CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH

EXCISE Appeal No.50939 of 2015

(Arising out of Order-in-Original No. 06-COMM-CEX-GZB-2014-15 dated 28.11.2014 passed by Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Ghaziabad)

M/s. WPIL Limited **...Appellant**
A-5, Sector-xxii, Meerut Road,
Ghaziabad, UP

Versus

Commissioner of Customs, **....Respondent**
Central Excise& Central GST, Ghaziabad
202, Wing A CGO Complex II
Kamla Nehru Nagar,
Ghaziabad, UP

APPEARANCE:
Mr. B.L. Narsimhan, Advocate for the appellant
Mr. B.K. Jain, Authorised Representative for the Respondent

CORAM :HON'BLE Mr. Ashok Jindal, MEMBER (JUDICIAL)
HON'BLE Mr. P. Anjani Kumar, MEMBER (TECHNICAL)

Date of Hearing:**9.3.2022**

Date of Decision: **28.3.2022**

FINALORDER No.70083/2022

ASHOK JINDAL

The appellant is in appeal against the impugned order wherein the demand has been confirmed by including the value of bought out items in the assessable value of their final product.

2. The facts of the case are that the appellant is engaged in manufacture of power-driven pumps (PD Pumps) which were used for handling water. It is pertinent to mention here that the appellant is not manufacturing electric motor to be used as prime

movers with the goods manufactured by the appellant. The appellant is having four modes of transactions for sale of the PD Pumps and bought out items:

a) PD Pump without motor,

b) PD Pump cleared as such by appellant and manufacturer of electric motor directly supplied at the site of the customer on procurement by the appellant on behalf of the customer,

c) PD Pump cleared from the factory without electric motor, however, motor is procured by the appellant on behalf of the customer and same was supplied by its manufacturer at the site of the customer.

d) PD Pump was assembled with electric motor and supplied to the customer by the appellant.

3. The appellant is paying duty including the value of electric motor in the value of PD pump in case, PD Pump are assembled with electric motor and supplied to the customer by the appellant but for rest of the transactions namely, PD Pump without motor, PD Pump cleared as such by the appellant and manufacturer of electric motor directly supplied to the site of the customer on procurement by appellant on behalf of the customer and PD Pump cleared from the factory without electric motor. However, motor is procured by the appellant on behalf of the customer and same is supplied directly by its manufacturer at site of the customer. On these three modes of transaction, the appellant is paying duty on PD Pumps which have been cleared from the factory. As electric motor never came to the factory of the appellant and the appellant

did not include the value of the electric motor in the value of PD Pump and did not pay duty on the value of electric motor. The Revenue is of the view that as there was a contract to the appellant to supply the PD Pump along with electric motor, in that circumstances, value of the electric motor is to be included in the assessable value of PD Pump. In these set of facts, the show cause notice was issued to the appellant for the period January 2009 – April 2013 on 27.1.2014 to demand duty by including the value of the electric motor in the assessable value of PD Pump. The matter was adjudicated. The demand on duty was confirmed along with interest and penalty was also imposed. Against the said order appellant is before us.

4. The learned counsel appearing on behalf of the appellant submits that in case electric motor comes to their factory and same has been attached to the PD pump and the appellant was paying duty thereon, but bought out items have gone directly to the customers, the appellant is not paying duty and the said issue has been decided by this Tribunal in the case of **Cheema Boilers Ltd. v Commissioner of Central Excise & ST, Chandigarhreported as 2018 (362) ELT 268 (Tribunal-Chennai)** and in the case of **Collector of Central Excise, Pune v Kishore Pumps Pvt. Ltd. reported as 1997 (91) ELT 91 (Tribunal),** therefore, the value of electric motor is not to be included in the assessable value of the PD pump.

5. On the other hand, learned AR reiterated the findings of the impugned order and submits that the value of electric motor is to

be included in the assessable value of PD Pump as without electric motor, the PD Pump is not operative.

6. Heard the parties. Considered the submissions.

7. We find that facts of the case are not in dispute that electric motors are directly supplied to the customers by the manufacturer thereof either on behalf of the appellant or on behalf of the customers or purchased by the customers themselves. Therefore, the short issue arising before us, whether the value of bought-out item which has not come to the factory of the appellant and directly gone to the place of the customer, the value of bought out item is to be included in the assessable value or not.

8. The said issue has been examined by the Tribunal in the case of **Cheema Boilers Ltd. (Supra)** wherein this tribunal has observed as under:

> *"Heard the parties and considered the submissions. The facts of the case are not in dispute that appellants are having purchase orders for Erection, Commissioning and Installation of Boilers at site. The appellant is clearing parts from factory to the site and certain bought out items are also directly supplied to the site from various vendors, on payment of duty. It is a fact on record that boiler in question emerges at site which become an immovable property, which is not excisable goods, therefore, not leviable for duty. As the Boilers on which the Revenue is demanding duty are not excisable goods,therefore, the question of payment of duty does not arise. Further, we find that bought out items have never came to the factory of the appellant and the appellant is liable to pay duty only on the goods manufactured by them. In that*

circumstance,for the bought items, the appellant is not required to pay duty. Therefore, we hold that demands in the impugned orders are not sustainable. Accordingly, the Impugned orders are set-aside.”

9. The issue has been squarely covered by the Tribunal in the case of **Cheema Boilers Ltd. (Supra)**.In these circumstances, we hold that the value of bought out item which has gone directly to the customer place is not includable in the assessable value of PD Pumps.

10. In these circumstances, we do not find any merit in the impugned order, the same is set aside. In result, the appeal is allowed with consequential relief, if any.

(Order pronounced in the open court on 28.3.2022)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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