CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

E/943/2008-DB

[Arising out of Order-in-Appeal No. 255/2008 dated 29/08/2008 passed by the Commissioner of Central Excise, Bangalore]

Conzerv Systems Pvt. Ltd. No.44, Phase II, Electronic City Bangalore	**Appellant(s)**

Versus

Commissioner of Central Excise, Customs and Service Tax Bangalore-I Post Box No. 5400, C.R Buildings, Bangalore - 560 001 Karnataka	**Respondent(s)**

Appearance:

Mr. Raghavendra, Advocate	For the Appellant
Dr J. Harish, Deputy Commissioner (AR)	For the Respondent

Date of Hearing: 08/02/2018
Date of Decision: 08/02/2018

CORAM:
HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. V. PADMANABHAN, TECHNICAL MEMBER

Final Order No. 20172 / 2018

Per: V. PADMANABHAN

The present appeal is against the Order-in-Appeal No. 255/2008 dated 29/08/2008. The appellant is engaged in the manufacture of Digital Panel

Meters, Energy Meters falling under Chapter 90 of the Central Excise Tariff Act. During the period under dispute i.e. 2002-03 to June 2006, the appellant cleared their meters to their showroom as well as service centres for demonstration as well as for replacement. At the time of clearance of such meters, since there was no sale, the central excise duty was paid in terms of Rule 8 of the Central Excise (Valuation) Rules by adopting the value as 115% of the cost of manufacture of said goods. The Department however was of the view that the duty is required to be paid on the basis of comparable goods and accordingly differential duty was demanded along with interest and penalties by the authorities below. Aggrieved by the impugned order, present appeal has been filed.

2. With the above background, we heard Shri Raghavendra, learned advocate representing the appellant as well as Dr. J. Harish, representing Revenue.

3. It is the submission of the learned counsel that the central excise duty on goods which are cleared to their own show-room is required to be done on the basis of Rule 8 as per CBEC circular dated 01.07.2002 (Question No. 13). It is his submission that the duty has been paid accordingly and the same finds approval in many of the Tribunal decision viz. *Commissioner of Central Excise Vs. Aquamall Water Solutions Ltd. - 2008 (223) E.L.T. 385 (Tri.-Bang.).* He further clearly admitted that the CBEC had issued a revised clarification dated 25.04.2005 in which a clarification on the same question as in the previous circular was changed and it was opined by CBEC that in

the case of free sample the value should be determined under Rule 4 of the Central Excise Valuation Rules, 2000. He also submitted that the demand is hit by time-bar.

4. The learned DR on the other hand justified the impugned order. He submitted that after the issue of revised clarification by CBEC dated 25.04.2005, the stand of the Department is correct. He also relied upon the decision of the jurisdictional High Court of Karnataka in the case of *Kennametal India Ltd. Vs. Union of India - 2016 (344) E.L.T. 179 (Kar.).* He submitted that both the two circulars have been considered by the Hon'ble High Court and it has been decided that the duty payable on goods cleared as samples are required to be done in terms of Rule 4 of the Valuation Rules.

5. After hearing both sides and on perusal of record, we find that the CBEC vide its revised clarification dated 01.07.2002 had clarified in question 13 that the duty is to be paid in terms of Rule 8 of the Valuation Rules. However the same has been subsequently revised vide Notification dated 25.04.2005 in which it has been specified that the valuation of samples can be done in terms of Rule 4. We find that the revised CBEC circular along with old one has been elaborately considered by jurisdictional Karnataka High Court and it has been decided by the Ho'ble High Court for the valuation of samples cleared for partly and demonstration may be correctly done in terms of Rule 4 of the Central Excise Valuation Rules. We find the same stand has been adopted by the authorities below and we find no reason to interfere with the same.

6. The issue of time-bar has also been discussed by the authorities below. In the impugned order it has been recorded that the appellant after shifting the unit to the present jurisdiction has failed to give information regarding goods cleared for replacement by adoption of value as per Rule 8 of the Valuation Rules. We are in agreement with such finding of the impugned order. We find no reason to interfere with the impugned order the same is sustained and the appeal is dismissed.

(Order Dictated in Open Court on **08/02/2018**)

(V. PADMANABHAN)
TECHNICAL MEMBER

(JUSTICE (DR.) SATISH CHANDRA)
PRESIDENT

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