

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. III

Excise Appeal No.71 of 2011

(Arising out of Order-in-Appeal No.04/2011-C.Ex dated 17.01.2011 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore]

M/s.Lakshmi Machine Works Ltd.

Machine Tool and Foundry Division,
Arasur,
Coimbatore 641 407.

Appellant

VERSUS

Commissioner of GST & Central Excise

6/7, ATD street, Race Course,
Coimbatore 641 018.

Respondent

APPEARANCE:

Shri J. Shankarraman, Advocate
For the Appellant

Shri Arul C. Durairaj, Superintendent (Authorized Representative)
For the Respondent

**CORAM : HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER(TECHNICAL)**

**DATE OF HEARING :29.09.2021
DATE OF PRONOUNCEMENT :05.10.2021**

FINAL ORDER No. 42363 / 2021

PER : P. ANJANI KUMAR

M/s.Lakshmi Machine Works Ltd., the appellants herein, are engaged in the manufacturers CNC Lathes, CNC Machining Centre and Iron Castings. The appellants received patterns from their customers to whom they supply the castings manufactured using the patterns. The present appeal pertains to the castings received by the appellants from

M/s.Bharat Earth Movers Ltd. (BEML, for short) for manufacture and supply of -

- (i) 25 no's of Cylinder Block 125s castings
- (ii) 75 no's of Cylinder Block 140s castings and
- (iii) 75 no's of Cylinder Block 170s castings.

Subsequently, the customer i.e. BEML have placed orders for further manufacture of castings using the same patterns. For the purpose of valuation of the castings manufactured and cleared by the appellants, they have taken into consideration the cost at which the said patterns are supplied by M/s.BEML, for the manufacture of castings initially. The entire cost of the patterns was amortised for 25, 75 and 75 numbers of different castings as cited above. As the total cost of the patterns was amortised, the appellant did not take into consideration the value of the patterns while clearing the castings cleared on additional orders to their client i.e. BEML. The department contended that the appellants failed to include the amortised cost of patterns in respect of clearances to M/s.BEML in contravention of Rules 4, 6 and 8 of Central Excise (No.2) Rules, 2001.A show cause notice dated 28.04.2006 has been issued and the same was confirmed by the lower authority vide order dated 30.09.2010 and was upheld by the appellate authority vide order dated 17.01.2011. The appellants have carried the case to the Tribunal.

2. The Tribunal vide Final Order No.43212/2017 dated 18.12.2017 upheld the order-in-appeal relying on the judgment of Larger Bench in the case of *Mutual Industries Vs CCE Mumbai* - 2000 (117) ELT 578

(Tri.). Being aggrieved by the same, the appellants preferred an appeal before Hon'ble High Court of Madras vide C.M.A.No.2555 of 2019. The Hon'ble High Court of Madras vide order dated 17.06.2019 have given the following order and directions:

“4. Learned Counsel for the Revenue, however, sought to justify the impugned order passed by the Tribunal.

5. Having heard the learned counsel appearing for the parties, we are of the opinion that the order passed by the learned Tribunal is a non-speaking order and except relying on the Larger Bench decision, the Tribunal failed to appreciate the contention in a proper perspective and the finding as to whether any additional Excise Duty is payable by the Assessee or not is based on factual aspects, the Tribunal ought to have been undertaken this exercise and after considering the objections of the Assessee in this regard and giving reasons for arriving such a conclusion, ought to have demanded the additional Excise Duty, if any.”

3. Learned Counsel for the appellant submits that cost of free patterns supplied by BEML for manufacturing 25/75/75 pieces of castings has been duly amortised. The amortization cost was equal to the total cost of patterns divided by number of pieces of castings manufactured. Thus, Central Excise duty was paid in full on the cost of patterns by way of amortization. When the appellants had produced more pieces than what was initially certified by M/s.BEML, there was no amount left to be amortised and as such the Central Excise duty was paid as applicable.

4. Learned counsel further submits that amortization was carried out by them. By way of the following example, he submits that applicable duty was paid on the cost of amortization irrespective of castings:

Sl.No.	Example	CASE 1	CASE 2	Case 3
1	Total cost of the pattern	Rs.1,00,000	Rs.1,00,000	Rs.1,00,000
2	Castings manufactured	1,000 Nos.	5,000 Nos.	10,000 Nos.
3	Amortised cost	Rs.100/- per piece	Rs.20/- per piece	Rs.10/- per piece
4	Assessable value on amortised cost	Rs.1,00,000	Rs.1,00,000	Rs.1,00,000
5	Excise duty @ 16% on amortised cost	Rs.16,000	Rs.16,000	Rs.16,000

He submits that irrespective of the number of pieces manufactured and cleared, the applicable duty on the amortised value was payable and was paid.

5. Learned counsel for the appellant submits that the reliance of Larger Bench of the Tribunal in the case of *Mutual Industries Vs CCE* Mumbai - 2000 (117) ELT 578 (Tribunal) is incorrect as the facts of the case are not comparable to the instant case. He submits that the decision in the case of *Mutual Industries* (supra) was rendered in the context of old Central Excise Valuation Rules, 1975, wherein the wholesale price was the determining factor for the valuation of excisable goods. He submits that Tribunal in the case of *CCE Mumbai Vs Mega Rubber Technology Pvt. Ltd.* – 2016 (343) ELT 383 (Tri.-Mumbai) held the issue in a similar case in favour of the appellant. He further submits that CBEC vide Circular No.170/4/96-CX dated 23.01.1996 have also clarified that the proportionate cost of value has to be included in the assessable value of the castings which the appellant did it in 25/75/75 castings.

6. Learned counsel submits also that invocation of extended period under proviso to Section 11A was bad in law. The Tribunal, in the case

of *Star Glass Works Vs CCE Mumbai* - 2003 (162) ELT 367 (Tri-Mumbai) [maintained by the Hon'ble Supreme Court in 2004 (163) ELT A46 (SC)], held that the cost of patterns which were supplied free of cost to the customer was not included in the assessable value of the product; however, there is nothing to show that the appellant, despite knowing or having reason to believe that these costs were includable, yet stated that they were not. Having regard to the fact that the state of law was unsettled, it was possible for the appellant to come to the conclusion that it did. The facts of the case does not justify invocation of extended period. He further submits that issue has arisen out of a CERA objection and was also contested by the department. Therefore, extended period cannot be invoked.

7. Learned Authorized Representative for the department reiterates the findings of the OIO and OIA.

8. We find that the case rests on a simple canvas. The brief issue to be decided in the instant case is as to whether the cost of patterns supplied by M/s.BEML are required to be amortised on all the castings cleared by the appellant even though the cost was amortised on the number of castings initially ordered by the customer. As an example, let us consider that the appellants have received a pattern costing Rs 100 to manufacture 10 castings. The appellants manufacture 10 castings. They clear these 10 castings by amortising the value of the pattern of Rs 100 equally on these 10 castings say Rs 10 rupees on each casting. The value of the pattern i.e. Rs 100 stands covered by 10 castings. However, because of the subsequent orders of the customer, the

appellant manufactures 5 more castings. As the value of the pattern has already been amortised on 10 castings, nothing remains to be amortised while clearing the additional 5 castings which were manufactured using the same pattern. Therefore, the 5 castings were cleared without amortization. It would not make any material difference if the said hundred rupees was amortised for 10 pieces or 15 pieces. What is important is to see whether or not the cost of the pattern has been amortised and has suffered Central Excise duty or otherwise. It is not the case of the department that the cost of the pattern was not amortised in the initial number of castings supplied as per certification by BEML. It is also not the case of the department that they have received some other patterns for the manufacture of castings additionally to the initial order and certificate by the customer i.e. M/s. BEML. Therefore, two things are clear that is, the cost of the patterns was totally amortised and there was no consideration either in the form of free supply of patterns subsequently to the appellant or any financial consideration given to the appellants further to the supply of patterns for the castings. Under the circumstances, it would not be correct to say that all the castings manufactured need to be amortised, notwithstanding the fact that amount has been already amortised. We find that department and Tribunal in the orders cited above relied upon the case of *Mutual Industries* (supra). It is clear from the said order that the same was rendered under Rule 5 of Central Excise Valuation Rules, 1975. The relevant paragraphs of the order are reproduced as under:

“4. In *Flex Industries Ltd. v. CCE, Meerut* - [1997 \(91\) E.L.T. 120](#) appellants were manufacturing Printed Polyester Films to make packing pouches. Printing of films was done through the medium of Gravure Printing Cylinder. These cylinders are manufactured to suit the needs of individual customers. The finished products were cleared on payment of duty on their value without taking into consideration the value of printed cylinders. Appellant was recovering from customers cost of cylinders used in the manufacture of pouches on debit notes. Department found that the appellants were splitting up single transaction of manufacture of finished products into two, namely, manufacture of cylinders and manufacture of finished products with a view to evade payment of duty. This stand of the Department was disputed. Overruling that objection differential duty was claimed. So the question whether price collected for cylinders can be included in the assessable value of the finished product came up before this Tribunal. This Tribunal referred to a Circular No. 17/4196-CX (sic), dated 23-1-1996, wherein the Central Board clarified the matter as under :

“The matter has been clarified and it is hereby clarified that the proportionate cost of pattern has to be included in the assessable value of the casting even in cases where such patterns are being supplied by the buyers of the casting or are got prepared/manufactured by the job worker at the cost of the buyer. In cases where there is difficulty in apportioning the cost of pattern, apportionment can be made depending on the expected life and capability of the pattern and the quantity of castings that can be manufactured from it and thus working the cost to be apportioned per unit. For this purpose, a certificate from a Cost Accountant may be accepted.”

This Tribunal took the view that the principle contained in the above clarification would apply to apportionment of cost of cylinder used in the manufacture of printed pouches. The Tribunal gave the following illustration :

“To illustrate, we assume that a set of four cylinders of the value of Rs. X can be used in manufacture of ten lakh printed pouches. Hence it is reasonable to regard that Rs. X 10 lakhs is the proportionate value of cylinder which is used in the manufacture of a single printed pouch and this fractional value has to be added to the value of printed pouch.”

Thus it is seen that the Tribunal has categorically found that the principle of proportional value addition has to be done for finding out the actual value of the finished product.”

...

7. Section 4 of the Central Excises and Salt Act, 1944 provides for finding out the value of excisable goods for purposes of charging of duty of excise. As per Section 4(1)(a) the value for charging of duty of excise should be the normal price, if the price is the sole consideration for the sale. Further, Rule 5 of Central Excise (Valuation) Rules, 1975 stipulates that where the price is not the sole consideration, the value of the goods shall be based on the aggregate of such price and the amount of the money value of any additional consideration flowing directly or indirectly from the buyer to the assessee. In the instant case, the price of the finished goods has been fixed between the appellant and the customer. Can one say that the price so fixed is the sole consideration for the sale of the finished product when the mould was supplied by the customer. Without the mould supplied by the customer, which is having substantial value, the product could not have been manufactured. So it is

crystal clear that the price of the finished goods was fixed by the appellant and the customer taking into consideration the supply of the mould by the customer. In other words, had the mould not been supplied by the customer, appellant could not have agreed to the price of the finished goods at the price as is evidenced by the contract entered into between them. So, the price of the finished goods fixed in the contract between the parties can safely be taken as not the sole consideration for the sale of the finished product. The other consideration is the value attributable to the use of the mould. In this view of the matter, we are not in a position to agree with the conclusions arrived at by West Zonal Bench, Mumbai in the three decisions referred to earlier. With respect we approve the decision rendered by this Tribunal in *Flex Industries Ltd.* case (supra).

... ..

11. The conclusions reached by us as stated above do not go to support the order impugned in this appeal. As stated earlier, the period covered by the show cause notice was from 1-10-1986 to 31-8-1990. Show cause notice was issued on 25-10-1991. While issuing this notice extended period of five years was invoked. The question is whether the Department was justified in invoking the extended period. In the show cause notice it is admitted that the appellant company was filing classification list during the period from October 1986 to August 1990. It is also admitted that the manufacturer filed price list declaring selling price of the goods and determining the assessable value for the purpose of levy. From this admission made in the show cause notice, it is evident that the manufacturer made available to the authorities under the excise law all details regarding transaction entered into between the manufacturer and the purchaser. This means that the terms and conditions of the contract under which the manufacturer was producing goods for the customer was made available to the Department. From the contract which was thus known to the Department they ought to have noticed that cost of mould which was also part of assessable value of the finished product was not being included in the value of the finished product. The show cause notice proceeds to state "It is, however, noticed subsequently that the assessee company did not include mould cost in the declared value of the manufactured moulded article of plastic" Subsequent notice, stated therein, is no ground to invoke extended period of five years provided by the Act. When the entire document and materials were available with the Department, it was the duty of the Department to scrutinise the terms and conditions therein and to come to its conclusion. It cannot sleep over the matter and come forward with a statement that it was noticed only subsequently. Since the entire contract was with the Department, we hold that the manufacturer did not suppress or conceal any fact for the purpose of evading payment of duty. No transaction mentioned in the show cause notice falls within six months immediately preceding the date of notice. The period was from 1-10-1986 to 31-8-1990. The show cause notice was dated 25-10-1991 that is, more than one year after the period mentioned in the notice. The show cause notice is clearly barred by limitation. The demand made in the show cause notice is not legally sustainable. Therefore, we hold that the proceedings initiated against the appellant pursuant to show cause notice dated 25-10-1991 is clearly barred by limitation. Consequently the impugned order has to be set aside in its entirety. We do so."

9. However, we find that Tribunal in the case of *Mega Rubber Technologies Pvt. Ltd.* (supra) has analyzed the case in terms of new Central Excise Rules where the concept of transaction value has come into effect. The Tribunal observed as follows:

“6.1 We find that the first appellate authority has upheld the contentions of the assessee on the provisions of applicability of Rule 16 of Central Excise Rules. The said rules empower the assessee to receive back the finished goods and take CENVAT Credit of the duty paid on such goods and reprocess/manufacture them and clear the goods on payment of duty. At given point of time the process undertaken by the assessee-respondent does not amount to manufacture, the assessee is required to reverse the amount of CENVAT Credit availed on such goods. In the case in hand as seen from the records, it is very clear that the assessee had tried to reprocess the finished goods received and in few cases no duty was paid. The finished goods received back resulted in scrap. The assessee has discharged the duty liability on scrap on the value of the invoices raised by them. In our considered view, this is a correct position of the law and if any inputs are issued to the job worker for manufacturing and manufacturing activity undertaken on such inputs, the resultant product cleared as scrap and no input as such. Applying the same analogy, we hold that the first appellate authority was correct in setting aside the order of the adjudicating authority, which confirmed the demands raised on this count.

6.2 As regards the demand of duty on the value of moulds used by the respondent in manufacturing the final products to their customers, it is emphasized that they have discharged the Central Excise duty on the cost of the moulds recovered from the customers. This factual aspect is not disputed. If it is a case that the amortization of the cost of moulds is nothing but to collect the Central Excise duty on value of such moulds, then it has already been done so by the assessee in the case in hand. There is no rebuttal in the grounds of appeal that the assessee has not discharged the Central Excise duty on such moulds received by them from their customers on which duty liability has been confirmed. In our view, when the Central Excise duty is paid on moulds at one time or recovered by amortising the cost of goods produces, it is the same i.e. duty on value of mould is to be recovered, which in this case has already discharged by the assessee.”

10. In view of our discussions above, and the case law, we find that the appellants have amortised the full value of patterns supplied to them by their client. It is neither legal nor proper to ask the appellants to continue the amortisation while clearing the additional castings using the same patterns whose value has been already amortised. It is not

the case of the department that the appellants have received new set of patterns whose value remains to be amortised. It is also not the case of the department that the appellants received any additional consideration for the same patterns. Under the circumstances, it cannot be said that the appellants have evaded duty by not amortising the patterns received by them. The demand confirmed cannot be upheld to be legal and proper. When the demand becomes not sustainable, interest and penalty etc. confirmed cannot be sustained.

11. In the result, the appeal is allowed with consequential relief, if any, as per law.

(Pronounced in court on 05.10.2021)

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

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

