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

E/274/2009

(Arising out of Order-in-Appeal No. 107/2008 (M-II) dated 28.11.2008 passed by the Commissioner of Central Excise (Appeals), Chennai)

Commissioner of Central Excise, Chennai – II   Appellant

Vs.

M/s. Arun Vyapar Udyog Pvt. Ltd.   Respondent

Appearance

Shri R.Subrmaniyam, AR (AC) for the Appellant
Shri M.A. Mudimannan, Advocate 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: **12.10.2017**

Final Order No. 42361/2017

Per Bench

The department has filed appeal against the order passed by Commissioner (Appeals) who set aside the demand, interest and penalties imposed on the ground of limitation.

2. On behalf of the department, Shri R. Subramaniyam, ld. AR submitted that the respondents were engaged in converting steel ingots in to CTD/TMT bars and MS round based on the job

work agreements entered with various manufacturers of steel ingots. It was noticed by the department that the value adopted for clearance of CTD/TMT bars manufactured on job work basis was less than the cost arrived as per Rule 11 of Valuation Rules, 2000 r/w Rule 6. Thus the cost of manufacture was revised and worked out on the basis of the figures available in the balance sheet pertaining to the years 2001 - 02, 2002 - 03, 2003 - 04 and 2004 - 05. A show cause notice dated 3.11.2007 was issued proposing to recover duty of Rs.19,65,387/- along with interest and also proposing to impose penalty. After adjudication, the original authority confirmed the demand along with interest and also imposed equal penalty. In Appeal, Commissioner (Appeals) observed that the demand is barred by limitation and the same was set aside. Hence Revenue has filed this present appeal.

3. The ld. AR submitted that the Commissioner (Appeals) has erred in holding that an earlier show cause notice dated 16.11.2005 was issued to the appellant for the very same period and therefore the subsequent show cause notice dated 3.1.2007 covering the same period would attract the bar of limitation. The present show cause notice is on a totally different ground and the same has come to light on perusal of the balance sheet of the appellant. That the view taken by the Commissioner (Appeals) that since the show cause notice for very same period is issued, the present show cause notice is

Customs, Excise & Service Tax Appellate Tribunal time-barred is erroneous. He submitted that the respondents had not taken cost of raw material on its face value to arrive at the assessable value and instead had taken the value of raw material contained in the finished goods. Thus, the value of raw materials actually consumed in the production of the finished goods was not included for determination of the assessable value. In the case of Ujagar Prints Vs. Union of India – 1989 (39) ELT 493 (SC), it has been held that when goods are manufactured on job work basis, the assessable value has to be arrived by adding the job charges plus cost of materials used in the manufacture of the product. Hence for every 93 Kgs. of finished goods manufactured corresponding raw material cost would be that of 100 kgs. of ingots used and not the cost of 93 kgs. of ingots. This aspect has not been considered by the Commissioner (Appeals). The adjudicating authority had examined these aspects and had confirmed the demand. He prayed that the matter may be remanded to the Commissioner (Appeals) for rehearing the appeal.

4. The ld. counsel Shri M.A. Mudimannan vehemently argued that the Commissioner (Appeals) had analysed the issue on merits as well as on limitation. He submitted that the show cause notice has been issued without any basis since the reliance is placed on the figures of the balance sheet of the appellant. Further, on the issue of valuation, earlier show cause notice dated 16.11.2005 had been issued and this case

was adjudicated by the authority on 30.11.2006. Thus, the entire issue was with regard to valuation which is the determination of assessable value. Therefore, the entire facts / details were within the knowledge of the department and therefore the Commissioner (Appeals) has rightly held that the second show cause notice issued for the very same period disputing valuation is barred by limitation.

5. Heard both sides and perused the records.

6. The main point that has been raised by the department is that the Commissioner (Appeals) has erred in holding that the show cause notice dated 3.1.2007 issued is barred by limitation for the reason that the earlier show cause notice was issued for the very same period. From the perusal of records, we find that the earlier show cause notice dated 16.11.2005 was issued raising the following allegations:-

> *"(a) The appellants have adopted lower assessable value at the time of clearing goods to their consignment agents and had realized excess amounts over and above the invoice value adopted at the factory gate and failed to pay the differential duty.*
>
> *(b) The appellants had differential duty payable for the year 2001 – 02 and 2002 – 03 by wrongly claiming abatement of the freight charges incurred for sending goods from factory to the consignment agents."*

The allegation in the present show cause notice is non-inclusion of actual cost of raw materials. Though the issue pertains to adoption of assessable value, the allegations are different.

7. Thus, it is seen that though the period covered is the same, the issue raised in both the show cause notices are different. The Commissioner (Appeals) ought to have considered and given a finding on the merits of the case instead of being carried away by the fact that the second show cause notice have been issued for the very same period. Further, merely because the show cause notice is for the very same period, it cannot be said that the second show cause notice is barred by limitation. It must be shown that the facts alleged in subsequent show cause notice was well within the knowledge of department. We, therefore, find that there is sufficient ground for remanding the matter for reconsideration by the Commissioner (Appeals).

8. In the result, the impugned order is set aside and the appeal is remanded to the Commissioner (Appeals) leaving all issues open and direct to consider the issue on merits also after affording reasonable opportunity of hearing to both sides.

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

Sulekha Beevi

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

Rex

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति / Certified True Copy
27/x
सहायक पंजीयक / Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर अपील अधिकरण / (CESTAT)
चेन्नै / CHENNAI