

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I**

APPEAL No. E/159/2009

(Arising out of Order-in-Appeal No. P-III/221/2008 dated 29.10.2008 passed by Commissioner of Central Excise (Appeals), Pune-III)

Piaggio Vehicles Pvt. Ltd.

Appellant

Vs.

Commissioner of Central Excise, Pune-III

Respondent

Appearance:

Shri M.H. Patil, Advocate, for appellant

Shri Sanjay Hasija, Superintendent (AR), for respondent

CORAM:

Hon'ble Mr. Ramesh Nair, Member (Judicial)

Hon'ble Mr. Raju, Member (Technical)

Date of Hearing: 15.5.2018

Date of Decision: 28.6.2018

ORDER No. **A/86852/2018**

Per: Ramesh Nair

The brief facts of the case are that appellant are engaged in manufacture of Three Wheeled Motor vehicle falling under Chapter Heading No. 8704 and 8708 of Central Excise Tariff act 1985. They are also having Spare Parts Division (SPD) where they are carrying out activity of procuring spare parts from various vendors, packing/repacking them into unit containers, fixing

MRP label on the same and clearing it to various Dealers/Customers etc under their brand. The case of the department is that the goods procured falling under Chapter Heading 3208, 8536 and 8539 of the Central Excise Tariff Act, 1985. The activity of Re packing/re-labelling of the same is amount to manufacture in terms of Section 2(f)(iii) of Central Excise Act, 1944, which specified that repacking/rebellling of goods specified under third Schedule of to make them marketable amounted to manufacture. These products are undisputedly covered under third schedule. Accordingly, Revenue is of the view that activity carried out by the appellant are of manufacture and excise duty on the basis of MRP of the said goods in terms of Section 4A is required to be paid. The show cause notice was issued and the same was culminated into adjudication order, wherein adjudicating authority confirmed the demand and interest and imposed equal amount of penalty. The seized goods were confiscated with an option to redeem the same on payment of redemption fine. Being aggrieved by the Order-in-original the appellant filed appeal before the Commissioner (Appeals) who concurring with the views of the adjudicating authority upheld the order of the original authority and rejected the appeal, therefore the present appeal.

2. Shri. M.H. Patil, Ld. Counsel for the appellant submits that the period involved is 1-3-2003 to 19-08-2005. The product namely switches, lamps falling under Chapter heading 8536 and 8539 respectively are spare parts of the motor vehicle. In respect of parts of motor vehicle specific entry Sr. No. 97 was inserted in 3rd schedule w.e.f. 1-6-2006 vide Notification No. 11/2006-CE(N.T.) dated 29-5-2006. As per this entry, parts, components and assemblies of auto mobile irrespective of falling under any heading is covered under this entry which came into effect on 1-6-2006, therefore before insertion of the said entry it cannot be said that product covered under third Schedule and liable for duty as deemed manufactured goods. He submits that goods so procured, repacked, re-labelled are admittedly parts, components and assemblies of automobiles therefore it specifically covered under Sr. No. 97 of third Schedule, hence before 1-6-2006 the product in question being parts and components and sub-assemblies of automobile cannot be considered as manufactured goods in terms of Section 2(f)(iii) read with third schedule. He placed reliance on the following judgments:

(a) G.S. Auto International Ltd Vs.
Commissioner[2003(152) ELT 3(SC)]

- (b) Banaras IGA South Asia Vs.
Commissioner[2000(126) ELT 1008(Tri.)]
- (c) Hindustan Sanitaryware Vs.
Commissioner[1999(114)ELT 778(SC)]
- (d) Ford India Limited Vs. Commissioner[2017SCC
CESTAT 7576]

He also submits that demand is time bar as there is no suppression of facts on the part of the appellant.

3. On the other hand, Shri. Sanjay Hasija Ld. Superintendent (A.R.) appearing on behalf of the Revenue reiterates the findings of the impugned order. We have carefully considered the submissions made by both sides and perused the records.

4. We find that the goods procured by the appellant are admittedly falling under chapter heading 3208, 8536 and 8539 of Central Excise Tariff Act. Classification of the goods attained finality at the end of the supplier of the said goods. The appellant are only carrying out repacking/relabeling of the goods without bringing any change to the bought out goods, therefore there is no question of change of any classification. The goods in question, therefore, after repacking and relabeling, the remained classified under chapter heading 3208, 8536 and 8539. As per Section 2(f)(iii),

the activity of repacking/relabeling for making product marketable is amount to manufacture if the goods are specified under third Schedule of Central Excise Tariff Act, 1944. On perusal of third Schedule for the relevant period, we find that the goods falling under Chapter heading 3208 is covered under Sr No. 34, the goods falling under Chapter 8536 is covered under Sr. No. 93 and the goods falling under Chapter 8539 is covered under Sr No. 94 of the third Schedule issued under Section 2(f)(iii) of the Central Excise Act, 1944. Therefore on this undisputed position the goods of 8208, 8536 and 8539 when repacked/relabelled and rendered the same for marketable shall amount to manufacture. The submission of the Ld. Counsel that there is specific entry inserted in the 3rd schedule w.e.f. 1-6-2006, we find that though the said specific entry was inserted/described as "parts, components and sub assemblies of auto mobile" but the fact remains that the goods falling under chapter heading 3208, 8536 and 8539 were already covered under 3rd Schedule, therefore in respect of those goods, the activity of repacking and re-labelling is amount to manufacture prior to 1-6-2006 also under specific entry in respect of goods 3208, 8536 and 8539 existing during the relevant period, merely because of specific entry was inserted which covers those goods which are already

specified earlier cannot be said that these goods prior to 1-6-2006 was not falling under the third schedule. Therefore prior to 1-6-2006 goods falls under 3208, 8536 and 8539 indeed falling under third schedule, hence repacking and relabeling of these goods was amount to manufacture. Accordingly, appellant was liable to pay duty. As regard the judgments relied upon by the appellant, on careful reading of the those judgments, we find that in case of G.S. Auto International Ltd (supra) the issue involved was of classification of the goods by interpreting the section note of Section XV of Central Excise Tariff Act. In the present case no dispute about classification was raised either at the supplier's end or at the end of recipient, therefore judgment in the case of G.S. Auto supra is not applicable in the present case. In case of Banaras IGA South Asia(supra), issue related to the classification of parts imported along with main machine, whereas facts of the present case is entirely different. In the case of Hindustan Sanitaryware (Supra) the issue was classification of components, parts and spare parts, whereas in the present case there is no dispute about the classification, only dispute raised is whether the goods in question are liable to duty prior to 1-6-2006 or otherwise. As we already discussed above the goods were clearly falling under

3rd schedule prior to 1-6-2006 therefore it was liable to duty, the said judgment does not help the appellant. In case of Ford India Limited(Supra) the issue involved is that department classified items under heading 3919/3923, 8527, 8536/8539 as parts and components falling under respective chapters. The assessee in the said case disputed the classification whereas in the present case classification stands settled when the goods were received by the appellant. Since only activity was carried out by the appellant is of repacking and relabeling there is no question of change of classification. In the present case department has not insisted to change the classification, whereas the same classification which was applied by the supplier was applied mutatis-mutandis when it is cleared by the appellant, therefore there is no quarrel as regard the classification in the present case hence ratio of the Ford India Limited (supra) is not applicable to the present case. As regard limitation, we find that since the appellant has not considered their activity as manufacture, they have not declared and disclosed the activity and removal of the said goods without payment of duty to the department, therefore there is clear suppression of facts on the part of the appellant, hence demand for longer period sustains. For the same reason penalty imposed under section 11AC is also

sustained. As per our above discussion, impugned order is upheld and appeal is dismissed.

(Pronounced in court on 28.6.2018)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

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