CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi.

Date of hearing/decision: 31.05.2017

Excise Appeal No. 55539 of 2013

(Arising out of order in appeal No. 170(RDN)CE/JPR-I/2012 dated 29.10.2012 passed by the Commissioner, Customs & Central Excise, Jaipur).

M/s Azad Coach Pvt. Limited — Appellant
Sh. Alok Kothari, Advocate for the appellant

Vs.

CCE, Jaipur — Respondent
Sh. M. R. Sharma, AR for the Respondent

Coram:

Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Final Order No. 53621/ 2017

Per: **Ashok K. Arya**:

M/s Azad Coach Pvt. Limited is in appeal against the order-in-appeal No. 170(RDN)CE/JPR-I/2012 dated 25/29.10.2012 whereunder duty of Central Excise amounting to Rs. 3,09,000/- alongwith interest and equivalent penalty has been confirmed against the appellant.

2. The brief facts of the case are that-

(i) During audit department found out that the assessee issued certain invoices / debit note to M/s Tata Motors, Lucknow totalling to Rs.18,75,000/- on account of additional charges for material and labour for post bid specific changes and for exterior & interior design and supervision for DMRC feeder bus but did not pay Central Excise duty.

(ii) Department issued show cause notice dated 20.12.2010 which was adjudicated vide order-in-original No. 35/2011 dated 28.07.2011 by Deputy Commissioner. This order confirming duty aongwith interest and penalty was sustained by the impugned order-in-appeal.

(iii) The appellant is now in appeal before the Tribunal.

2. With above background of facts, we have heard ld. Advocate Sh. Alok Kothari for the appellant and Sh. M. R. Sharma, ld. AR for the Revenue.

3. After having carefully considered the facts of the case and the submissions of both sides, it appears that the relevant invoices are part of the same manufacturing activity namely body building conducted by the appellant-assessee on which duty of Central Excise was payable.

3.1 The appellant pleads that the relevant two invoices are concerned with the designing part on which they have paid service tax and it is an independent work, therefore, duty of Central Excise is not payable, and only service tax is payable for the subject amount collected. Ld. Advocate for the appellant also pleads that debit note showing the amount of Rs.2,50,000/- has actually not been issued to client namely M/s Tata Motors, Lucknow, which fact has also been informed to the department alongwith the copies of the ledger as a proof that no entry concerning this debit note has been made in the ledger pertaining to the said manufacturing activity.

3.2 The appellant has failed to provide any evidence that the subject invoices are part of independent work; and the related contract on these activities does not relate to their manufacturing activity of body building. Thus, based on the fact on record, it can be said that the amount collected by issuing these two invoices is part of their main activity of body building on which duty of Central Excise is payable. Therefore, the demand of Central Excise duty concerning the amount collected by these two invoices is hereby sustained.

3.3 However, the debit note which has been found to be wrongly prepared and has not been issued to the client M/s Tata Motors, Lucknow and does not find any entry in the ledger of the appellant; the amount shown as collected by the said debit note cannot be included in the value of the manufacturing activity of the appellant. Therefore, no duty of Central Excise is leviable on the same.

3.4 Further, the appellant would be entitled to the benefit of claiming cenvat credit for the service tax, are paid for the activities mentioned in the invoices. Therefore, for the final quantification of liability of the duty against the appellant, the matter is remanded to the original adjudicating authority, who shall do so in the light of the findings given above and after giving opportunity of personal hearing to the appellant.

3.5 It is also made clear that the penalty imposed on the appellant under Section 11AC of Central Excise Act would be equivalent to the final quantification of the liability of duty as determined by the original adjudicating authority for which the case is being remanded to him.

3.6 The liability of interest is also confirmed only on the amount of duty as found payable on re-quantification by the original adjudicating authority during the remand proceedings.

4. In the result, the impugned order is modified to above effect and the appeal partly allowed in above terms.

(Dictated and pronounced in the open Court).

(Anil Choudhary)
Member (Judicial)

(Ashok K. Arya)
Member (Technical)

Pant