN THE CUSPTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:15/02/2017

Excise Appeal No.680/2006

[Arising out of Order-in-Appeal No.12 to 24 dated 8.2.2008 passed by the Commissioner of Central Excise (Appeals), Jaipur]

M/s.EID Parry (India) Ltd. Appellants

Vs.

CCE, Jaipur Respondent

Appearance:

Rep. by Shri R.K. Verma, Advocate for the appellant .
Rep. by Shri R.K. Manjhi, DR for the respondent.

Coram: Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No.51881/2017

Per Archana Wadhwa:

After hearing both the sides duly represented by Shri R.K. Verma, ld. Advocate for the appellant and Shri R.K. Manjhi, ld. DR for the respondent, we find that the dispute in the present appeal relates to assessable value of various types of sanitary wares manufactured by the assessee. Whereas the appellant has adopted the value in terms of the provisions of Section 4 of the Central Excise Act; Revenue is of the view that the goods are liable to be assessed on MRP basis, in terms of Section 4 A of the Central Excise Act. Accordingly, the assessments, which were provisional, stands finalized and consequent demand of duty stands confirmed against the appellant.

2. After hearing both the sides and going through the impugned order, we note that the lower authorities have relied upon the opinion dated 17.06.2003 of the

Director of Legal Metrology, New Delhi, wherein he reiterated that "sanitaryware items covered in grass/haystack etc. are covered under the provisions of the Packaged (commodities) Rules. The grievances of the appellant is that the said letter was never provided to them and on the contrary, they have also produced on record the opinions of the Director of Legal Metrology, New Delhi itself, which do not stand considered by the authorities. It is also seen that this opinion dated 17.06.2003 given by the Director of Legal Metrology is in response to a query by Revenue and such query does not stand produced before us so as to enable us to find out as to what was asked for from the Legal Metrology Department. We also find favour with the assessee's plea that the other two opinions, which have been shown to us opined to the contrary, do not stand considered by the lower authorities.

2. It is also the appellant's contention that their sister concern situated at Tanipet, Tamil Nadu, manufacture is being assessed to duty under Section 4 of the Act, without any objection having been raised by the Revenue. We agree that the Revenue cannot take two contra stands in respect of the same assessee. This fact also requires verification.

3. It is further noted that the Revenue has relied upon the Hon'ble Supreme Court's decision in the case of **Whirlpool of India Ltd. – 2007-TIOL-191-SC-CX-LB** holding the refrigerator, which are cleared from the manufacturer factory in packed condition, to be a commodity falling under the Weights and Measures Act, 1976. Without commenting upon the applicability of the said decision to the facts of the instant case, we not that the said decision was subsequently taken note

of by the Hon'ble Supreme Court in the case of **State of Maharashtra Vs. Subhash Arjundas Kataria – 2011-TIOL-122 –SC-MISC** and the matter was referred to the Larger Bench of the Hon'ble Supreme Court.

4. Ld. Advocate appearing for the appellant brings it to our notice that the said Larger Bench has not been constituted till date and no decision is available. Inasmuch as the Revenue has relied upon the decision of **Whirlpool of India Ltd. (supra)**, which stands referred to the Larger Bench, it is deemed fit to await the said Larger Bench's decision.

5. As already observed, the opinion relied upon by Revenue along with query raised to the Metrology Department, has not been placed on record and not procured to the appellant; that the facts of packaging condition of ultimate clearance of the goods to the consumer are not available on record; that the other contra opinions placed on record have not been considered by the lower authorities and in view of the reference of the legal issue to the Larger Bench, we deem it fit to set aside the impugned order and remand the matter to the Original Adjudicating Authority for re-consideration of all the above issues. However, we make it clear that we have not expressed any opinion on the disputed issue and the assessee is within his right to raise any ground, plea or evidence, etc. to that effect in support of his case.

[Order dictated and pronounced in open court]

(Archana Wadhwa)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.