IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Excise Appeal No.76464 of 2016

[Arising out of Order-in-Original No.06/Commr./CE/Kol.II/Adjn./2016-17 dated 19.05.2016 passed by Commr. of Central Excise, Kolkata II]

M/s Philips Lighting India Ltd.
Mouza Argon, P.S. Sankrail, Andul-Mouri, Howrah-711302

Appellant

VERSUS

CCEx., Kolkata II
15/1 Strand Road, Kolkata 700001

Respondent

APPERANCE :

Shri P. Shah, C.A. for the Appellant
Shri T.Mondal, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.S.GARG, MEMBER (JUDICIAL)
HON'BLE MR.P.VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO.75329/2020

DATE OF HEARING : 06.02.2020
DATE OF DECISION : 06.02.2020

PER S.S.GARG :

The present appeal is directed against the impugned order dated 26.05.2016 passed by Commissioner of Central Excise, whereby the Commissioner has ordered for confiscation of goods valued of Rs.81,17,157/- seized on 27.08.2014 on the date of search with an option to redeem the goods on payment of fine of Rs.81,17,157/- under Rule 25 of the Central Excise Rules, 2002. Further, penalty of Rs.2,000/- was imposed on the appellant under Rule 25 of the Central Excise Rules, 2002.

2. Heard both sides and perused the records. The only issue involved in the present matter is whether the activity of affixing holograms on the CFLs (revalidation process) carried out by the

appellant in its warehouse, amounted to manufacture in terms of Section 2(f)(iii) of the Central Excise Act, 1944. The process of revalidation/affixation of holograms on the product has been considered by the Commissioner to have rendered the CFLs marketable to the consumer by subjecting it to the treatment of repacking/relabeling to extend the guarantee/warranty of the product. Hence, the process of revalidation undertaken by the appellant in its warehouse has been considered as amounting to manufacture in terms of the provisions of Section 2 (f) (iii) of the Central Excise Act, 1944 and thus, the clearances of the revalidated product from the appellant's warehouse, were held to be liable to the levy of Central Excise duty. The appellant has four warehouses situated at Gurgaon, Howrah, Bhiwandi and Chennai, for storage and distribution of various products, such as, lighting products, domestic appliances, medical equipments, electronic goods etc. in North, East, West and South India respectively. Consequent to investigations conducted by the Department, the demand for recovery of Excise duty was raised on the appellant vide show-cause notice No.38/2016-17 issued by DGCEI dated 21.06.2016 along with the proposal for imposition of penalty. The Ld.Counsel for the appellant, submitted that the issue involved in the present case has been subject matter of various proceedings that have been initiated by the Department against the appellant with respect to all its four warehouses situated all over India. The details relating to proceedings initiated by the Department on the identical issue against all the warehouses are provided below :

Unit name	**Seizure Notice**	**SCN (Demand notice dt.)**	**Period of dispute**	**Demand/ Proposals**	**Penalty proposals on officials/ Employees under Rule 26 CER**
Chennai Warehouse	Seizure Notice dt.11.02.2015 Goods valued at Rs.1,43,11,055/- seized	20.04.2016	January 2012 to August 2015	Duty- Rs.5,13,59,172/- And Penalty under Section 11AC r/w Rule 25 and Confiscation of goods	(i) Girish Mittal (ii) Rajiv Sharma (iii) R.Sankaran

Kolkata Warehouse	**Confiscation of goods valued at Rs.81,17,157/-, vide OIO dated 19.05.2016 passed by Ld.Commissioner, Kolkata, which is the subject matter of present appeal**	21.06.2016	January 2013 to August 2015	Duty- Rs.3,00,45,067/- And Penalty under Section 11AC r/w Rule 25 and Confiscation of goods	(i) Girish Mittal (ii) Rajiv Sharma (iii) N.Desikan
Bhiwandi (Mumbai) Warehouse	Seizure Notice dt.16.02.2015 Goods valued at Rs.1,36,84,741/- seized	18.07.2016	January 2013 to August 2015	Duty- Rs.4,05,95,957/- And Penalty under Section 11AC r/w Rule 25 and Confiscation of goods	(i) Girish Mittal (ii) Rajiv Sharma (iii) Anand Shah
Gurgaon Warehouse	Seizure Notice dt.11.02.2015 Goods valued at Rs.77,56,520/- seized	28 .04.2016	April 2011 to August 2015	Duty- Rs.6,34,27,937/- And Penalty under Section 11AC r/w Rule 25 and Confiscation of goods	(i) Girish Mittal (ii) Rajiv Sharma (iii) Vijay Parihar

Further, we find that all the aforesaid show-cause notices pertaining to the demand of duty including the one pertaining to the Kolkata warehouse, were taken up for common adjudication by the Commissioner of Central Excise, Gurgaon I, and vide Order-in-Original No.01-07/YG/CE/2017-18 dated 23.05.2017, the demands/proceedings raised/initiated against the appellant in respect of all its warehouses, including the Kolkata warehouse, have been dropped by the Commissioner and the issue has been held in favour of the appellant on merits. The Ld.Counsel for the appellant further submitted that in the light of the order passed by the Commssioner, Gurgaon I dated 23.05.2017, the issue on merits has already been settled in favour of the appellant and therefore, the confiscation of goods is bad in law.

3. We have gone through the order passed by the Commissioner, Gurgaon I dated 23.05.2017, whereby all the proceedings initiated against the appellant pertaining to all the warehouses including Kolkata warehouse, have been dropped on merits. All the proceedings against the appellants have been dropped by the Commissioner by passing a common order holding that the said activity cannot be constituted as

amounting to manufacture in terms of Section 2 (f)(iii) of the Central Excise Act, 1944. Since the main appeal has been allowed on merits in favour of the appellant, the present proceedings are only in respect of confiscation of the goods valued at Rs.87,17,157/- with an option to redeem the same on payment of fine of Rs.81,17,157/-.

4. In view of the above discussions, we are of the considered view that the impugned order ordering confiscation of the goods with an option to redeem the same, is not sustainable in law and therefore, we set aside the impugned order by allowing the appeal of the appellant, with consequential relief, if any.

5. In the result, the appeal is allowed.

(Operative part of the order was pronounced in the open court)

Sd/
(S.S.Garg)
Member (Judicial)

Sd/
(P.V.Subba Rao)
Member (Technical)

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