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

DIVISON BENCH
COURT NO.1

Appeal No. E/54340/2014

[Arising out of the Order-in-Appeal No. JNK-EXCUS-000-APP-1085-13-14 dated 25.03.2014 passed by the CCE (Appeals), Jammu & Kashmir]

Date of Hearing/Decision: 31.08.2018

For Approval & signature:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Gees Industries	**Appellant**
Vs.	
CCE, Jammu & Kashmir	**Respondent**

Appearance

Shri. A.S. Gil, Advocate- for the appellant
Shri. Harvinder Singh, AR- for the respondent

CORAM: **Hon'ble Mr. Ashok Jindal, Member (Judicial)**
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

FINAL ORDER NO: 63175 / 2018

Per Ashok Jindal:

The appellant is in appeal against the impugned order wherein it has been alleged against the appellant that they have undervalued the goods.

2. The facts of the case are that the appellant is manufacture of Transformers and located in the state of Jammu & Kashmir and availing the benefit of exemption Notification No. 56/2002-CE dated 14.11.2002. After manufacturing the transformers, if these transformers sold to DGSM deed contracts, these are to be tested and the testing charges were included in the assessable value of these transformers but in case these

transformers were sold in the open market, in that case, the appellant is testing these transformers on behalf of the buyers and buyers have re-imbursed the testing charges to the appellant. The case of the Revenue is that the testing charges are to be included in the assessable value of these transformers. In these set of facts, the show cause notice was issued for the period 2007-2008 to 2009-2010 by invoking extended period of limitation on 25.01.2011. The matter was adjudicated and demand of duty on account of under- valuation was confirmed. Against the said order, the appellant is in appeal before us.

3. The ld. Counsel for the appellant submits that the appellant is recovering these testing charges from the buyers and they are doing the said activity on behalf of the buyers. Therefore, these testing charges are not includible in the assessable value. He further submits that as in terms of the Notification No. 56/2002-CE dated 14.11.2002, if whatever duty is payable by the assessee, the same is entitled to the refund, therefore, the allegation of suppression or mala-fides is not sustainable against the appellant, therefore, the demand for the extended period of limitation is to be set aside and no penalty is imposable on the appellant.

4. On the other hand, the ld. AR supported the impugned order and submits that as these testing charges has been borne by the appellant although same has been re-imbursed by the buyers, therefore, the same are includable in the assessable value.

5. Heard the parties and considered the submissions.

6. On careful consideration submissions made by both the sides, we find that in this case testing has been done before clearance of the goods, therefore, any activity undertaken before clearance of the goods and charges thereof are to be included in the assessable value, although, these testing charges has been re-imbursed by the buyers. Buyers has not only

re-imbursed the testing charges but he is also paid the value of transformers to the appellant, so, if anything received from the buyer is re-imbursement then nothing is to be paid by the appellant for the value of goods. Therefore, the arguments advanced by the ld. Counsel testing charges are re-imbursed by the buyers and not includable in the assessable value. In these terms, we hold that these testing charges are the part of assessable value, therefore, the charges of under valuation is proved and accepted.

7. Further, we take note of the fact that the appellant is located in the state of Jammu & Kashmir and availing benefit of exemption Notification No. 56/2002-CE dated 14.11.2002. As per the said Notification, whatever duty paid by the appellant through PLA , the same is refundable or the appellant is entitled to take self credit. In that circumstances, charge of mala-fide is not sustainable, therefore, the demands for the extended period of limitation are set aside. Consequentially, no penalty is imposable on the appellant.

8. In result, the appellant is directed to pay the differential duty along with interest for the clearances made during the period of limitation.

With these terms, the appeal is disposed off.

(order dictated and pronounced in the open court)

Anil G. Shakkarwar **Member (Technical)**	**Ashok Jindal** **Member (Judicial)**

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