IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

DATE OF HEARING : 14/06/2017.
DATE OF DECISION : 04/07/2017.

Excise Appeals No. 57207, 57895-57900 of 2013

[Arising out of the Order-in-Original No. 14/2012-13 dated 31/01/2013 passed by The Commissioner, Central Excise, New Delhi.]

M/s Global Enterprises — Appellant

Versus

CCE, Delhi – II — Respondent

and

CCE, Delhi – II — Appellant

Versus

Pooja Baluja]
Shri Shalabh Kapoor]
Shri Bijender Kumar Kedia] Respondents
Shri Shyam Aggarwal]
Shri Ashish Mutneja]
Shri Sunil Bhateja]

Excise Appeal No. 54947 of 2014

M/s Kaizen Computech Ltd. — Appellant

Versus

CCE, Delhi – II — Respondent

Appearance

S/Shri J.P. Kaushik, B.L. Garg and Jitendra Singh, Advocates – for the appellant/respondents.

Shri H.C. Saini, Authorized Representative (DR) – for the Respondent/appellant.

CORAM :**Hon'ble Shri Justice Dr. Satish Chandra, President**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 54622-54629/2017 Dated : 04/07/2017

Per. B. Ravichandran :-

These appeals are against common impugned order dated 31/01/2013 passed by Commissioner of Central Excise, Delhi – II. The main appellant in this case is M/s Global Enterprises (hereinafter, GE), New Delhi, a proprietary concern of Shri Rishi Baluja. GE were engaged in manufacturing/trading of multi media speakers, with or without FM radio, classifiable under Chapter 85 of Central Excise Tariff. The Central Excise officers conducted search and verification in the premises of GE in April, 2011. Follow up investigations were conducted and statements of various connected persons were recorded. Certain excisable goods were also seized. On completion of the investigation a show cause notice dated 27/04/2012 was issued to various persons. The notice proposed classification of multi media speakers with woofer having FM radio, under CETH 85279990 and to be assessed under Section 4A of the Central Excise Act, 1944. A duty demand of Rs. 89,71,607/- was also made covering the period 01/04/2007 to 31/03/2011. Proposals were also made for confiscation of seized excisable goods and to impose penalties under Section 11AC/Rule 26, on various noticees. The case was adjudicated. The Original Authority vide the impugned order held that multi media speakers without FM radio and with FM radio are classifiable under CETH 85184000 and 85279990 respectively. Multi media speakers with FM radio were held to be assessable under Section 4A. Duty demand of Rs. 88,27,946/- was confirmed alongwith interest. The seized goods were ordered to be confiscated with an option to redeem on payment of fine of Rs. 2,00,000/-. Penalty of equivalent amount to duty was also imposed on GE under Section 11AC. Penalties of Rs. 1,00,000/- each was imposed on the buyer companies under Rule 26. Original Authority dropped penal proceedings against M/s Krishna Technologies and M/s JMD Computers.

2. Revenue filed 6 appeals against the same impugned order contesting non-imposition of penalties under Rule 26 of Central Excise 2002 on 6 individuals for their role in non-payment of duty. Another appeal is by M/s Kaizen Computech Ltd., engaged in trading of multi media speakers in their own brand name, against imposition of penalty under Rule 26.

3. The brief facts of the case are that GE were engaged in manufacture/selling/trading of multi media speakers. GE purchased parts of speakers and assembled them into multi media speakers. These speakers were sold with their brand name "EXCEL". They claimed that during the period 2007-2008 to 2010-2011, no duty was payable on these speakers as the value of clearance was within the SSI exemption limit. Multi media speakers with or without FM radio were also received by GE from

M/s Krishna Technologies and M/s JMD Computers. GE printed brand names of various buyers on such speakers and packed them for sale. The disputes in the present appeal mainly revolves around two issues :- (a) classification of multi media speakers with FM radio and (b) the use of brand name of others by GE in the manufacture of multi media speakers.

4. We have heard both the sides extensively and perused the appeal record, written submission and sales brochure of the impugned products. We take up for consideration, first the classification of multi media speakers. There is no dispute about classification of such multi media speakers without FM radio under CETH 85184000. The dispute is only with reference to classification of multi media speakers with FM radio. The Revenue held a view that the same is classifiable under CETH 85279990, whereas GE contended that the same will be classifiable like any other multi media speakers under CETH 85184000. For better appreciation of the competing headings, the same are reproduced below :-

"8518	Microphones and stands therefore; loudspeakers, whether or not mounted in their enclosures, headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers, audio-frequency electric amplifiers; electric sound amplifier set
85181010	Microphones and stands therefore Loudspeakers, whether or not mounted in their enclosures
85182100	Single loudspeakers, mounted in their enclosures

85182200	Multiple loudspeakers, mounted in the same enclosure
85182900	Other
85183000	Headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers
85184000	Audio-frequency electric amplifiers
85185000	Electric sound amplifier sets
85189000	Parts”
“8527	Reception apparatus for radio-broadcasting, whether or not combined, in the same housing with sound recording or reproducing apparatus or a clock
-	Radio-broadcast receivers capable of operating without an external source of power :
85271200	Pocket-size radio cassette-players
85271300	Other apparatus combined with sound recording or reproducing apparatus
85271900	Other
-	Radio-broadcast receivers not capable of operating without an external source of power, of a kind used in motor vehicles :
85272100	Combined with sound recording or reproducing apparatus
85272900	Other Other Other
85279100	Combined with sound recording or reproducing apparatus
85279200	Not combined with sound recording or reproducing apparatus but combined with a clock
85279900	Other : Radio communication receivers :
85279911	Radio pagers
85279912	Demodulators

85279919 Other

85279990 Other"

5. We note that the Original Authority considered the impugned goods as composite goods and applying note 3 of Section XVI of the Central Excise Tariff Act, held that FM radio present in the amplifier speakers provide a "principal function" or "clearly defined function" and accordingly he held that the said product should be considered as "radio communication receivers – others" rather than speakers (audio frequency electric amplifier). We have carefully perused the finding of the Original Authority as recorded in para 103 of the impugned order. We note that the Original Authority fell in error in appreciating the factual details of the impugned goods, commercial parlance as to how it is brought and sold and also applicable scope of tariff entries in terms of the provisions of section note/chapter note. We reproduce the pictorial representation of multi media speakers with built in FM radio as below :-

6. We note the product, as represented above basically contains two speakers and a woofer. FM radio is built in, in the woofer. The whole set is a multi media speaker system generally connected to other devices like computers or audio players for sound output. A comparison of the above goods with multi media speakers + sub-woofer, without FM radio, indicates that both the products are almost identical except for the fact that in one, there is a an additional built in FM radio, in the sub-woofer. We are not in agreement with the lower authority in the conclusion that the speaker system combined with sub-woofer having built in FM radio, attains clearly defined function of an FM radio rather than a speaker system. In a plain trade parlance it is clear and apparent that a person intend to buy a multi media speaker system will consider the impugned product for his requirement. The FM radio is an added, in built feature. As clearly shown in the sales brochure, the main function of the product is being provided by speaker system with sub-woofer.

7. We note that almost similar issue of classification of multi media speakers having additional function of USB port and FM radio came up for consideration by the Tribunal in **Logic India Trading Company – 2016 (337) E.L.T. 65 (Tri. – Bang.)**. The Tribunal held that the impugned goods are speakers with added function and the main role of the item, in question, remains amplifying the sound received from outside source or from inbuilt feature. Applying the interpretative rules and section note 3 of Section XVI, the Tribunal held that the product should be

classified as speakers only. The said decision is affirmed by the Hon'ble Supreme Court in **2016 (342) E.L.T. A34 (S.C.)**.

8. In view of the above legal position, we find the impugned order regarding classification of multi media speakers with added feature of FM radio is not sustainable. The product should continue to be classified as speakers.

9. Regarding the liability of GE for Central Excise duty in terms of Schedule III of Central Excise Act, 1944, we note that heading 8518 (speakers) are not covered in the said schedule for applying the provisions of "deemed manufacture". Accordingly, printing of brand name and packing of these products alone cannot be considered as manufacture. We note that GE have manufactured multi media speakers and cleared affixing EXCEL, as their own brand name. They claim that the clearance of such speakers manufactured by them are well within the exemption limit for small scale unit. The Original Authority held that even in the speakers sold with EXCEL brand, the brand "QHMPL" is mentioned. We note that the brochure shows EXCEL as a registered trade mark. It is indicated that the said speakers are marketed and supported by QHMPL group. We find, no brand name of other person can be said to have been used in such situation.

10. Regarding manufacture of speakers with other's brand name we note that GE is affixing brand name of buyers on the speakers purchased from M/s Krishna Technologies and M/s JMD

Computers. We note that the show cause notice did not propose demand on combined turnover of GE, Krishna Technologies and JMD Computers. The manufacture of multi media speakers by M/s Krishna Technologies and M/s JMD Computers has been indicated in the statements given by Shri Rishi Baluja, Shri Shalabh Kapoor, Shri Sanjay Kumar Jain and Smt. Pooja Baluja. We find force in the contention of GE that process of printing brand name and packing undertaken by GE did not amount to manufacture in the present case. The reliance placed on the decision of the Tribunal in **CCE, Jaipur vs. Sabhyata Plastics Ltd.** reported in **2002 (51) R.L.T. 807 (CEGAT – Del.)** and Hon'ble Supreme Court in the case of **Union of India vs. J.G. Glass Industries Ltd.** reported in **1997 (23) R.L.T. 768 (S.C.)** are relevant to the facts of the present case. The Hon'ble Supreme Court held for "manufacture", a different commercial commodity has to come into existence and the commodity which was already in existence will serve no purposes, but for the said process. It should be seen that whether the commodity already in existence will be of no commercial use but for the said process. Applying the said test, we find that mere printing of brand name or packing will not amount to manufacture in case where there is no legal concept of "deemed manufacture", specifically provided by any provisions applicable to the said product.

11. Considering the above discussion and analysis, we find that the impugned order is not sustainable on the question of

classification of multi media speakers and usage of brand name of others, without involving manufacture at the hands of GE.

12. The applicability of SSI exemption for the products manufactured by GE has to be re-verified with the details submitted by the GE to arrive at duty liability, if any. They have claimed that the turnover during the impugned periods is well below the threshold limit of Rs. 1.5 crores. This needs re-verification and confirmation by the Jurisdictional officer.

13. With the above observation and in view of our finding against the impugned issues, we set aside the impugned order and allow the appeal of M/s Global Enterprises on the above terms.

14. We note that in view of the above findings the appeal against penalty under Rule 26, filed by M/s Kaizen Computech Ltd. is also to be allowed.

15. In view of the above findings with reference to GE, there is no merit in the appeals by Revenue for imposition of penalty on various individuals. These appeals are dismissed.

(Order pronounced in the open court on 04/07/2017.)

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

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