IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

Appeal No. E/543/2010

(Arising out of Order-in-Appeal No. 127/2010 (P) dated 30.6.2010 passed by the Commissioner of Central Excise (Appeals), Chennai)

M/s. ETA Engineering P. Ltd. — Appellant

Vs.

CCE, Puducherry — Respondent

Appearance

Shri S. Muthuvenkataraman, Advocate for the Appellant
Shri S. Govindarajan, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **22.05.2018**

Final Order No. **41552 / 2018**

Per Bench

Brief facts are that the appellants are engaged in manufacture of Air Handling Unit, Fan Coil Unit and Packaged Split Air Conditioners. They cleared goods to their branches situated in Bangalore, Cochin, Hyderabad, Chennai etc., who in turn sold the goods as such to the customers. They cleared air handling unit to their Hyderabad Branch for project work at

Cyberabad Convention Centre and at I Labs P. Ltd. in Hyderabad vide their Invoice Nos. 309 dated 18.10.2005 and 590 dated 31.1.2006 respectively. The assessable value adopted for the said goods at the time of removal from the factory to branch was Rs.40,19,712/- whereas the goods were invoiced at their branch for Rs.52,32,069/-. It appeared that the appellant had sold the said goods for a higher value through the branch for which they have not discharged the central excise duty. Show cause notice was issued for demanding the duty along with interest and for imposing penalty. After due process of law, the original authority confirmed the demand, interest and imposed penalties. In appeal, Commissioner (Appeals) upheld the same. Hence this appeal.

2. On behalf of the appellant, ld. counsel Shri S. Muthu Venkataraman submitted that the show cause notice alleged that the valuation has to be done under Rule 7 of Central Excise Valuation Rules, 2000 which has been adopted by the adjudicating authority for confirming the demand whereas the Commissioner (Appeals) has observed that Rule 9 would be applicable. That this would go to show that the demand confirmed is without any basis. It is also argued by him that after clearing the goods from the factory to the branch, some additional works such as ducting, piping, electrical and other

installation works are also done and the branches raise bill for such activities. The demand is raised by the department on the air handling unit including the value of other parts fitted to it and therefore the demand cannot sustain.

3. The ld. AR Shri S. Govindarajan supported the findings in the impugned order.

4. Heard both sides.

5. On perusal of records as well as after hearing submissions, it is seen that at the time of removal of the goods from the factory, the appellant knew the value at which the goods were to be sold by their branches would be higher than that mentioned in the invoices. The very same product which has been cleared from the factory is sold from the branch office at a higher price. The only contention raised by the ld. counsel is that the Commissioner (Appeals) has applied Rule 9 in his discussions whereas the show cause notice as well as the adjudication order adopts valuation under Rule 7 of Central Excise Valuation Rules, 2000. The allegations in the show cause notice as well as the basis for which the differential duty demand is very much clear from the show cause notice as well as the order passed by the adjudicating authority. We hold that mere mention of a wrong Section/Rule would not be much consequence to distort or interfere with the demand confirmed. We do not find any infirmity in the order passed by the

Commissioner (Appeals). The impugned order is upheld and the appeal filed by appellant is dismissed.

(Operative portion of the order was
pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

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