IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV

DATE OF HEARING : 26/05/2017.
DATE OF DECISION : 26/05/2017.

Excise Appeal No. 50054 of 2014

[Arising out of the Order-in-Appeal No. 101 (VC) CE/JPR-I/2013 dated 03/09/2013 passed by The Commissioner (Appeals), Central Excise Commissionerate, Jaipur – I.]

M/s Steel Craft — Appellant

Versus

CCE, Jaipur — Respondent

Appearance

Shri Kumar Vikram, Advocate – for the appellant.

Shri M.R. Sharma, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri Anil Choudhary, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 53521/2017 Dated : 26/05/2017

Per. B. Ravichandran :-

The appeal is against order dated 03/09/2013 of the Commissioner (Appeals – I), Jaipur. The appellants received flats and angles of iron and steel supplied by M/s ABB Ltd. After cutting to size the said flats and angles and drilling holes therein, the said products were joined by using nuts, bolts and washers before returning the same to the principal namely M/s ABB Ltd.

The Revenue entertained a view that the appellants are liable to pay Central Excise duty on such process and accordingly proceedings were initiated to demand duty. The Original Authority confirmed Central Excise duty liability of Rs. 5,40,618/- and imposed a penalty of Rs. 5,000/- under Rule 27 of Central Excise Rules, 2002. On appeal, the said original order was upheld by the impugned order.

2. The learned Counsel for the appellant submitted that they are only undertaking a process of cutting and making holes in the iron and steel items and there is no process amounting to manufacture. He also relied on decision of the Tribunal in **CCE, Hyderabad vs. Deepak Galvanising & Engg. Indus. P. Ltd.** reported in **2008 (228) E.L.T. 40 (Tri. – Bang.)**. He further submitted that they have discharged service tax on the said process under "business auxiliary service" and that will show that the process does not amount to manufacture.

3. Learned AR supported the findings of the lower authorities. Relying on the Circular dated 05/01/1988 of the Board as well as the decision of the Hon'ble Supreme Court in **CCE, Jaipur vs. Man Structurals Ltd.** reported in **2001 (130) E.L.T. 401 (S.C.)**, the learned AR submitted that the processes undertaken by the appellants amount to manufacture and they are rightly subjected to excise levy. Further, he submitted that the appellants were discharged Central Excise duty on similar items

when they have undertaken the said work on their own raw material. Such dual approach is not permissible.

4. We have heard both the sides and perused the appeal records. The point for decision is whether the appellants have undertaken processes amounting to manufacture, in respect of iron and steel items received from ABB and returned back to them after the said processes. The processes undertaken by the appellants as recorded in the impugned order are that the appellants received flats and angles and cut them down to required size. They drill holes on such items and join them using nuts, bolts and washers, to make parts of structures, before returning the same to the principal. The impugned order categorically recorded that the resultant goods have different characteristics, marketable under different names and classifiable under different heading [7508.90]. Accordingly, it was concluded that the processes carried out on the raw materials are covered by the scope of Section 2 (f) of Central Excise Act, 1944. A perusal of tariff heading 7308.90 will show that the said heading covers structures and parts thereof of various types made up of plates, rods, angles, shapes, sections, tubes and the like, preparing for use in structures, of iron and steel. The product cleared by the appellants, after the processes undertaken, by them fit into such description. It is also to be noted that the appellants were discharging Central Excise duty on similar processes when the same is done on their own raw material.

Admittedly two different yard sticks cannot be followed for the same processes.

5. We note that the Tribunal in **Deepak Galvanising & Engg. Indus. P. Ltd.** (supra) was examining a case of clearance of angles, rods and channels, which were cleared after drilling holes by the appellant. As we noted in the present case, the product cleared by the appellants are parts of structures after assembling them with the use of nuts, bolts and washers. We take note of the ratio indicated by the Hon'ble Supreme Court in **Man Structurals Ltd.** (supra). Though the said order was for remand direction, indications were given as to how to determine the duty liability in such situation. The products, in question, as cleared by the appellants are specifically identifiable and classifiable under a tariff heading under Chapter 73. The raw materials are of general nature falling under Chapter 72. As such, we have no reason to interfere with the findings of the lower authorities.

6. The appellants pleaded limitation also. Here we note that the appellants, admittedly, for the very same set of processes for the same buyer were discharging Central Excise duty when the raw materials are their own. However, when the raw materials are supplied by principal/buyer they have not paid Central Excise duty for claimed to have paid service tax. In such situation, the appellants had knowledge and applied different reasoning to follow different tax liabilities for the same processes. As such, we

are in agreement with the lower authorities regarding demand for extended period.

7. In view of the above discussion, we find no merit in the appeal and the same is dismissed.

(Order dictated and pronounced in open court.)

(Anil Choudhary)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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