CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

BENCH-DB

COURT –III

Excise Appeal No. Ex/53036/2014-EX [DB]

[Arising out of Order-in-Original No. 02-VC-CE-JPR-I-2014 dated 29.01.2014 passed by the Commissioner of Central Excise (Appeals-I), Customs & Service Tax, Jaipur]

Excise Appeal No. Ex/53037/2014-EX [DB]

[Arising out of Order-in-Original No. 229VC-CE-JPR-I-2013 dated 31.12.2013 passed by the Commissioner of Central Excise (Appeals-I), Customs & Service Tax, Jaipur]

M/s. Roca Bathroom Products Pvt. Ltd. ...Appellant

Vs.

C.C.E. & ST., Jaipur …Respondent

Appearance:
Mr. R.K. Verma, Advocate for the Appellant
Mr. M.R. Sharma, DR for the Respondent

CORAM:
HON'BLE JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. V. PADMANBHAN, MEMBER (TECHNICAL)

Date of Hearing.08.06.2017
Date of Decision.30.06.2017

Final Order No. 54379-54380 /2017

Per V. PADMANBHAN:

These appeals are filed against the Orders in Appeal dated 29.01.2014 as well as 31.12.2013.

2. The appellant is engaged in the manufacture of Sanitary wares and Toilet Articles falling under chapter 69 of

the Central Excise Tariff Act. They manufacture Moulds and use the same in the manufacture of Sanitary Wares & Toilet Articles. After the repeated use of such moulds made out of Plaster of Paris, they become worn out and cannot be used any further and hence, they are cleared as scrap. The Department was of the view that Central Excise duty is required to be paid on the consideration received at the time of sale of such used moulds. Accordingly, duty demands have been made, which stand confirmed by the authorities below. Aggrieved by the impugned orders, the present appeals have been filed.

3. With the above background, we have heard Shri R.K. Verma, ld. Counsel for the appellant as well as Shri.M. R. Sharma, ld. DR on behalf of Revenue.

4. The ld. Counsel for the appellant submitted that what has been sold by the appellants are nothing but scrap since the plaster of Paris moulds become worn out with use. Such moulds are not the result out of any manufacturing process in the factory and therefore not excisable, even though, some consideration has been recovered at the time of sale of such moulds. He further argued that there is no specific entry for classification of waste and scrap of moulds. He also submitted that the demand for the subsequent period has been dropped by the Commissioner (Appeals).

5. The ld. DR supported the impugned orders. He referred to the explanation inserted below the definition of the terms "Excisable Goods" finding place in Section 2(d) of the Central Excise Act, 1944. The explanation reads as follow:-

> *Section2 Definitions.:*
>
> *(d) "excisable goods" means goods specified in [the First Schedule and the Second Schedule] to the Central Excise Tariff Act, q985 (5 of 1986)] as being subject to a duty of excise and includes salt'*
>
> *[Explanation,-For the purposes of this clause, "goods" includes any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable.]*

6. Ld. DR submitted that the worn out moulds are considered as marketable in terms of the explanation above.

7. From the record, we note that the Plaster of Paris moulds used in the manufacture of Sanitary Wares by the appellants are manufactured and used in house. No duty has been paid on such moulds in view of the Notification no. 67/95 dated 16.03.1995 which provides for "nil" rate of duty for goods capitively consumed. It is further seen that such moulds are sold for a consideration after exhausting its life span. The dispute is whether excise duty is payable on such goods at. the time of their clearance.

8. The claim of the appellant is that goods being cleared are nothing but waste and hence not excisable. We find that these moulds were manufactured within the factory of the appellant and used for further manufacture within. Hence they retain the characteristic of manufactured goods and satisfy the requirements of Section 2(f). Even though at the point of clearance such moulds are worn out, they do not loose the characteristic of manufactured goods. The explanation inserted after excisable goods in Section 2(d) makes the statute clear that such goods are deemed to be marketable. Consequently, we are of the view that excise duty is liable to be paid at the time of their clearance on the transaction value. It is further seen from the Cenvat Credit Rules, 2004, that if the moulds had been procured from outside on payment of duty as capital goods, duty would have been payable in terms of Rule 3(5A) at the time of clearance.

9. In view of the above discussions we uphold the impugned orders and reject the appeals.

(Pronounced in the open court on 30.06.2017)

(V. PADMANBHAN) **MEMBER (TECHNICAL)**	**(JUSTICE (DR.) SATISH CHANDRA)** **PRESIDENT**

Sakshi