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

COURT-I

Date of hearing: 21.09.2017
Date of Decision:27.10.2017

Appeal No. E/2395-2396/2012 EX (DB)

[Arising out of the Order-in-Originall No. 01/2012 dated 04/05/2012, passed by The Commissioner of Central Excise-DELHI-II]

M/s Walltracts India Pvt. Ltd.
Shri Arun R. Jausuja, General Manager … Appellant

Vs.

CCE Delhi-II … Respondent

Appearance:
Present Shri Amit Jain, Advocate for the appellant
Present Shri R.K.Mishra, DR for the respondent

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

Final Order No 57421-57422/2017

Per: V. Padmanabhan

1. The appeal is against Order in Original No.01/2012 dated 04/05/2012

2. The facts giving rise to this appeal are, in brief, as under,:-

2.1. The appellant are in the business of installing roller blinds, curtain tracks, etc. at site. For this purpose, items like fabrics, aluminum tubes, aluminum tracks, plastic brackets, metal brackets, chain, etc. are procured from outside. The roller blinds are of textile fabrics as well as non-textile items (plastic). Since the roller blinds of textile materials are fully exempt from duty, in this case, the dispute is only about the roller blinds of non-textile materials. The aluminum sections are cut to the required size and after fixing the plastic brackets or metal brackets on the wall, the sections are fixed on which the roller blinds/vertical blinds are mounted. The department was of the view that these blinds were chargeable to duty. Since the appellant were not paying any central excise duty, a show cause notice dated 30.10.2009 was issued to them for demand of short paid duty amounting to Rs. 59,35,572/- for the period 2005-2006 to 2008-2009 along with interest and also for imposition of penalty on the appellant company as well as on Shri Arun R. Jasuja, General Manager of the appellant company under Rule 26 of the Central Excise Rules. The show cause notice was adjudicated by the Commissioner vide order-in-original dated 30.11.2010 by which the duty demand of Rs. 59,35,572/- was confirmed against the appellant company under proviso to Section 11A (1) of the Central Excise Act, and Rs. 15 Lakhs paid by the appellant during investigation was appropriated towards this demand. Besides this, penalty of Rs. 59,35,577/- was imposed on the appellant company. A penalty of Rs. 10 Lakh was imposed on Shri Arun R. Jasuja under Rule 20 of the Central Excise Rules, 2002.

2.2. The appellant company as well as Shri Arun R. Jausuja, GM filed appeals against this order of the Commissioner, which were disposed by the final Order No.677-678/2011 dated 11.07.2011 by which the order of the Commissioner was set aside and the matter was remanded to the Commissioner for de novo adjudication as it was found that while confirming the demand, the Commissioner has not given any finding as to under which Tariff Heading the goods alleged to have been manufactured by the appellant are classifiable. The Tribunal in the Final Order while remanding the matter, directed the Commissioner to give a clear finding as to whether the appellant's activity amounts to manufacture and if so, under which heading the goods would be classifiable.

2.3. The matter was adjudicated de novo by the Commissioner vide order-in-original dated 04/05/2012 by which the Commissioner held that the roller/vertical blinds made of fabrics of Chapter 39 are classifiable under sub-heading 3925 2000, roller/vertical blinds made out of the fabrics of Chapter 52 to 59 are classifiable under sub-heading 630300 and the roller blinds of fabrics falling under Chapter 70 are classifiable under sub-heading no. 70199000 of the Tariff. The Commissioner by this order confirmed the duty demand of Rs. 44,66,863/- along with interest. Besides this, also imposed penalty of equal amount on the appellant company under Section 11 AC, the imposed penalty of Rs. 5 Lakh on Shri Arun Jasuja, General Manager of the appellant company. An amount of Rs. 15 Lakhs already deposited by the appellant during investigation was ordered to be appropriated towards this demand. Against this order of the Commissioner, these two appeals have been filed.

3. Heard both the sides.

4. Shri Amit Jain, Ld. Counsel for the appellant for the appellant, pleaded that for installation of the roller/vertical blind, first

measurements are taken at site or drawings are obtained from Architect; that as per the drawing/measurements and the type of blinds to be installed, the materials for the same-blinds, aluminum tubes, fabrics brackets, motors, if required, metal curtain tracks, etc., are sourced; that the aluminum tubes and chains are cut to the required sized; that thereafter the brackets are fixed at site on to the window sill, that the fabric is fixed on the aluminum tube cut to size and bottom bar is also attached to the fabric; that in case of motorized blinds, the motor is also fixed in the Aluminum tubes; that the Aluminum tubes are sent to the site where it is installed; that if it is motorized blind, the metal wires are connected to the power supply provided by the client. From the above method of installation of blinds, the Ld. Counsel submitted that the roller/vertical blinds came into existence at site; that these rollers/vertical blinds once installed, cannot be shifted to another place without being completely dismantled; that since vertical/roller blind after installation become part of the immovable property, there is no manufacturing involved, that the appellant during the period of dispute, were treating their activity as services and were registered with Central Excise authorities for payment of service tax and till July, 2007 they were paying service tax under "installation service" and from July, 2007 onwards, they were paying service tax under Works Contract Service; that the same activity cannot be treated as service as well as manufacture; that service tax paid by the appellant during the period of dispute is about Rs. 14 Lakhs. Further during investigation, an amount of Rs. 15 Lakhs had been paid; that even if the appellant's activity is treated as manufacture and attracting duty, the bulk of the duty demand would be time barred, as when the appellant's activity had been declared to the department and service tax was being collected by treating their activity as service, the appellant cannot be accused of suppressing the relevant facts. Finally he concluded his argument with the following points.

i. The goods manufactured, supplied and installed by them at the client's premises become fixed to the walls and hence will become immovable property and not goods. Hence no excise duty payable.
ii. The goods are made as per the specific requirements of the customers and hence are not marketable in a general sense.
iii. Service tax has been paid by the appellant under The Works Contract Composition Scheme. Accordingly the same consideration cannot be charged to Excise duty.

5. The Ld. DR submitted that the Director of the appellant has already admitted that the goods manufactured by the appellant do not become immovable property. He also further submitted that the legal opinion obtained by the appellant clearly indicated that items manufactured are items clearly liable to payment of Excise duty. Accordingly, he prayed for no holding the impugned order.

6. The appellant had submitted a note on the process of manufacture undertaken. According to this the steps undertaken are summarized below.

a. Technical staff visits the customer's site; measure the width, height, etc. and assesses the fitness of the site for installation of blinds. Drawing of the site is made and sent to the workshop.

b. If the site is ready, then brackets are sent for installation, which are aligned and fitted on site onto the wooden/marble window sill/ceiling within the pelmet.

c. Exact measurement of site, after fitting the brackets, is once again taken and sent to workshop.

d. Upon receipt of measurement, following activities are undertaken:

e. Fabric is cut to size in required width and height, and aluminum tube and bottom bars are cut to the required width.

f. Fabric is fixed on the aluminum tube by double sided tape.

g. Bottom bar is attached to the fabric at the bottom by welding/PVC strip, depending on the type of bottom bar used.

h. If the blind is motorized, the motor is inserted into the aluminum tube.

i. This tube with fabric is then, sent to the site where it is fixed/attached in the already installed brackets.

j. If blind is manual, then, chain is inserted into the tube plug/drives set. Thereafter, the 'Tuning' is done by setting the chain limits with limit beads, to ensure smooth movement of the blind.

k. If blind is motorized, the motor wires are connected to the power supply provided by the customer, and motor limit setting is done in terms of number of upwards and downwards rotation.

l. At this stage, a complete blind comes into existence.

m. A joint measurement is taken as the customer pays by final measurement. A completion certificate is signed by the customer signifying the completion of the job.

n. Invoice is prepared based on the joint measurement and sent to the customer with signed measurement sheet and the completion certificate.

7. In the light of the above steps undertaken by the appellant, the controversy in the present case is whether the presented goods are considered as excisable goods liable to payment of excise duty or the whole process is to be considered as a service in which certain goods are supplied during the course of rendering service. The claim of the appellant is that the process does not amount to manufacture but service. They further claim service tax has been paid under Works Composition Scheme.

8. From the process outlined above, we note that all materials are made in their factory premises to the exact dimensions and drawing of the site made by the technical staff. The fabric is attached to the tube along with motor and dispatched to the site. These roller blinds/vertical blinds are mounted, installed at the site with the help of brackets.

9. Since the fabric is fixed to the aluminum tube in the factory as also the motor in certain cases, therefore, the blinds can be said to have come into existence in the factory premises. Such blinds are installed at the site of the customer. These blinds are in the nature of curtains and cannot be said to become immovable properties when they are mounted on the wall. The roller blinds can be unbolted and removed at any time which renders these blinds to be in the nature

of movable rather that immovable property. These facts also have been admitted by Shri Zakkaria Vergere Salaria, MD of the company in his affidavit. Hence we find no justification in the claim of the appellant that the goods become immovable property. Further we also do not find any merit in the claim of the appellant that these goods are tailor made items and not marketable. It is obvious that the product is available as per the needs of the buyer even though it may not be a product offered on the shelves. Further we find that blinds (including venetian blinds and similar articles find specific inclusion in CETH 39253000 of Central Excise Tariffs, when made out of plastics. Accordingly these goods are chargeable to excisable duty under CETH 39253000 when made of out of plastic and under CETH 630300 and 70199000 when made out of other materials.

10. The other argument of the appellant is that they were registered for rendering services and have also paid service tax. It is obvious that service tax if paid can only be on service component. The value of the service component is not includible in the value of goods cleared from the factory which is liable to payment of excise duty. From the impugned order we find that the value of the goods for payment of excise duty has been determined in terms of Central Excise Valuation Rules 2000, on the basis of CAS-4 Certificate issued by the Chartered Accountant. Hence, we find no merit in the argument. It is further seen that the Adjudicating Authority has permitted the Cenvat credit of the CVD paid on the imported inputs as well as the Central Excise Duty paid on locally procured components.

11. The appellant has also advanced the ground of time bar. It is the claim of the appellant that during the period of dispute they were registered with the Central Excise authority for payment of Service Tax and hence it cannot be said that it has suppressed the facts from the department. This aspect has been discussed by the Adjudicating Authority in para 34 of the impugned order as under :-

> ***34.*** *It was further contended that extended period is not invokable as there was no suppression of facts with an intention to evade payment of Central Excise duty. Therefore, demand beyond normal period of limitation is not invokable. The party has cited a number of judgments to justify their stand that once the figures are reflected in the balance sheet it does not amount to suppression of facts. Merely not disclosing the fact of manufacture of goods to the Department did not come under the category of suppression. Most of the judgments cited by the party relates to the Service Tax which is being calculated generally on the basis of figures reflected in the balance sheet. In Service provider case total amount reflected in the balance sheet is the income from the service as such when these figures are disclosed publicly it is presumed that there is no melafide on the part of the party to evade duty. But in case of manufacturer, the income reflected in the balance sheet did not automatically make that amount as dutiable or cum duty value. This value can consist of trading figure, job work, exempted goods etc. A manufacturer is exempted from taking Central Excise registration vide Notification No. 36/2001 dated 26.06.2001. However, such units are required to give a declaration in Annexure -4 once their value of clearances reaches the specified limit which is 140 Lakhs presently. In the present case the said declaration was never filed with the Department though the value of clearance has crossed the limit of Rs. 500 Lakhs. The manufacturer never disclosed to the Department that they were manufacturing Roller Blinds. There was no confusion about the duty liability on the said products. Further Sh. Arun R Jasuja, General Manager of the said Company on spot on 18.12.2008 has inter alia stated that they were in process of taking of registration in another fortnight; that the Company was principally in agreement that some of the products manufactured by them were excisable like roller blinds/window dressing. From the above it is evident that the party was aware of the fact of duty liability on the Roller Blinds but has not taken the Central Excise Registration and had not shown that it made any effort to discover, by making enquiries with the department whether it was liable to duty. I found that M/s Walltracks (India) Pvt. Ltd. is a part of Walltracks LLC (middle East). It is normal procedure when a company starts there business in a new country that company always studied the law of that country. This might have been done by M/s Walltracks also. They were aware of the facts that their competitors in the market are paying excise duty*

on roller blinds as admitted by Sh. Arun R Jasuja, GM. There is nothing to show that the appellant had ever informed the Department or had tried to take the view of the Department on their product. Further, it is well settled that ignorance of law in no excuse. In view of the above, I hold that the party has suppressed the fact of manufacturing of blinds from the Department and extended period of limitation under section 11A (1) is invokable in this case.

We are in agreement with the above finding of adjudicating authority and hold that this ground is without merit.

12. The appellant has also relied on several case laws including:-

1. Union of India v. Sonic Electrochem (P) Ltd., 2002 (145) ELT 274 (S.C.)
2. Board of Trustee v. CCE, A.P., 2007 (216) ELT 513 (S.C.)
3. CCE, Delhi-I v. Crystal Corporation, 2017 (349) ELT 745 (Tri.- Delhi)
4. Om Metals Infraproject Ltd. v. CCE, jaipur, 2016 (342) ELT 262 (Tri.- Delhi)

13. We have perused the above case laws but we find that all the case laws have been delivered in totally different facts. Hence they are not applicable to the facts of the present case.

14. In view of above, the impugned order is sustained and appeal filed by appellant is dismissed.

[Order Pronounced in the open court on 27-10-2017__]

(Justice Dr. Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

Rekha