

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 419 of 2010

*(Arising out of Orde-in-Appeal No.214/2009-CE dated
7.12.2009 passed by the Commissioner of Central
Excise (Appeals-I), Bangalore.)*

**M/s. Fouress Engineering
(I) Ltd**

Plot No.2, Phase II
Peenya Industrial Area
Bangalore – 560 058.

Appellant(s)

Versus

**Commissioner of Central
Excise
Bangalore-II**

Queens Road,
Bangalore – 560 001.

Respondent(s)

Appearance:

Mr. N. Anand, Advocate

For the Appellant

Mr. Rajesh Shastry,
Superintendent (AR)

For the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)

HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20795 /2023

Date of Hearing: 20.06.2023

Date of Decision: 20.06.2023

Per : R. BHAGYA DEVI

M/s. Fouress Engineering (I) Ltd., the appellant, are manufacturers of industrial valves. They were issued with show-cause notice for having cleared goods to their customers without

payment of duty. Accordingly, duty was demanded. The Original Authority had dropped certain demands and confirmed an amount of Rs.1,98,629/- for clearing goods without payment of duty stating that the same were short supplied items and duty demand amounting to Rs.75,614/- was also confirmed as they relate to designing and drawing approvals. The Commissioner (A) in the impugned order upheld these demands, against which the appellant is in appeal.

2. When the matter came up for hearing today, the learned counsel Mr. N. Anand, advocate on behalf of the appellant admitted payment of Rs.75,614/- against designing and drawing charges and did not contest the same. However, regarding short supplied items, he claimed that these items had already suffered duty in the original invoice and since the original invoice did not contain these items, they were sent on a separate invoice clearly mentioning that they were short supplied items. They also produced copies of invoices to show that the short shipment of goods cleared were originally duty paid items, hence, the question of demanding duty again does not arise.

3. The learned Authorised Representative for the Revenue reiterating the findings of the learned Commissioner (A) submitted that it appears that none of these documents were placed before the adjudicating authority.

4. Heard both sides.

5. We have carefully gone through the records of the case and the precise issue to be decided is whether excise duty can be demanded on the short-supplied items.

5.1 The learned Commissioner (A) in the impugned order at para 10 confirming the duty on the short-supplied items stated that the appellants have not produced or substantiated their claim of short shipment of goods by providing the relevant documents. Today, at the time of hearing, the appellant has produced Invoices wherein in Invoice No.1011/03-04 dated 29.6.2004 'Actuator SI No. SAR 25345' were cleared without payment of duty as the assessable value for short-supply was already included in the total value of earlier despatch vide invoice No.913 dated 22.5.2005 was cleared. The Invoice No.1011/03-04 dated 29.6.2004 clearly indicated as follows:

“ED (Excise Duty) Exempted Reason:

1) Assessable value given is based on last price + Overhead, for the purpose of shipment; 2) Declared assessable value for this short-supplied item is already included in the total value of earlier despatch vide Excise Invoice No. 913/03-04 as mentioned above. 3) Hence Excise duty is not payable again.”

5.2 Further, the learned advocate also placed on record a letter dated 19.5.2004 wherein the appellant had admitted to despatch valve which was short-supplied. These documents proved that the actual short-supply were duty-paid under the original invoice, hence as claimed by the appellant, the question of paying duty once again does not arise.

6. Accordingly, taking into consideration the facts placed before us and the documents placed on record, we allow the

appeal to the extent of duty demand of Rs.1,98,629/- and duty demand of Rs.75,614/- is confirmed as admitted by the appellant himself. Appeal is partially allowed.

(Order dictated and pronounced in Open Court.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

rv