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

Appeal No. E/524/2012

(Arising out of Order-in-Original No.7/COMMR/CE/2012 dated 24.8.2012 passed by the Commissioner of Central Excise, Tirunelveli)

Commissioner of GST & Central Excise
Tirunelveli Appellant

Vs.

M/s. Unimech Industries Respondent

Appearance

Shri S. Govindarajan, AC (AR) for the Appellant
Shri M.N. Bharathi, Advocate for the Respondent

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

Date of Hearing / Decision: **16.01.2019**

Final Order No. **40100 / 2019**

Per Bench

The above appeal is filed by the department against the order passed by Commissioner who set aside Rs.34,94,737/- raised in the show cause notice and confirmed the demand of only Rs.23,14,649/- along with interest and imposed equal penalty.

2. On behalf of the appellant, ld. AR Shri S. Govindarajan supported the grounds of appeal. He submitted that the show

cause notice was issued after noting discrepancies in the figures shown in the Profit & Loss account and ERI returns. The respondent was engaged in trading of goods also. When they were asked to produce evidence, the respondent produced a worksheet showing the break-up of the invoices in respect of traded goods and manufactured goods for the years 2007 – 08, 2008 – 09 and 2009 – 10. The respondents had purchased the traded goods from M/s. Sam Turbo Industries Ltd. Coimbatore and sold to various Thermal Power Stations. However, the total value of both the traded goods and the manufactured goods as shown in the worksheet was found to be less than the value as shown in the profit and loss accounts for each of the three financial years. The difference was not explained by the respondent. It was noted that they had availed CENVAT credit of the excise duty paid on purchased goods immediately on receipt of the goods in the factory. While selling the goods, the sales invoices showed that additional value was added to the goods sold and the goods were cleared on payment of excise duty. However, on reconciling the sales invoices along with ER1 returns, it was found that the sales invoices in some cases showed higher amount whereas in some cases it did not show any difference to as the value of the goods when purchased from outside. The ld. AR argued that when the respondents have sold the goods at a higher price after purchase, they had modified the goods so as to suit the requirement of their client namely Thermal Power Plants. This activity of value addition amounts to manufacture. The Commissioner has wrongly dropped the demand raised on such enhanced value shown in sales invoices holding that it cannot be presumed that the activity amounts to manufacture. When there is increase in the value, it is strong indication that the respondents have undertaken process of manufacture on the goods purchased. Thus, the demand of duty on the amount corresponding to the enhanced value shown in the sales invoice as raised in the show cause notice ought to have been confirmed.

3. The ld. counsel Shri M.N. Bharathi submitted that the grounds of appeal stated is entirely different from that of the argument put forward by the ld. AR. In the grounds of appeal, the only ground stated is that the Commissioner has not given any finding for setting aside the demand on the ground of limitation. In the impugned order, the Commissioner has not dropped the demand of Rs.34,94,737/- on the ground of limitation. In fact, in paragraphs 15 and16 of the impugned order, the Commissioner has categorically held that although the respondents are doing some modifications on the goods received into the factory, there is no new product emerging and therefore the activity does not amount to manufacture. The Commissioner has made proper discussion as well as given correct finding to support the dropping of demand for Rs.34,94,737/-. It is also submitted by him that the

respondents had filed appeal against the confirmation of demand of Rs.23,14,649/-. The said appeal was dismissed vide Final Order No. 40455/2015 dated 23.4.2015 for failure to comply with the predeposit.

4. Heard both sides.

5. The department is aggrieved by the order passed by the Commissioner who dropped part of the demand of Rs.34,94,737/-. Though the ld. AR has put forward the argument that the dropping of said demand is not correct when the activity of doing modifications on the products purchased having been admitted by the respondent, there is actually no such ground raised in the appeal filed before this Tribunal. The ground raised in the appeal memorandum is that the Commissioner has not given any finding with regard to limitation or with regard to confirmation of interest and demand.

6. In the impugned order, in paragraphs 13 to 16, the Commissioner has discussed the issue of the difference in the figures reflected in the returns filed by the respondent and the financial statement. The demand in respect of Rs.34,94,737/- is made only in respect of such amount reflected in the sales invoices wherein the goods have been sold at a higher price by the respondent. In para 15, the Commissioner has said that though the proprietor of the assessee has given statement that they are doing some modification on the goods, there is nothing to show that a new product emerges from such modification.

The goods received and the goods sold are one and the same and there is no change in CETH or description of the goods. The Commissioner has therefore categorically held that the activity if any of modifying the goods does not amount to manufacture. In that case, it is for the department to show as to what are the inputs used for doing such modification and what is the activity actually involved for doing the modifications. The activity cannot be held to be manufacture on a mere presumption that there is an increase in the price value. Whenever there was no increase in the price, it is taken by the department to be traded goods. Thus, the allegation of manufacture is on mere assumption of increase in the value of goods sold. There is actually nothing brought forth in the show cause notice to show that the activity undertaken by the respondent amounts to manufacture.

7. For this reason, we find that the Commissioner has rightly dropped the demand with respect to Rs.34,94,737/-. The impugned order therefore calls for no interference. The appeal filed by the department 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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