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

Court IV

Date of hearing: 05.12.2017

Appeal No. E/2780,2781/2012 –EX [SM]
[Arising out of the Order-in-Appeal No.43 to 44/ CE/D-II/2012 dated 18/05/2012 passed by the Commissioner (Appeals) of CE, New Delhi.]

Shri Vijay Anand & Associates Pvt. Ltd.
Shri Vijay Anand, Managing Director … Appellant

Vs.

CCE, Delhi –ii … Respondent

Appearance:
Present Shri Naveen Mullick, Advocate for the appellant
Present Shri G.R. Singh, DR for the respondent

Coram: Hon'ble Mr. S.K. Mohanty, Member (Judicial)

FINAL ORDER No. 58250-58251/2017

Per S.K. Mohanty

1. These appeals are directed against the impugned order dated 18/05/2012 passed by the Commissioner (Appeals), Central Excise, New Delhi, upholding the adjudication order dated 30/11/2010, wherein Central Excise duty demand of Rs. 10,19,011/- along with interest was confirmed and equal amount of penalty was imposed on the appellant company. Besides, personal penalty of Rs. 2 Lakhs was also imposed on Shri Vijay Anand, Managing Director of the appellant company.
2. The brief facts of the case are that the appellant company is engaged in the manufacture of wooden loose furniture and articles of wood in its factory, and for that purpose, is registered with this Central Excise department. The appellant also

undertakes the activity of interior decorator service and carries out such activites in the hotels/resorts at the respective sites of the customers. For providing such service, the appellant company is also registered with the Service Tax department and discharges Service Tax liability under the taxable category of Works Contract Service. As a Central Excise assessee, the appellant company avails the benefit of SSI exemption provided under Notification No. 8/2003 dated 01/03/2003. During the disputed period, the appellant company had undertaken interior decorator job and also assembling of the fixtures in the customer's hotels. The fixtures assembled at the site were considered by the department as the manufactured goods and accordingly, the value of such fixtures were added to the assessable value of the furniture sold from the factory and the benefit of SSI Notification dated 01/03/2003 was denied to the appellant company.

3. The Ld. Advocate appearing for the appellant submits that the furniture/fixtures assembled at the client's site are not subjected to levy of Central Excise duty and accordingly, the appellant company had discharged appropriate Service Tax liability under the Works Contract Service. Thus, he submits that a single transaction cannot be leviable to Central Excise duty as well as for payment of Service Tax. Accordingly, he submits that since the Service Tax payment on the Works Contract Service was accepted by the Jurisdictional Service Tax Authorities and the periodical returns filed by the appellant were assessed,

further Central Excise duty demand cannot be confirmed on those fixtures, by considering the same as manufacture of excisable goods.

4. On the other hand, the Ld. DR appearing for the Revenue reiterates the findings recorded in the impugned order and further referred to various invoices appearing at page 16 in the show cause notice to state that the appellant had removed the furniture in as it is condition from the factory and as such, is liable to pay Central Excise duty on those furniture.

5. Heard both sides and perused the appeal records. I find that the show cause notice dated 31/12/2009 issued by the department had referred to the statements recorded from Shri H.K. Juneja, Production Manager of the appellant company as well as Shri Vijayanand, who had stated that the appellant is not paying Central Excise duty on all their clearances but duty is being paid only on loose furniture i.e. 'sofa, table, chair, bed etc.,' and no Central Excise duty was paid by them on contract items like Skeletal boxes. Wooden floorings, moldings etc. Further, I also find that the invoices referred to in the show cause notice were issue by the appellant in favour of their hotel customers mentioning the fixed furniture/ fixtures installed at site, on which appropriate Service Tax liability has been discharged by the appellant. It is evident from the records that the department has not countered the statements furnished by the Production Manager as well as the Managing Director and also did not disprove that the Service Tax liability has been

discharged on the furniture/ fixtures erected at the site. Thus, in my considered view, the fixtures erected at the customer's site cannot be considered as loose furniture, for the purpose of levy of Central Excise duty. Thus, the value of such fixtures cannot be included in the assessable value of loose furniture for the purpose of computation of the SSI threshold limit.

6. Therefore, I do not find any merits in the impugned order, so far as it confirms the duty demand and the penalty on the appellant company. Further, the impugned order is also not sustainable for imposition of personal penalty on the Managing Director of the appellant company.

7. In the result, after setting aside the impugned order the appeals filed by the appellants are allowed.

[Order dictated and pronounced in the open court]

(S.K.Mohanty)
Member (Judicial)

Rekha