

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Zonal Bench, Ahmedabad

Appeal No. E/494,1812/2010-DB

(Arising out of OIA No. KS/319/SRT-II/2009 dated 29/12/2009 and SKSS/133/SURAT-II/2010 dated 09/09/2010 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-II)

Agro Care - **Appellant**

Vs.

C.C.E. & S.T.-Surat-ii - **Respondent**

Represented by:

For the appellant : Shri Vinay Kansara (Advocate)

For the respondent : Shri Gobind Jha, Supdt. (AR)

CORAM:

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

Hon'ble Mr. Raju, Member (Technical)

Date of Hearing: 30.11.2018

ORDER NO. **A/12966-12967/2018**

Per: Ramesh Nair

The brief facts of the case are that the appellant is carrying out the job work on behalf of principal manufacturer and they are clearing the job work goods on payment of duty. For the purpose of computing the assessable value, the appellant have not included the notional profit of 15% of the principal supplier of raw material. Accordingly, the Revenue has alleged that the value in the hands of the job worker is undervalued in as much as the 15% notional profit was not added for considering the cost of raw material. Accordingly, the differential duty was confirmed.

2. Shri Vinay Kansara, Ld. Counsel appearing on behalf of the appellant submits that the similar issue has been considered in the case of ITC Ltd. Vs. Commr. of Central Excise, Chennai-I 2016 (333) ELT 287 (Tri- LB). He also referred to the Board's Circular no. 619/10/2002-CX dated

19/02/2002. It is his submission that according to the aforesaid judgment, the notional profit of the principal supplier of raw material need not be added for calculating the cost of raw material, in subsequent computing of assessable value. On query from the bench, he also submits that the Larger Bench judgment in the case of Eicher Motors Ltd. Vs CCE-2008 (228) ELT 43 (T-LB) is also considered in the case of I.T.C Ltd. On limitation, he submits that there is not suppression of facts as the appellant at the relevant time filed the declaration wherein the computation of the value was declared along with the Chartered Accountants Certificate. He submits that the cost of raw material was taken excluding the notional profit on the bonafide belief on the basis of various judgments in the case of Bhilwara Processors Ltd. Vs. CCE- 2004 (178) ELT 185 (T). Since there was a contrary view of the Tribunal and the matter was referred to the larger bench malafide intention cannot be alleged against the appellant. Therefore, the demand is time bar.

3. Shri Gobind Jha, Ld. Supdt. appearing on behalf of the Revenue reiterates the findings of the impugned order. He strongly relied on the judgment of Larger Bench in the case of Eicher Motors (supra).

4. On careful consideration of the submissions made by both the sides and perusal of record, we are of the view that the matter can be decided only on the ground of limitation. As per the undisputed fact, the appellant have filed the price declaration to the department, wherein they have taken the cost of Raw Material without including the 15% notional profit on the bonafide belief which was based on the various judgments including the Tribunal's decision in the case of Bhilwara Processors Ltd. In the case of Eicher Motors Ltd, the bench was of different view. Accordingly, the matter was referred to the Larger Bench. Since, there was no clarity on the legal issue of valuation that whether the notional profit should be added while

computing the assessable value in the hands of job worker, entertaining the bonafide belief by the appellant appears to be correct. Since the costing data was produced to the department, department was not prevented from verifying the same and issuing the Show Cause Notice within the normal period. In view of this fact, the suppression of fact or misdeclaration is not present in the instant case. Hence, the demand is time bar as the Show Cause Notice was issued on 26.10.2009 for the period November & December, 2002. The impugned order is set aside and the appeal is allowed only on the ground of limitation without going into the merits of the case.

As regards the appeal no. E/1812/2010 which is on the issue on refund claim, which was rejected on the ground that as regard the demand case, the Commissioner (A) allowed the department's appeal vide Order in Appeal no. KS-319-SRT-II/2009 dated 29.12.2009. Since this very order dated 29.12.2009 has been set aside by us in appeal no. E/494/2010-SC, the appellant is entitled for the consequential refund. Accordingly, the appeal on the issue of refund bearing no. E/1812/2010 is also allowed.

(Dictated and pronounced in the open Court)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

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