IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing: 1/11/2018

Appeal No. E/1231/2012- (DB)
(Arising out of Order-in-Appeal No. 315/AKJ/CE/JPR-I/2011 dated 01/02/2012 Passed by the Commissioner of Central Excise-JAIPUR-I(Appeal)

Roca Bath Room Products Pvt Ltd — Appellant

Vs.

C.C.E. & S.T.-Jaipur-i — Respondent

Appearance
Shri Alok Kothari, Adv. — for the appellant
Shri H.C. Saini ,DR — for the respondent

CORAM: **HON'BLE MRS. ARCHANA WADHWA, MEMBER (JUDICIAL)**
HON'BLE MR.BIJAY KUMAR, MEMBER (TECHNICAL)

Final Order No.53247/2018

Per: Mrs. Archana Wadhwa

1. On matter being heard, we find that dispute in the present appeal relates to excisablity of moulds and dies of plaster of paris manufactured by the appellant in their own factory and consumed captively, when the same are subsequently sale after being used. As per the appellant, after continues use of such moulds and dies in their factory, the same had become scrap and are sold as scrap only, in which case no duty liability would arise against them. On the other hand, it is the contention of the Revenue that such moulds and dies have not discharged their duty liability on account of captive consumption Notification No. 67/95 dated 16/3/1995, when the same were being used within the factory. As such, at the time of clearance

of the same, the duty is required to be paid even though such moulds and dies stand cleared after prolonged use in the factory.

2. Ld. Advocate on behalf of the appellant fairly brings to our notice earlier decision of the Tribunal in the appellant own case Vide Final Order NO. 54379-54380/2017 dated 30/06/2017, wherein the duty liability, for the earlier period was upheld against them by observing as under;

> *"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 requirement 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 statue 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."*

3. However, the appellants contention is that while arriving at the above finding, Tribunal has not taken note of the precedent decisions laying down that waste cannot be held to be manufactured goods even for the period post 10th May 2008, when the explanation were added to Section 2(d) of Central Excise Rules, 1944. By drawing out attention to the decision in the case of ***Nirlon Ltd. vs. Commissioner of Customs Excise***, (Tri-Mum) High Court & ***Hindalco Industries Ltd. vs. Union of India,*** High Court Mumbai , he

submits that waste & scrap cannot attract duty and prays for setting aside the impugned order.

4. Ld. Advocate for the Revenue submits that in as much as the issue stand decided in their own case, the precedent order should be followed unless reversed by any higher appellate forum.

5. On being question Ld. Advocate also submitted that the earlier order of the Tribunal was not challenged before any higher appellate forum in as much as the amount of duty involved was on the lower side. However he submits that the issue is of recurring nature and needs to be settled.

6. Without going into the detailed arguments placed by both the sides, we find that the Tribunal's earlier decision in the same assessee case has held the clearance of moulds and dies as excisable goods and to discharge duty liability. The said order of the Tribunal has not been challenged by the appellant and as such has attained finality. As such we would not like to take a view different than the one taken earlier by the Tribunal in the same assessee case. As such by following the same we reject the appeal.

(Dictated and pronounced in open court)

(Bijay Kumar)
Member (Technical)

(Archana Wadhwa)
Member(Judicial)

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