CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SCO 147-148, SECTOR 17-C, CHANDIGARH-160017

DIVISON BENCH
COURT NO.1
Appeal No. E/494, 496/2010

[Arising out of the Order-in-Appeal No. 14-COMMR-PKL-2009 dated 05.11.2009 passed by the CCE (Appeals), Panchkula, Arising out of the Order-in-Appeal No. OIA- 15/COMMR/PKL/2009-10 dated 05.11.2009 passed by the CCE (Appeals), Panchkula]

Date of Hearing/Decision: 30.07.2018

For Approval & signature:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Devender Singh, Member (Technical)

Yamuna Fabricators Unit-III
Suyog Engineers Pvt. Ltd. **Appellants**

Vs.

CCE, Panchkula **Respondent**

Appearance

Ms. Krati Somani Advocate- for the appellant
Shri. G.M. Sharma, AR- for the respondent

CORAM: **Hon'ble Mr. Ashok Jindal, Member (Judicial)**
Hon'ble Mr. Devender Singh, Member (Technical)

FINAL ORDER NO: 62570-62571 / 2018

Per Ashok Jindal:

The appellants are in appeal against the impugned orders wherein the differential duty has been demanded along with interest and penalties were also imposed on the appellants.

2. As the fact and issue in both the appeals are common, therefore, both the appeals are disposed of by a common order.

3. The facts of the case are that the appellants are manufacturers of economizer coils and super heater coils which are parts of boilers. The appellants were the job worker of M/s ISGEC. Pursuant to an agreement wherein pre-bended steel tubes were supplied free of cost to the appellants by M/s ISGEC accompanied by invoices indicated payment of duty. The appellants took the cenvat credit of the duty indicated in the invoices. The appellants undertook the certain processes of manufacturing of the said coils which were then cleared to M/s ISGEC on payment of duty. The appellants issued two invoices; one for the free materials supplied by M/s ISGEC and the other for the labour charges and the goods used by them for manufacture of the said coils. On receipt of the said coils, M/s ISGEC took the cenvat credit and cleared the same on payment of duty on the transaction value. Through an investigation, it was alleged that M/s ISGEC is selling the goods as such as the appellants have manufactured the goods in complete form, therefore, in terms of Rule 10A(ii) of Central Excise Valuation Rules, 2000, the appellants are required to pay the duty on the value at which M/s ISGEC sold the goods. In these set of facts, the proceedings were initiated against the appellants, consequently, the differential duty was demanded along with interest and penalties were also imposed on the appellants. Aggrieved from the said orders, the appellants are before us.

3. The ld. Counsel for the appellant submits that in their own case for the earlier period this Tribunal held that the differential duty is not payable by the appellants, therefore, the impugned orders are to be set aside.

4. Heard the parties.

5. Considering the fact that the identical issue came up before this Tribunal in appellant' s own case for the earlier period, wherein, this Tribunal observed as under:

> *"7. In this case, the facts have not been disputed that the appellants are job worker and after manufacturing the goods and clearing on payment of duty to M/s ISGEC and M/s ISGEC is taking the credit of duty paid by the appellant and further cleared the goods on payment of duty at transaction value. The case of the Revenue is that in terms of Rule 10A(ii) of the Central Excise Valuation Rules, 2000, the appellants are required to pay duty on the transaction value of M/s ISGEC. Although we hold that the appellants are required to pay duty as per the Rule 10A(ii) of the Valuation Rules, 2000 but on the amount on which duty have been demanded from the appellants, duty has already been paid by the M/s ISGEC on the said amount. If the duty has been demanded from the appellant, in that circumstances, it will be the case of demand of duty twice on the same product which is not permissible in law. Therefore, although we hold that the appellants are liable to pay duty as per Rule 10A(ii) of the Valuation Rules but in the facts and circumstances of the case as duty has already been paid on the said goods, therefore, no duty is payable by the appellants.*
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> *8. On the issue of penalty, we find that as per the statement and agreement between the parties M/s ISGEC has undertaken of testing at their end after goods were supplied by the appellant to M/s ISGEC. In that circumstances, activity of testing done by the M/s ISGEC amounts to manufacture as Note 6 to Section 16 of the 1st schedule of Central Excise Tariff Act, 1985. On the basis of said understanding, the appellants have cleared the goods to M/s ISGEC on the value arrived at the job charges plus raw material. The appellants from no stretch of means can be said have suppressed the facts of under valuation and paid less duty by suppressing value of the said goods as there was an understanding between the appellants and the principle manufacturer that the process of testing undertaken by the M/s ISGEC amounts to manufacture. Ultimately, the duty has been paid by the M/s ISGEC on transaction value of M/s ISGEC, on that circumstances, as duty has been paid on the transaction value of the said goods, in that circumstances, it cannot be said that the appellants were having any intention to pay less duty on the said goods. Therefore, we hold that no penalty is imposable on the appellants."*

6. As the issue has already been settled in favour of the appellants, therefore, we hold that the appellants are not liable to pay differential duty as demanded by the way of the impugned orders. Accordingly, we set aside the impugned orders.

In result, the appeals are allowed with consequential relief, if any.

(Dictated and pronounced in the open court)

Devender Singh
Member (Technical)

Ashok Jindal
Member (Judicial)

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