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

E/666/2006

(Arising out of Order-in-Appeal No. 49/2006 (P) dated 20.4.2006 passed by the Commissioner of Central Excise (Appeals), Chennai)

M/s. Jeevan Diesels & Electricals Ltd. Appellant

Vs.

CCE, Puducherry Respondent

Appearance

Shri K.S. Jain, Authorized Representative for the Appellant
Shri S. Govindarajan, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing / Decision: **23.06.2017**

Final Order No. 41249/2017

Per Bench

Appellant is aggrieved by the demand of differential duty, interest and penalty imposed alleging that they have to include amounts collected as testing charges, service charges, installation charges to arrive at assessable value.

2. Brief facts are that appellants are manufacturers of Diesel Generating sets and are registered with Central Excise Department. On verification of records, it was noticed that appellant had collected additional charges over and above the

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amount included in the assessable value for determination of Central Excise duty. Department was of the view that appellant has to include such additional amounts collected also for arriving at assessable value. A show cause notice dated 2.8.2004 raising such allegation was issued for the period 2002 – 2003 and after adjudication culminated in confirmation of duty of Rs.1,30,184/- along with interest and imposed equal penalty besides penalty of Rs.10,000/- under Rule 25 of Central Excise Rules 2002. In appeal, the Commissioner (Appeals) upheld the same except for setting aside the penalty of Rs.10,000/-. Hence this appeal.

3. On behalf of the appellant, the Managing Director of appellant Company, Sh. K.S. Jain, appeared and argued the matter. He submitted that appellants had filed detailed reply to the show cause notice. The authorities below failed to consider the contentions put forward by appellant. His arguments can be summarized as under:

3.1 That while accounting for freight charges, they had credited freight insurance charges by oversight. The same has been explained in the reply to the show cause notice and also furnished Chartered Accountant's certificate along with the copy of ledger account.

3.2 In respect of inspection charges, it is submitted that they have collected from M/s. HPCL charges for the testing provided by Indian Registrar of Shipping for inspection of DG sets and such inspection was not part of manufacturing activity as it was done by a third party at site of the customer. That these services were hired by HPCL and provided by the Indian Registrar of Shipping and appellants had paid on behalf of HPCL and the amount was reimbursed by HPCL. The role of the appellant was only to assist HPCL and the inspecting agency at the site.

3.3 In respect of labour charges, it is submitted that the credit made in account was only because of the money received as revenue from the customer for various other reasons also. It was not a consideration from the sale of goods which is liable to central excise duty. To substantiate the same, they had produced Chartered Accountant's certificate. With reference to labour charges, he stated that the appellants had deducted such charges from the bills of M/s. MPP Technologies Pvt. Ltd. as the glass was not sent in a fitted condition, although as per the purchase order M/s. MPP Technologies Pvt. Ltd. were supposed to fit the glass and send the same. Therefore, they had engaged outside labourers to fit these glasses and paid the glass fitting charges. The same was deducted from M/s. MPP Technologies Pvt. Ltd. These glasses were fixed on the door acoustic and closures. That the amount was not received as consideration for supply of goods to M/s. MTP Technologies. The documentary proof substantiating the same was produced by the appellant.

3.4 With regard to service charges, he stated that though charges were recovered for the services rendered at customers' site it was post-manufacturing activity. One of the pumps cleared by the appellant was defective which was rectified for which the appellant had collected service charges.

3.5 With regard to consultancy charges and other allegations, he submitted that these common expenses were put in the unit account and thereafter at the end of the year, it was transferred to respective units appropriately and to that effect, they enclosed certificate from Chartered Accountant along with letters received from the respective agencies towards their dues.

4. Against this, the learned AR Shri S. Govindarajan reiterated the findings in the impugned order. He submitted that since the testing of the DG sets were an inbuilt service, the same is includable in the assessable value. So also, charges collected from servicing of pumps is includable in the value as per the definition of transaction value. The appellant has also collected installation and erection charges for the DG sets installed at the site of the buyers. That such charges are includable when parts or components cleared are erected and installed at the customers' site.

5. We have heard the submissions made by both sides.

6. On behalf of the appellant, the Managing Director has drawn our attention to the numerous correspondences issued to the department explaining the various amounts collected alleged in the show cause notice. He has substantiated his contentions along with certificates issued by Chartered

Accountant also. In the case of testing charges, it is seen that the same is done at the customers' site. The testing is done by Indian Registrar of Shipping as per the statutory obligation and as hired by HPCL. In such cases, testing activity does not form part of manufacturing activity and therefore is not includable in the assessable value. The Tribunal in the case of Goyal M.G. Gases (P) Ltd. Vs. Commissioner – 2014 (309) ELT 727 (Tri. Del.) held that cylinder testing charges are not includable in the assessable value. The view was maintained by Hon'ble Supreme Court as reported in 2016 (342) ELT A223 (SC).

7. The next allegation concerns the service charges collected for servicing a pump cleared to the customer. The appellant has explained that one of the pumps which was cleared showed defects and was serviced by them and the charges were collected for the same. Such charges for servicing after clearance of the goods and when defect has occurred cannot be included in the assessable value for the purpose of central excise duty. The servicing was done on the requirement of customer. In respect of installation and erection charges, it is submitted that the erection of DG sets at various sites were done by their sub-constructors by fixing to foundation. The purchase order was only for supply of DG sets and not for installation. No material required for erection/installation was cleared from their factory as part of the DG sets. There was separate order for installation and erection. Therefore, in our view, the above discussed charges cannot be included in

assessable value in terms of definition of transaction value under section 4 of Central Excise Act. We have to say that in the peculiar facts and circumstances of the case, as explained by the appellant as well as the facts brought out from the records, that these charges do not form part of transaction value.

8. In Bharat Bijlee Ltd. vs. Commissioner of Central Excise, Mumbai – 2007 (336) ELT 78 (Tri. – Mumbai) which relied upon Larger Bench decision in Commissioner of Central Excise, Raiupr Vs. Bhaskar Ispat Pvt. Ltd. – 2004 (167) ELT 189 (Tri. – LB), it was held that testing charges borne by customer is not includable in assessable value. Further, charges for erection and installation of DG sets are includable only if such charges are shown in the purchase order.

9. In view thereof, we find that the confirmation of duty, interest and penalty is not sustainable. The impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Operative portion of the order was pronounced in open court)

(**V. Padmanabhan**)
Member (Technical)

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

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