IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –I

Excise Misc.Application No.E/Misc./50324/2017-[DB]
Excise Appeal No.E/3138/2010-[DB]

[Arising out of Order-in-Original No. 321(DKV)CE/JPR-I/2010 dated 06.07.2010 passed by the Commr. Jaipur-I].

Glamouroom Taps Pvt. Ltd. …Appellant

Vs.

C.C.E. Jaipur-I … Respondent

Present for the Appellant : Mr. R.K. Verma
Present for the Respondent: Mr. H.C. Saini (D.R.)

Coram: HON'BLE JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. B. RAVICHANDRAN, MEMBER (TECHNICAL)

Date of Hearing/Decision: 20/06/2017

FINAL ORDER NO. 54131/2017

PER: B. Ravichandran:

The appeal is against order in appeal No. 321/2010 dated 06.07.2010 of Commissioner of Central Excise (Appeals) Jaipur. The appellants are engaged in the manufacture of bathroom fittings, taps etc. liable to central excise duty. During the process of manufacture of these items, brass ingots are melt for casting in the furnace. There is a burning loss and also formation of dust. The appellants removed the said dust manually and retrieved the metals whatever feasible. However, the left over waste called 'dust/ furnace dust', from which they could not extract useful metal, are sold for a consideration. The Revenue entertained a view that such item is classifiable under CETH 7404 0029 as waste of copper and scrap. Accordingly, the duty demand was made against the appellant, which was confirmed by the original authority and upheld by the first appellate authority. The demand so confirmed is Rs. 16,58,704/- along with equal amount of penalty under Section 11AC of the Central Excise Act, 1944 and with further penalty of Rs. 1 lakh under Rule 25 of the Central Excise Rules, 2002.

2. We have heard both the sides and perused the appeal records.

3. Admittedly, the dust which is cleared by the appellant is arising as a residual item in the furnace during the process of melting and manufacture of excisable final products. The impugned item is actually marketable contained percentage of brass. Relying on the sale value the central excise duty as waste and scrap was demanded and the claim of the appellant that these are furnace dust, was rejected. We note that no chemical test regarding the actual nature of the product was carried out by the Revenue. It would appear that emphasize was made only on marketability and receipt of certain consideration by the appellant to hold the product as excisable. It is now a well settled position of law that a product has to clear both the test of being manufactured as well as capable of being marketed. The admitted position in the present case is that the appellant are a manufacturer of brass articles and cannot be said to be involved in the manufacture of residual 'furnace dust' which is arising as a compulsory technical necessity. We find that the reliance placed by the appellant on the decision of Apex Court in Alcobex Metals Ltd. 2015 (325) ELT 242 (S.C.) is appropriate. The Apex Court has observed as below:

> "2. After going through the records, we find that the respondents in the present case is almost identically placed as the products, viz., dross and skimmings which were involved in the Indian Aluminium C. Ltd.'s case (supra)
> 3. We thus, find that the High Court was correct in its approach in relying upon the aforesaid two judgments and arriving at the conclusion as mentioned above."

The Apex Court was dealing with dutiablity industrial dust arising during course of manufacture of brass and copper.

4. After careful perusal of the ratio provided by the Hon'ble Supreme Court, we find that the attempt in the impugned order to distinguish the same is not sustainable. On careful consideration of the above facts and analysis, we find no merit in the impugned order and accordingly, set aside the same. The appeal is allowed.

5. There is a miscellaneous application by the appellant for change of cause title, it is mentioned that the appellant name has been changed from Glamouroom Taps Pvt. Ltd. to Roca Bathroom Products Pvt. Ltd. The appellants submitted the approval by the competent authority for such change of name. Accordingly, we allow the misc. application and order the change of cause title incorporating the new name of the appellant.

6. The appeal and misc. applications are allowed.

(Dictated and pronounced in the open court)

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(JUSTICE (DR.) SATISH CHANDRA)
PRESIDENT

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