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

Appeal No. E/125/2009

[Arising out of Order-in-Appeal No.117/2008 (P) dt. 30.09.2008 passed by the Commissioner of Central Excise (Appeals), Chennai]

Vijay Power Generators Ltd. Appellant

Versus

Commissioner of Central Excise,
Pondicherry Respondent

Appearance:

Shri T. Ramesh, Advocate
For the Appellant

Shri S. Govindarajan, AC (AR)
For the Respondent

CORAM :

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

Date of hearing / decision : 21.08.2017

FINAL ORDER No. 41776/2017

Per Bench

The brief facts of the case are that appellants are manufacturers of diesel generating sets. They had cleared inputs like Engine, Alternator, Fuel tank, Base frame, Batteries as such, under invoices on payment of duty to the site/place of the customer concerned, where the components were assembled and erected / installed. It appeared to the department that appellant had collected erection / installation charges from buyers @ Rs.9000/- per set. In adjudication proceedings, a duty liability of Rs.1,54,224/- with interest thereon, and equal penalty was ordered. Appeal filed to Commissioner (Appeals) was rejected vide impugned order dt. 30.09.2008. Hence appellants are before this forum.

2. Today when the matter came up for hearing, ld. Advocate Shri T. Ramesh submits that department has extrapolated the amount of Rs.9000/- shown in a single invoice dt. 20.12.2005 issued to M/s.Diesel Power Technology, Bangalore and applied it to all their other clearances. They aver that no erection charges were collected from their customers but they had incurred these expenses on their own. It is not the case of the department that appellant had recovered any amount from his customers other than what was mentioned in the invoice. Hence the department cannot artificially include the charges incurred by the appellant on its own for erection and installation. When the appellant had not charged more than the invoice value erection and installation charges borne by the appellant cannot be included in the transaction value.

3. On the other hand, on behalf of department, Ld. A.R Supports the adjudication. He also draws attention to point No.10 of Board's circular No.643/34/2002-CX. dt. 01.07.2002.

4. Heard both sides and gone through the facts. In the normal course, the transaction value between the manufacturer and buyer is

required to be adopted and accepted as assessable value for the purpose of levy and discharge of Central Excise duty, unless, there are justifiable reasons not to accept the same.

4.2 The definition of "transaction value" is found in Section 4 (3) (d) of the Central Excise Act, 1944 which is reproduced below for ready reference :

> *"(d) "transaction value" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods"*

In the present case, there is no allegation or evidence put forth that the buyers were liable to pay to, or on behalf of assessee, by reason of, or in connection with the sale, the purported amounts alleged by the department as erection and installation charges. It is not the case of the department that appellants were in fact charging the said amount from each of their customers in the invoices or for that matter, collecting it from them subsequently in some other manner. On the other hand, based on a single invoice issued to Diesel Power Technology, Bangalore where installation / erection charges has been shown as Rs.9000/-, the department has sought to add the exact ~~the~~ same amount in respect each of all other clearances of the appellant. We are unable to fathom how such adhoc addition of transaction value without any basis or evidence can be legally justified.

4.3 In any case, appellants contend that they have not collected erection / installation charges from their customers in actuality, a fact which has not been contested or disproved by both the lower authorities herein. In the event, strictly following the interpretation of definition " transaction value" in Section 4 (3) (d) ibid., additions on the alleged score of erection / installation cannot be sustained. Although ld. A.R has relied upon the clarification to the contrary given in the Board's circular dt. 1.7.2002, we are of the considered opinion that Board's clarification cannot override a legal provision of the statute. This view is supported by a host of appellate decisions of higher appellate bodies.

5. In the event, we set aside the impugned order and allow the appeal with consequential relief, if any, as per law.

(Operative part of the order pronounced in court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S)
Member (Judicial)

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Customs, Excise & Service Tax Appellate Tribunal

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(CESTAT)
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