IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

COURT-IV

Date of Hearing/Decision : **21.02.2017**

Appeal Nos. E/77-78/2010
(Misc. Application No. E/Misc./51528/2016)

[Arising out of the Order in Appeal No. OIA- 02/2009-10 dated 08.09.2009 passed by Commissioner (Appeals), Central Excise, Delhi]

M/s. Ashbee Systems Pvt. Limited … Appellant
Shri Ashish Bhutani, Director

Vs.

Commissioner of Central Excise & S.T., Delhi … Respondent

Appearance:

Rep. by - Shri Awddesh Choudhary, Advocate for the appellants
Rep. by - Shri H.C. Saini, DR for the respondent

Coram: Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 51908-51909/2017-DB

Per Ashok Jindal

The present appeals have been filed against Order-in-Appeal No. 02/2009-10 dated 08.09.2009. The appellant has also filed miscellaneous application to bring on record some additional evidence and the same is taken on record. We find that the same are very much relevant for deciding the issue, therefore we allow the miscellaneous application.

2. Heard Shri Awdhesh Choudhary, ld. Counsel for the appellant and Shri H.C. Saini, ld. DR for the Revenue and perused the bulky materials available on record.

3. It is seen that the demand of Rs.1,71,40,806/- stands confirmed against the appellant for the period 2003-04 to 2007-08, by way of raising a Show Cause Notice on 3.6.08 that is by invoking the longer period of limitation.

4. As per the facts on record, the appellants are manufacturing some of the parts of the weigh bridge, which are being cleared by them on payment of duty. The other parts of the weigh bridge are either being procured by them from the other manufacturer or are being imported. All the parts of the weigh bridge are being cleared by them under one invoice and / or otherwise and taken to site for assembling, erection of the same and commissioning of the same in terms of the orders placed upon them by different customers.

5. A dispute arose between the appellant and the Revenue as regards the excisability of weigh bridge. The Revenue was of the view that inasmuch as all the parts and components of weigh bridge are being cleared by the appellant under the cover of one invoice, the same amounts to clearance of complete weigh bridge in SKD or CKD condition. As such the proceedings stand initiated against them for recovery of demand, culminating into passing in the present impugned order.

6. It is also seen that inasmuch as the appellant was assembling and erecting the weigh bridges at the customer's sites, some proceedings were also initiated against them by the jurisdictional Central Excise authorities having jurisdiction over the customer's premises. The said proceedings travelled up to Tribunal by way of filing appeals by the Revenue, inasmuch as Commissioner (Appeals) orders were in favour of the assessee. The Tribunal vide order No. A/57-58/WZB/04/C-II dated 01.04.2004, took note of the earlier decision of the Tribunal in the same assessee's case as reported in - *2001 (134) ELT 717 (Tri.-Del.)* as also another order of the Tribunal being Order No. 446/04 dated 20.02.2004 and rejected the Revenue's appeal.

7. In view of the above developments, it is the prayer of the appellant that inasmuch as the issue stands decided in their own case, the impugned order is set-aside. The demand is also assailed on the point of limitation, by submitting that various proceedings at various Commissionerates were going on against them and as such the entire facts were in the knowledge of the Revenue.

8. Countering the above arguments, ld. DR for the Revenue draws our attention to the findings of the original adjudicating authority and submits that inasmuch as the bought out and imported parts of the weigh bridge were brought to the appellant's factory and all the requisite parts and components were cleared under the cover of one invoice, the department has rightly considered the same as clearance of one complete weigh bridge. He submits

that the facts in the earlier cases were different inasmuch as the parts and components were not being cleared in one go and it was in these circumstances that the Tribunal observed that since the weigh bridges were coming into existence step by step at the customer's site, they cannot be held to be marketable and hence, are excisable. He also submits that in those cases the demands were raised by the department by the Central Excise officers having jurisdiction over the customer's premises and in respect of the weigh bridge which comes into existence at the customers site, whereas in the instant case the duty is in respect of the weigh bridges being cleared from the appellant's factory.

9. At this stage, ld. Advocate also brings to our notice another decision of the Commissioner (Appeals) passed in their own case being order in Appeal No. 196-197 dated 18.04.2011. In the said order, the demand stands raised in respect of weigh bridges cleared from the appellant's factory. The Commissioner (Appeals) passed a detailed order after taking into consideration the fact that in the instant cases the order of the appellants was in respect of pit and pitless weigh bridges which are different from the normal weigh bridges. He has also taken into consideration the Hon'ble Supreme Court's decision in the case of *Narne Tulaman Manufacturers Pvt. Ltd. vs. CCE - 1998 (38) ELT 566* as also the decision of the Supreme Court in the case of *Sirpur Paper Mills Limited vs. CCE - 1998 (97) ELT 3.* After taking into consideration the activities of the appellants as also the legal position, he has concluded in favour of the

assessee and has set aside the order passed by the original adjudicating authority.

10. We find that the order of the Commissioner (Appeals) dated 18.04.2011 has been accepted by the department. Moreover, the appellants are paying duty on the parts cleared by them and are doing erection and commissioning at the site of the buyer. Therefore, we hold that appellants are not liable to pay duty on complete weigh bridge. Further, we find that the issue whether the appellant is liable to pay duty on complete weigh bridge or parts thereof was in dispute and it was held in favour of the appellant for the earlier period. Therefore, for the subsequent period, in that circumstances, extended period of limitation is not invokable.

11. In view of the above, the appeals succeed on both counts i.e. merits as well as on limitation. Accordingly, we set-aside the impugned order and allow the appeal with consequent relief, if any.

[Order dictated & pronounced in open court]

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

(**Ashok Jindal**)
Member (Judicial)

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