CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No. I

Service Tax Appeal No.51848 of 2014-[DB]

(Arising out of Order-in-Appeal No.GZB-EXCUS-000-APP-196 & 197-13-14 dated 19/12/2013 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Ghaziabad)

M/s Advance Steel Tubes Lltd., **.....Appellant**

(45/3, Site-IV, Industrial Area, Sahibabad, Ghaziabad)

VERSUS

Commissioner of Central Excise, **....Respondent**

(Ghaziabad)

APPEARANCE:

Shri Rajesh Chhibber, Advocate for the Appellant
Shri Rajeev Ranjan, Authorised Representative for the Respondent

CORAM: **HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)**
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO-70231 / 2020

DATE OF HEARING : 06 February, 2020
DATE OF DECISION : 06 February, 2020

PER: ARCHANA WADHWA

After hearing both the sides duly represented by Shri Rajesh Chhibber learned Advocate appearing for the appellant and Shri Rajeev Ranjan, learned Authorised Representative appearing for the Revenue, we find that the appellant is primarily engaged in the manufacture of G.I. Pipes as also parts of Transmission Towers. They were also undertaking job-work for the manufacture of Hand-pumps, who were sending them semi-finished hand-pumps for the purpose of galvanization. After galvanization, the galvanized hand-pumps were being returned to the principal manufacturer. As the appellant was availing Cenvat credit of duty on various inputs used for their own manufacture as also for galvanization on job-work basis, they were reversing the credit in respect of the goods so used for galvanization. Such reversal of credit was being duly reflected by them in their RG-12 returns. It may not be out of place to mention here that hand-pumps (whether galvanized or ungalvanized) are unconditionally exempt in terms of Notification No.10/2006-CE.

2. Revenue entertained a view that galvanization undertaken by the appellant is not a manufacturing process and same amounts to providing 'Business Auxiliary Service' to principal manufacturer and as such the appellant should have paid the service tax on the same. Accordingly, show cause notice dated 24.04.2012 was raised against them proposing confirmation of service tax of Rs.11,36,720.00/- for the period October, 2006 to March, 2011, by invoking the longer period of limitation. The same stands confirmed by the Original Adjudicating Authority along with imposition of penalty of identical amount and upheld by Commissioner (Appeals). Hence the present appeal.

3. The appellant's contention is that the galvanization is admittedly a process of manufacture and in any case hand-pumps, whether in the appellant's hand or in the hands of the principal manufacturer were unconditionally exempted. The same cannot be held to be a service falling under the category of 'Business Auxiliary Service'. Learned Advocate has also challenged the impugned order on the ground of limitation by submitting that the entire facts were known to the revenue inasmuch as they were reflecting the job work in their returns along with the fact of reversal of Cenvat credit. Learned Original Adjudicating Authority has accepted the above position but has still invoked the extended period on the sole ground that nature of job work was not disclosed.

4. After hearing the learned A.R. we are of the view that the appeal can be disposed on the point of limitation itself. Admittedly, the entire demand is beyond the normal period of limitation. It is also a fact that the appellants were disclosing the reversal of Cenvat credit in respect of the items used in the job work activity, in their monthly returns. This fact is sufficient enough to establish the bonafide of the assessee that they were entertaining bonafide belief that the galvanization amounts to manufacture and since hand-pumps were exempted, there is no requirement to pay any duty of excise also. In the absence of any other evidence to attribute any malafide on the appellant, we are of the view that the extended period is not available to revenue. As such, on this ground itself, we set aside the impugned order and allow the appeal with consequential relief to the appellant.

(Dictated and pronounced in open court)

(Archana Wadhwa)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

akp