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

COURT-I

Date of hearing/Decision: 24.10.2017

Appeal No. E/53773 & 53873/2014-EX [DB]
[Arising out of the Order in Appeal No. 38-39/DLH/2014 dated 07/04/2014 passed in Appeal No. 112-113/CE/2012 Passed by The Commissioner Central Excise (Appeals), New Delhi]

M/s R A Somani & Jindal Sanitary Works … Appellant

Vs.

CCE Delhi- I … Respondent

Appearance:
Present Shri Prem Ranjan Kumar, Advocate for the appellant
Present Shri H. Saini, DR for the respondent

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

FINAL ORDER No. 57530-57531/2017

Per:Justice Dr. Satish Chandra

1. Both the appeals are filed against Order in Appeal No. 38-39/2014 dated 07/04/2014. The period of dispute is 09/02/1997 to January, 2002.
2. The brief facts of the case are that during the period under consideration the appellant was engaged in the manufacture of Plastic Flushing Cisterns European Water Closet Seat-covers, Bath-tubs, Bathroom mirror Cabinets which are subject to Central Excise Tariff Act, 1985.
3. On 08/01/2002, a search was conducted at the business premises of the assessee where it was found that the appellant on the seat cover was using the brand name of "Hind Ware" which was owned by M/s Hindustan Sanitary Ware Industries. For using the brand name of other, the department has denied SSI exemption and

demanded the Excise Duty and also levied penalty. Being aggrieved the appellant filed the present appeal.

4. With this background Shri B.K. Singh and Shri Prem Ranjan Kumar, the Ld. Counsel for the appellant submit that the appellant was manufacturing the seat cover and the same was supplied exclusively to M/s Hindustan Sanitary Ware Industries. No such seat cover was sold in the open market. He also submits that the final packing material was supplied by the Hindustan Sanitary Ware Industries. Finally, the material was packed under the supervision of the recipient and handed over to the M/s Hindustan Sanitary Ware Industries. The labeling was done by the appellant exclusively for M/s Hindustan Sanitary Ware Industries. It is the submission of the Ld. Counsel that in panchnama various codes have been mentioned against the seized material and these codes were supplied by the M/s Hindustan Sanitary Ware Industries. Accordingly, the punchnama was maintained as per the code supplied by M/s Hindustan Sanitary Ware Industries. Lastly, he made a request that impugned order may kindly be set aside.

5. On the other hand, Shir H. Saini, Ld DR for the revenue justified the impugned order by relying on the ratio laid down by the Hon'ble Supreme Court in the case of *Kohinoor Elastic P. Ltd. vs. CCE Indore* 2005 (188) ELT 3 (SC) where SSI exemption was denied for using the brand name of others. However, he admits that the period in dispute is prior to the judgment (supra). When it is so then the ratio will not be applicable. The case will have to be decided as per the then law.

6. By considering the rival submissions and on the perusal of the record, we are of the view that the appellant was doing a job work/

manufacturing exclusively for M/s Hindustan Sanitary Ware Industries. No such item was sold in the market or third party. The final packing was also done at the factory premises as per the instruction of M/s Hindustan Sanitary Ware Industries.

7. When it is so, then we are of the view that the brand name was not used by the appellant for its own benefit but it was a part of job work/ business by putting the label of the brand name and hand over after packing to the M/s Hindustan Sanitary Ware Industries. When it is so, then we find no justification to sustain the impugned order and the same is hereby set aside.
8. In the result, both the appeals are allowed.

[Order Dictated and Pronounced in the open court]

(V.Padmanabhan)
Member (Technical)

(Justice Dr. Satish Chandra)
President

Rekha