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

Appeal No.: E/00475/2012

(Arising out of Order-in-Appeal No. CMB-CEX-000-APP-163-12 dated 28..08.2012 passed by the Commissioner of Central Excise, Customs and Service Tax (Appeals), Coimbatore)

M/s. Kanji Fabrications (P) Ltd. : Appellant

Vs.

Commissioner of Central Excise, Coimbatore : Respondent

Appearance:-
Shri. J. Shankar Raman, Advocate
for the Appellant
Shri. L. Nandakumar, 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:**27.07.2018**

Final Order No. 42160 / 2018

Per Bench,

Appellants are manufacturers of sheet metal fabricated components. Intelligence gathered revealed that the appellant has collected freight charges over and above the assessable value through commercial invoices and not included the same in the assessable value for payment of duty. It has been charged that the freight collected in excess of the actual freight incurred by the appellant towards delivery of goods to the buyers place is an additional consideration towards sale of goods which has not been included in the assessable value for payment of appropriate duty in violation of the provisions of Section 4 of the Central Excise Act, 1944 read with Rule 5 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. After due process of law, the Original Authority confirmed an amount of Rs. 1,89,075/-, interest and imposed a penalty equal to the duty under Section 11AC of the Central Excise Act, 1944. In appeal, the Commissioner (Appeals) upheld the same. Hence, this appeal.

2.1 The Ld. Counsel Shri. J. Shankar Raman appearing for the appellant submitted that the appellant is a small scale industry engaged in fabrication of cabinets from locally procured materials like MS Sheets, Angles and Flats. They were doing the above activity only for M/s. BPL Telecom Ltd. Palakkad. The said cabinets were cleared on payment of central excise duty. In all the purchase orders BPL had agreed to pay Rs. 1000/- per cabinet as freight charges and the appellant delivered the goods at the premises of BPL at Palakkad for which the appellant utilize the service of their own vehicles and private transporters and pay them the freight charges. The appellant may spend the entire amount towards transportation or spend more or less and it depends on various factors.

2.2 The appellant relied upon various decisions of the Hon'ble Tribunal as well as the ruling of the Hon'ble Supreme Court in the case of ***Baroda Electric Meters Ltd. Vs. Collector of Central Excise – 1997 (94) E.L.T. 13 (S.C.)*** to contend that the transport charges and any profit made thereon when collected separately from the customers is not includible in the assessable value.

3. On behalf of the Revenue, Ld. Ar Shri. L. Nandakumar submitted that only the actual cost of transportation can be excluded from the assessable value and any amount received towards transportation in excess of the actual transportation cost is includible in the assessable value.

4. Heard both sides.

5. The issue is no longer *res integra* as the Hon'ble Supreme Court in the case of *Baroda Electric Meters Ltd. (supra)* held that duty of excise is on manufacture and not a tax on the profits made on transportation. Rule 5 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 states that "Where any excisable goods are sold in the circumstances specified in clause (a) of sub-section (1) of Section (4) of the Act except the circumstances in which the excisable goods are sold for delivery at a place other than the place of removal, then the value of such excisable goods shall be deemed to be the transaction value, excluding the cost of transportation from the place of removal up to the place of delivery of such excisable goods." Even after the new Valuation Rules came into force, similar view was expressed in ***Bathinda Industrial Gases Vs. C.C.E. & S.T., Chandigarh-II – 2014 (308) E.L.T. 111 (Tri. – Del.).*** Following the same we are of the considered opinion that the demand requires to be set aside, which we hereby do. The impugned order is set aside.

6. The appeal is allowed with consequential reliefs, if any.

(Operative part of the order was pronounced in open Court)

(Madhu Mohan Damodhar)
Member (Technical)

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

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