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

Excise Appeal No. 54019 of 2014

[Arising out of Order-in-Appeal No. 33/2013 dated 3.07.2014 passed by the Commissioner of Central Excise (Appeals), Jaipur]

M/s. Samtel Glass Ltd. **Appellant**

Vs.

Commissioner of Central Excise **Respondent**
Jaipur

Appearance:

Shri Bimal Jain, Advocate for the Appellants
Shri Dharam Singh, DR for the Respondent

CORAM:

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

Date of Hearing/ Decision: 07.06.2017

FINAL ORDER NO. 54345 /2017

Per: Justice (Dr.) Satish Chandra:

The present appeal is filed against the Order-in-Appeal No. 33/2013 dated 3.07.2014.

2. During the period December, 2005 to March, 2008, the appellant was engaged in the manufacturing of funnel for which they manufactured moulds. The amortised cost of the moulds is added in the assessable value of the funnels.

3. In some cases, their customers do not take up the contracted quantity. As a result, they get compensation from the customers, which is attributable to the expenses already incurred by them for designing, development and manufacturing the moulds. The Revenue is seeking duty on the said compensation so received by them. Being aggrieved, the appellant filed the present appeal.

4. With this background, Shri Bimal Jain, learned Counsel submits that for the designing and development, the department has demanded the service tax which was accepted by the appellant without any objection. He submits that when the required quantity was not uplifted as per contract, by the customers than the customer paid some compensation to meet the cost of design and development. The same is not subject to duty.

5. On the other hand, Shri Dharam Singh, learned DR justified the impugned order.

6. After considering the rival submissions, it appears that an identical issue came up before the Tribunal in the case of ***Spring Fresh Drinks vs. CCE [1991 (54) ELT 333 (Tribunal)]*** where it was observed that liquated damages recovered by assessee for non-

performance of contract is not includible in the assessable value. The said order passed by the Tribunal was upheld by the Hon'ble Supreme Court in the case of ***Collector vs. Spring Fresh Drinks – 1997 (92) ELT A 70 (SC)***.

7. By following the earlier decision (supra), we find no justification to sustain the impugned order. The same is hereby set aside. In the result, the appeal is allowed with consequential relief.

(Dictated and pronounced in the open Court)

(V. Padmanabhan)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

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