IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

REGIONAL BENCH - COURT NO. – DB-I

Excise Appeal Nos. 41208 and 41209/2013

(Arising out of Order-in-Appeal Nos. 123 & 124/2013 dated 25.03.2013 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Chennai.

M/s. Southern Wires **Appellant**
398 (Old No. 766),
Poonamalle High road,
Kilpauk, Chennai-600 010.

Vs.

Commissioner of Customs, Central Excise and Service Tax, **Respondent**
No. 26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai-600 034.

APPEARANCE:

Shri. R. Anish Kumar, 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 C. J. Mathew, Member (Technical)

Final Order No.**40104-40105/2020**

Date of Hearing: 04.02.2020
Date of Decision: 04.02.2020

Per Sulekha Beevi

Brief facts are that the appellants are engaged in the manufacture of 3MM Stranded Ply wire and are registered with the Central Excise Department. On verification it was noticed that during the period from April'2008 to December'2008, the appellant had cleared their products to buyers by adopting transaction value for the goods. The department was of the view that as the buyers are related persons appellant has wrongly adopted transaction value and they ought to have arrived assessable value by adopting 110% of the cost of production of such goods as per CAS-4 as envisaged in Rule 10 (a) read with Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. Two Show Cause Notices were issued for the period 04/2008 to 07/2008 and 08/2008 to 12/2008, proposing to demand the short paid Central Excise duty along with interest and also for imposing penalty. After due process of law, the adjudicating authority confirmed the demand along with interest and imposed penalty. On appeal, the Commissioner (Appeals) upheld the same. Hence these appeals.

2. On behalf of the appellant, Learned Counsel Shri R. Anish Kumar appeared and argued the matter. It is submitted by him that the six buyers to whom the supplies were made by the appellant are distinct legal entities under the eye of law and not related persons for the purpose of valuation. Though the buyers can be treated as inter-connected, they are not related persons as regards the appellant. The appellant has rightly adopted transaction value and the demand made cannot sustain. During the same period the appellant also removed goods to other parties at the same value and the copy of invoices were submitted before the adjudicating

authority. Ld. Counsel relied upon the appellant-assessee's own case in Final Order No.40316-40318/2018 dated 01.02.2018, for a different period and argued that the Tribunal after considering the facts of the case has set aside the demand raised by department alleging that the appellant has to arrive the assessable value under Section 4 (1)(b) read with Rule 10, Rule 8 of Valuation Rules, 2000.

3. Learned AR Shri L. Nandakumar, AC, appeared and argued the matter on behalf of the department.

4. Heard both sides.

5. The issue that has to be answered is whether the appellant and the buyers shall be within the description of "related persons" so as to come within the valuation as per Section 4 (1) (b) of CEA, 1944. For better appreciation, relevant provision in Section 4 (3) is reproduced as under:-

> **"Section 4. Valuation of excisable goods for purposes of charging of duty of excise:**
> ………
>
> **(3) For the purpose of this Section**
> ……….
>
> b) persons shall be deemed to be "related" if –
>
> (i) they are inter-connected undertakings;
>
> (ii) they are relatives;
>
> (iii) amongst them the buyer is a relative and distributor of the assessee, or a sub-distributor of such distributor; or
>
> (iv) they are so associated that they have interest, directly or indirectly, in the business of each other.

Explanation. - In this clause -
(i) "inter-connected undertakings" means two or more undertakings which are inter-connected with each other in any of the following manners, namely:-

(A) if one owns or controls the other;

(B) **where the undertakings are owned by firms, if such firms have one or more common partners;**

(C) where the undertakings are owned by bodies corporate,-

(I) if one body corporate manages the other body corporate; or

(II) if one body corporate is a subsidiary of the other body corporate; Or

(III) if the bodies corporate are under the same management; or

IV) if one body corporate exercises control over the other body corporate in any other manner;

(D) where one undertaking is owned by a body corporate and the other is owned by a 'firm, if one or more partners of the firm,-

(I) hold, directly or indirectly, not less than fifty per cent. of the shares, whether preference or equity, of the body corporate; or

(II) exercise control, directly or indirectly, whether as director or otherwise, over the body corporate;

(E) if one is owned by a body corporate and the other is owned by a firm having bodies corporate as its partners, if such bodies corporate are under the same management;

(F) if the undertakings are owned or controlled by the same person or by the same group;

(G) if one is connected with the other either directly or through any number of undertakings which are inter-connected undertakings within the meaning of one or more of the foregoing sub-clauses."

The authorities below have concluded that valuation under Section 4 (1) (b) has to be adopted and not the transaction value mainly on account of the fact that the six units are inter-connected undertakings. However, from the Order-in-Original or the impugned order there is no discussion how the buyers are related persons. As per Rule 10 (a) of the Valuation Rules only if the buyers and seller are related in the manner specified under the sub-clause (ii), (iii), (iv) of Clause-(b) of Sub-section (3) of Section 4 of the Central Excise Act, 1944, the valuation as alleged in the SCNs will come into application. In the present case, apart from the units being inter-connected undertakings there is nothing to show that the buyers and seller are related persons. There is no mutuality of interest or fund flow brought out by evidence on the part of the department.

6. In the appellant's case for a different period the Tribunal had occasioned to consider the very same issue and held as under:-

> "5. Admittedly, the main respondent who is a partnership firm sold all their produce to six buyers. Four of these buyers are partnership firms with partners who are close family members having blood relationship among each other as well as partners of the respondent firm. These four buyers and the respondent firm are interconnected is not disputed. However, two of the buyers were private limited companies. As juristic person they cannot be held to be "relative of the respondent firm". Other than this, the original authority did not examine as to the category in which these two private limited companies can be considered as interconnected to the respondent firm. The overreaching control, mutuality of interest, financial control by way of share holding pattern etc., has never been discussed. In fact, relatives of the

responded firm being Directors of the two private limited companies appeared to be the reason for the original authority to hold all the six buyers as interconnected to the respondent firm. We find no legal basis to support such summary conclusion. In this regard, we are in agreement with the impugned order that the original authority failed to bring out legal support for holding all the buyers as interconnected firms.

6. Further, it is to be noted that the respondent all along submitted that the value of their sale is based on commercial consideration. These are normal transaction value as per the market conditions. There is no question of rejection them as there are no value reduction by any extraneous situation. No decision of this aspect was made in the original proceedings perhaps on the reason that since the buyers were held to be interconnected, the transaction is automatically tainted. We note that the impugned order relied on two decisions of the Tribunal in the case of R.B. Agarwalla & Co. Pvt. Ltd. Vs. CCE, Bhubaneswar - 2007 (217) ELT 417 (Tri.-Kol.) and in the case of South Asia Tyres Pvt. Ltd. Vs. CCE, Aurangabad - 2003 (152) ELT 4334 (Tri.-Mum.). The decision in South Asia Tyres Pvt. Ltd. (supra) has been affirmed by the Hon'ble Supreme Court."

7. After appreciating the facts and following the above decision, we are of the considered opinion that the demand cannot sustain. The impugned orders are set aside and the appeal is allowed with consequential reliefs, if any.

(Dictated and pronounced in open court)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

(**C. J. MATHEW**)
Member (Technical)

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