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

E/676/2007

(Arising out of Order-in-Appeal No. 113/2007 (M-II) ST dated 25.06.2007 passed by the Commissioner of Central Excise (Appeals), Chennai)

M/s. Tansi Project Cell — Appellant

Vs.

CCE, Chennai-II — Respondent

Appearance

Shri P.C. Anand, Consultant
for the appellant

Shri A. Cletus, ADC (AR)
for the Respondent.

CORAM :

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

Date of Hearing/Decision: **18.07.2017**

FINAL ORDER Nos. 41235 **/2017**

Per Bench

The facts of the case are that the appellants during 2002 – 2003 had undertaken job work for manufacture of 'Steel Structures and tower components' as per the specification of M/s. Reliance Engineering Associates Pvt. Ltd., for telecommunication purpose. The appellant was supplied both steel and lead free of cost for

Customs, Excise & Service Tax Appellate Tribunal fabrication of 42 Nos. of "Base Trans receiver Stations" involving cutting, bending, slitting, drilling and galvanizing. The Department took the view that process carried out by the appellant including that of galvanization amounts to manufacture and hence duty liability of Rs. 1,53,325/- will arise on the assessable value of Rs. 9,58,279.70. On adjudication, differential duty liability of Rs.1,50,882/- along with interest thereon was confirmed by the original authority. Equal penalty of Rs. 1,50,882/- under Section 11 AC of the Central Excise Act, 1944 was imposed and a penalty of Rs. 75,000/- under Rule 25 of the Central Excise Rules,2002 was also imposed. In appeal, the Commissioner (Appeals) vide impugned order dated 25.06.2007, though set aside the penalty imposed under Rule 25, however, upheld the remaining part of the order of the adjudicating authority. Aggrieved, appellants are before this forum.

2. Today when the matter came up for hearing, on behalf of the appellants Ld. Consultant, Shri P.C. Anand submitted that the appellants had not done the galvanizing process but that was done only by M/s. Hindustan Galvanizing. For this reason the processes carried by them on the material supplied by M/s. Reliance Engineering Associates Pvt. Ltd., will not amount to manufacture. He also contends that there is no justification for imposition of equal penalty under Section 11AC.

3. On the other hand, Ld. AR, Shri A. Cletus, ADC, supports the impugned order. He further submits that the fact of the steel

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materials free of cost and that of getting the steel structures galvanized were not intimated to the department. The appellants were therefore wrongly claimed exemption of Rs. One crore. When the actual value of the cleared items are taken into account, they cross Rs. One crore exemption limit and hence the differential duty is consequently payable by the appellants.

4. Heard both sides and gone through the facts.

5.1 Evidently the appellants have been entrusted with job work to fabricate the steel structures, namely, Base Trans receiver stations. From the facts on record, it also emerges that the said fabricated structure was required to be supplied to M/s. Reliance Engineering Associates Pvt. Ltd., after galvanizing. This being so, the entire processes undertaken on the steel and lead received free of cost by the appellant, including that of galvanization will amount to manufacture. The protestation of the appellant that galvanization was not carried out by them but through M/s. Hindustan Galvanizing, will not make any difference to the taxability in this case, since they had been entrusted with the fabricating and supplying of the complete item including galvanization thereof. We do not find any infirmity in the impugned order demanding duty liability of Rs. 1,50,882/- along with interest from the appellants.

5.2 Coming to the imposition of penalty, it is evident that the appellant had not informed the department about the receipt of the raw materials nor did they make any intimation concerning the fact of getting the fabricated structures galvanized through their own job worker. Such an omission on their part will definitely take the colour of suppression of facts with intent to evade payment of duty. Accordingly, penalty imposed under Section 11 AC of the Act does not call for any interference. In any case, the penalty under Rule 25 of the Rules has already been set aside by the Commissioner (Appeals) in the impugned order.

6. In the circumstance, no merit is found in the appeal for which reason the appeal is dismissed.

(Operative part of the Order pronounced in the open Court)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

Sulekha Beevi
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

BB

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सहायक पंजीकार / Asst. Registrar
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चेन्नै / Chennai