CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 05.09. 2017

Excise Appeal No. 1231 / 2012

(Arising out of order-in-appeal No. 315A (AKJ) CE/JPR-I/2011 dated 01.02.2012 passed by the Commissioner of Central Excise (Appeals) Jaipur).

M/s Roca Bath Room Products Pvt. Limited Appellant

Vs.

CCE, Jaipur Respondent

Appearance:

None for the appellant
Sh. R. K. Mishra, AR for the respondent

Coram:

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

Final Order No. 56489 /2017

Per: **Justice (Dr.) Satish Chandra**:

List revised. None present on behalf of the appellant nor any request for adjournment of the case is available on record.

2. In the absence of the ld. Counsel for the appellant we heard Sh. R. K. Mishra, ld. AR for the Revenue.

3. From the record, it appears that an identical issue has come up before the Tribunal in appellant's own case (Final Order No. 54379 - 54380/2017 dated 30.06.2017) where it was observed that–

"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 captively 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".

4. Moreover, in the present appeal, the amount involved is less than Rs. 2 lakhs, as per Section 35B (ii) of the Act, the appeal is not maintainable.

5. In view of above, the appeal filed by the appellant is dismissed.

(Dictated and pronounced in the open Court).

(V. Padmanabhan)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

Pant