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

Appeal(s) Involved:

E/508/2009-DB

[Arising out of Order-in-Appeal No. 10-2009 dated 24/03/2009 passed by Commissioner of Central Excise (Appeals), BANGALORE LTU]

Sobha Developers Ltd.
No 43,2nd Floor, Dickenson Road,bangalore
BANGALORE - 560092
KARNATAKA

Appellant(s)

Versus

Commissioner of Central Excise, Service Tax And Customs Bangalore LTU (appeals)
UNIT JSS TOWERS, 100 FEET RING ROAD,
BANASHANKARI III STAGE
BANGALORE - 560085
KA

Respondent(s)

Appearance:

Shri G. Shivadass, Advocate
LAKSHMI KUMARAN & SRIDHARAN
WORLD TRADE CENTRE NO.404-406, 4TH FLOOR, SOUTH WING BRIGADE GATEWAY CAMPUS NO.26/1, DR. RAJKUMAR ROAD,
BANGALORE - 560 055
KARNATAKA

For the Appellant

Shri Pakshirajan, Asst. Commissioner(AR)

For the Respondent

Date of Hearing: 03/09/2018
Date of Decision: 03/09/2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 21323 / 2018

Per : S.S. GARG

The present appeal is directed against the impugned order dt. 24/03/2009 passed by the Commissioner(Appeals) whereby the

Commissioner(Appeals) has rejected the appeal of the appellant and upheld the Order-in-Original.

2. Briefly the facts of the present case are that during the period 01/04/2002 to 31/03/2005, appellants manufactured aluminium doors, windows, frames and cement blocks valued at Rs.44,66,23,502/-. After extending the SSI benefit, the total duty payable on all the items worked out to Rs.26,82,657/-. But the appellant paid duty only on cement blocks amounting to Rs.2,82,316/- (after availing SSI benefit under Notification No.8/2003-CE dt. 01/03/2003 as amended), and no duty was paid towards aluminium doors, windows and frames. Hence a show-cause notice was issued demanding the aforesaid amount along with interest and penalties and to appropriate the amount already paid and demanding. The show-cause notice was adjudicated vide the Order-in-Original No.67/2008 dt. 22/24-07-2008 by the Additional Commissioner, LTU, confirmed all the demands except dropping personal penalty on the Managing Director. Aggrieved by the Order-in-Original, the appellant filed appeal before the Commissioner(Appeals) who rejected the said appeal. Hence the present appeal.

3. Heard both sides and perused records.

4.1. Learned counsel for the appellant submitted that the impugned order is not sustainable as the same is passed without properly appreciating the facts and the law. He further submitted that the activity undertaken by the appellant does not amount to manufacture as the activity carried out is cutting of aluminium profile into doors and windows and this cutting and drilling holes does not give separate identity to the goods. He further submitted that the specifications are project specific and frames made are fixed to the structures and becomes part of the immovable property thus rendering it non-excisable under the Central Excise Act. For this submission, he relied upon the decision in the case of Quality Steel Tubes (P) Ltd. Vs. CCE [1995(75) ELT 17 (SC)] and CCE Vs. United Phosperous Ltd. [2000(117) ELT 529 (SC)]. He further submitted that in the case of Hindustan Coal [2006(196) ELT 400 (SC)], the apex court has held that the burden to prove manufacture is always with the Department.

4.2. He further submitted that during the impugned period, the issue of excisability to doors / window frames etc. which forms part of the immovable structure was held in favour of the assesses by various decisions. Subsequently, the matter was referred to Larger Bench in the light of the conflicting decisions and the Tribunal in the case of Mahindra and Mahindra Ltd. Vs. CCE [2005(190) ELT 301 (Tri. LB)] held that structures in their movable state will be subject to duty, notwithstanding their getting permanently fixed as structure. It is his further submission that there being favourable decisions prevailing during the impugned period and the subsequent conflicting decisions resulting in the issue being referred to Larger Bench, the action of the appellant is bona fide and extended period is not invocable. For this submission, he relied upon the following decisions:-

i. Blue Star Ltd. Vs. UOI [2015(322) ELT 820 (SC)]
ii. Larsen & Toubro Ltd. Vs. CCE [2007(211) ELT 513 (SC)]
iii. CCE, Pune Vs. Telco Ltd. [2006(204) ELT 83 (Tri. Mumbai) approved by Bombay High Court in 2009(234) ELT A56(Bom.).
iv. Savira Industries Vs. CCE, Chennai-II [2016(331) ELT 504 (Tri. Chennai)]
v. Parul Associates Interiors Pvt. Ltd. Vs. CST, Bangalore [2016(46) STR 373 (Tri. Bang.)]
vi. Hindustan Tyre Resoles Vs. CCE, Belgaum [2017(6) GSTL 185 (Tri. Bang.)]
vii. Contenental Foundation Jt. Venture Vs. CCE, Chandigarh-I [2007(216) ELT 177 (SC)]

4.3. He further submitted that the period involved in the present case is from 01/04/2002 to 31/03/2005 whereas the show-cause notice was issued on 24/01/2008 which is clearly barred by limitation of one year as prescribed under law.

5. On the other hand, the learned AR defended the impugned order.

6. After considering the submissions of both sides and perusal of material on record, we find that the period involved in the present case is 01/04/2002 to 31/03/2005 whereas the show-cause notice was issued on 24/01/2008 which is clearly barred by limitation. More so, when the statements were recorded as early as 06/02/2006, 17/07/2006 and 18/09/2006, which is on record and the search operations were conducted and Mahazar was drawn on 28/04/2005. Further we find that during the impugned period, there were decisions favourable to the assessee holding that the activities carried out by the assessee does not amount to

manufacture. But the authorities below have relied upon the decision in the case of Mahindra and Mahindra Ltd. which subsequently held that the structure in the movable state will be subject to duty. Further we find that in the decisions relied upon by the appellant, it has been held that when there are conflicting decisions, the appellant has a bona fide belief and no suppression can be alleged against the appellant and extended period of limitation cannot be invoked in such a situation. Further we find that the facts were within the knowledge of the Department in 2005 itself but show-cause notice was issued on 24/01/2008. Therefore we are of the considered view that the entire demand in the present case is barred by limitation. Learned counsel has also submitted that on merits also, they have a very good case. But since, we are allowing the appeal on limitation itself, we do not think it appropriate to decide the issue on merits. As a result, the appeal is allowed with consequential relief if any.

(Operative portion of the Order was pronounced
in Open Court on **03/09/2018**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

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