CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing: 18.09.2017
Date of Pronouncement: 26.10.2017

Appeal No. E/52801/2016-EX[DB]

[Arising out of the Order-in-Appeal No. 138(AK)/CE/JPR/2016 dated 17.06.2016, passed by the Commissioner of Central Excise, Jaipur]

M/s Adani Wilmar Ltd. … Appellant

Vs.

C.C.E. Jaipur ... Respondent

Appearance:

Present Shri S.J. Vyash, Advocate for the appellant
Present Shri M.R. Sharma, DR for the respondent

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

FINAL ORDER No. 57374 /2017

Per V. Padmanabhan:

The appeal is filed against the Order-in-Appeal no. 138/2016 dated 17.06.2016.

2. The appellant is engaged in the manufacture of different types of edible oil and related products. For packing the edible oil, the appellant was also manufacturing the plastic containers. A part of these containers was cleared to their sister concern. Along with the containers manufactured in the appellant's factory, the appellant also supplied bottle caps which were procured from outside. The valuation of goods for payment of

duty for supply to their sister concern was done on the basis of rule 8 of the Central Excise Valuation Rules 2000. For this purpose the appellant submitted costing as per CAS-4 standards. The Department observed during audit that the costing of the plastic body did not include value of the bought out bottled caps. Department was of the view that duty needs to be paid on the value of the full bottle including the bought out cap. Accordingly, differential duty was demanded along with interest and penalty. Aggrieved by the decision, the present appeal has been filed.

3. With the above we have heard Shri S.J. Vyash, Advocate for the appellant and Shri M.R. Sharma, DR for the respondent.

4. It is the submission of the Ld. Counsel for the appellant that the cap for bottles is a bought out item which has been supplied along with the body of the bottle manufactured in the factory, for convenience. He submitted that the value of the bought out items, even if supplied with the manufactured item, are not required to be included for payment of duty. He also relied on the following decisions:

i) Neycer India Ltd. 2015 (320) ELT 28 (SC)

ii) Metal Box of India Ltd. 1983 (13) ELT 956 (Tri)

iii) Metal Box of India Ltd. 1990 (45) ELT A33 (SC)

iv) Col Tubes (P) Ltd. 1994 (72) ELT 342 (Tri)

v) Col Tubes (P) Ltd. 1997 (90) ELT A63 (SC)

5. Ld. DR justified the impugned order. He submitted that the bottle manufactured in the appellant's factory becomes a complete bottle only when the cap is also attached. Since the

article supplied to sister concern is the complete bottle, duty is required to be paid on the value including the body and the cap. He relied on case of ***Sidhartha Tubes Ltd. 2006 (193) ELT 3 (SC).***

6. After hearing both the sides and on perusal of the record, we find that the crux of the issue to be decided is whether the value of the bought out item i.e. cap which is also supplied along with the plastic jars manufactured in the appellant's factory is to be included in the transactional value of the jar for payment of excise duty. It is a matter of common sense that the plastic bottle becomes complete only with the addition of the cap. Instead of saying that the bought out items have been supplied with the manufactured goods, it will be more appropriate to say that complete plastic bottles were supplied by the appellant to their sister units. In terms of section 4 of the Central Excise Act duty is required to be paid on the value of the goods supplied. In the case of decision ***Neycer India Ltd. (supra)*** relied by the appellant, the Hon'ble Apex Court has held that the value of bought out items optionally supplied with own products are not to be included. In the case of ***Metal Box of India Ltd. (supra)*** the Hon'ble Apex Court has dismissed the Revenue's appeal and upheld the view that plastic caps separately manufactured and excise duty paid cannot be included in the value of aluminum collapsible tube. In the case of ***Col Tubes (P) Ltd.*** also the Hon'ble Apex Court dismissed the Revenue's appeal in another case of plastic cap supplied with aluminum collapsible tube.

7. After going through the above case laws, we find that the present facts are distinguishable. In the case of ***Neycer India Ltd. (supra)*** the bought out items were optionally supplied. In the case of ***Metal Box of India Ltd. (supra)*** as well as ***Col Tubes (P) Ltd.***, the definition of containers as per explanation 1 of the then item 27 of the Central Excise tariff included tubes without the cap also. However, in the present case, we find that the plastic bottle is of no use without the cap. Hence the cap is not an optional accessory but an essential part of the plastic container. In the case of ***Sidhartha Tubes Ltd.***, relied by the Revenue, the Hon'ble Apex Court has taken the view, that the value of sockets which were essential for functioning of pipes as it joins the pipes to each other will be includible in the assessable value of pipes. The Hon'ble Apex Court has observed as follows:

> *"7. In the case of Hindustan Polymers v. C.C.E., reported in 1989 (43) E.L.T. 165, this Court has held that under Section 4, the normal price for which the goods were sold at the factory gate shall be taken as the assessable value and if a manufacturer levied a charge for an item (socket in this case), which was intrinsically necessary to place the pipes on the market then the cost of such an item had to be loaded to the normal price of the pipes.*
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> *8. Applying the above tests to the facts of the present case, we find, as stated above, that the sockets were fitted on the said m.s./g.i. pipes before their clearance. It has*

been concurrently found by the Commissioner as well as by the Tribunal that the sockets were fitted on the threaded portion of the pipes. It has been found that the said sockets enabled the functioning of the pipes. It is found that the sockets were essential for functioning of the pipes. They were required for joining the pipes to each other. In the circumstances, the functional test stood fully satisfied in this case and consequently, the cost of the said sockets was includible in the assessable value of the said m.s./g.i. pipes. On behalf of the appellant, it has been contended that the test of essentiality is not the correct test. We do not find any merit in this argument. We have applied the test of essentiality in several cases, particularly in order to distinguish a component from accessory. [See : Commissioner of Central Excise v. Akay Cosmetics Pvt. Ltd. reported in 2005 (182) E.L.T. 294 Para 45]. According to Chambers Science & Technology Dictionary, "socket" is defined as a pipe end enlarged to pass over a same-sized pipe to make a joint. Therefore, sockets not only contributed to the functioning of the pipes, it constituted a part of m.s./g.i. pipes. As stated, the customer was charged with the price of the socket when the appellant sold the m.s./g.i. pipes with the sockets. Hence, the department was right in including the cost of the sockets in the assessable value of m.s./g.i. pipes."

8. In view of the above, the impugned order is sustained and appeal is rejected.

[Order Pronounced in the open court on **26.10.2017**]

(Justice Dr. Satish Chandra)
President

(V. Padmanabhan)
Technical Member

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