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

E/00264/2008

[Arising out of Order-in-Original No.3/2008, dated 26.02.2008 passed by the Commissioner of Central Excise, Chennai-IV]

M/s. FAL INDUSTRIES LTD. APPELLANT

Versus

COMMISSIONER OF CENTRAL EXCISE, CHENNAI-IV RESPONDENT

Appearance:

For the Appellant Shri P.C. Anand, Cons.

For the Respondent Shri K.P. Muralidharan, AC (AR)

CORAM:

Hon'ble Shri D.N. Panda, Judicial Member
Hon'be Shri Madhu Mohan Damodhar, Technical Member

Date of hearing/decision **09-03-2017**

FINAL ORDER NO. 40523/2017

Per D.N. Panda:

Appellant does not dispute on the dutiability of the goods failing to succeed before Tribunal in its Appeal **No.E/01067/1999 & E/00545/2003** disposed on 10.08.2006. While these appeals were disposed on merit, Tribunal considered contention of the appellant on limitation. On this point, the matter was remanded to adjudicating authority for consideration.

2. We make clear that when the duty element is not disputed and that has been discharged, the issue of limitation has no significance at this stage.

3. The only point that has come up for consideration is on imposition of penalty. Therefore, it has become necessary to examine the manner of conduct of the activity to ascertain whether that demonstrates evasion with a premeditated mind to cause such evasion.

4. When the facts on record are looked into it reveals that the spare parts manufactured by the appellant were used in its factory assembling Unit located elsewhere and those were cleared at certain value paying duty thereon. Out of such parts cleared, to the assembling Unit, sometimes few parts were sold thereat. When these sold parts fetched higher price, department adopted that price for the valuation of the entire lot of parts transferred from appellant's factory to its assembling Unit.

5. We are surprised how a trader is expected to get higher price at all times in this competitive market. It is practically an impossible situation. Revenue has not brought out what was average price prevailed in the market at different times. The law relating to valuation under section 4 of the Central Excise Act, 1944 has confined its scope to the time and place of removal to determine transaction value. The trading transactions were found to be minor and that too sales were effected after clearance of parts made to assembly unit. In absence of any ingredients or material showing depression to assessable value caused by appellant to prejudice Revenue at the relevant point of time and place of clearance, there cannot be presumption of any situation to order for

enhancement of assessable value of clearance of traded goods. Therefore in absence of any deliberate intention of appellant to cause loss to Revenue, ~~[illegible]~~ no penalty is imposable. Appeal is thus allowed accordingly and only to this extent.

(Dictated and pronounced in open court)

23/03/17

(MADHU MOHAN DAMODHAR)
TECHNICAL MEMBER

22/3/2017

(D.N. PANDA)
JUDICIAL MEMBER

Ksr

Customs, Excise & Service Tax Appellate Tribunal

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अपील अधिकरण/(CESTAT)
चेन्नै/Chennai