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

Date of Hearing/Decision: 27.7.2017

Appeal No. E/1547/2011 -DB
E/1693-1694/2011

(Arising out of Order-in-Appeal No. 162/CE/D-II/99/1514 dated 30.3.2011 passed by the Commissioner of Central Excise (Appeals), New Delhi)

M/s H.V. Equipment (Pvt.) Ltd. — Appellant
Rajendra Verma, Director
D.S. Verma, Director

Vs.

CCE, Delhi-II — Respondent

<u>Appearance</u>

Shri J.M. Sharma, Consultant - for the appellant

Shri S.K. Bansal, D.R. - for the respondent

CORAM: **Hon'ble Mr. Justice (Dr.) Satish Chandra, President**
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Final Order No. 55666-55668/2017

Per Justice Dr. Satish Chandra:

The present appeal is filed against the Order-in-Appeal No. 99/1514 dated 30.3.2011

2. The brief facts of the case are that during the period under consideration (1992-1994), the appellant was engaged in the manufacture of Dense Phase Pneumatic Conveying System (DPPCS), which is pollution control device. It was assembled with various components which were procured by the appellant from the market except the Level Sensing Device (LSD). In the Show Cause Notice, the

department has demanded the Central Excise duty on the components, which were procured by the appellant from the open market. Para 6.1 and 6.2 of the Show Cause Notice (SCN) read as under :

> "6.1 It further appears from the scrutiny of the various records that the following main components of DPPCS are manufactured at the factory of M/s HVEPL:
>
> i) Level Sensing Device
>
> ii) Transporting Vessel
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> iii) End Receiver
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> iv) Booser
>
> v) Air Control Module
>
> vi) Electrical Control Panel
>
> vii) Air – Receiver
>
> 6.2 M/s HVEPL have Designing and Engineering Deptt. in their factory where first of all, the designs of DPCS are prepared as per the requirement of the customer. Some of the parts of the said DPPCS System are manufactured in the factory and some parts are procured from the market and despatches in the site where complete DPPCS is erected and commissioned."

3. Further, in para 10 and 11 of the SCN, the department has demanded the duty on the components which were procured by the appellant from the open market. However, in the impugned order, the duty was demanded on the installation of the machine - DPPCS which was installed at the customer's site.

4. Thus, in the impugned order there is clear cut departure from the Show Cause Notice, which is the foundation of the case and the department cannot travel beyond it as per the ratio laid down by Hon'ble Supreme Court in the case of ***CCE Vs. Ballarpur Industries Ltd.*** 2007 (215) ELT 489 (SC) where it was observed that:

> "**21.** Before concluding, we may mention that, in the present case, the second and the third show cause notices are alone remitted. The first show cause notice dated 21-5-1999 is set aside as time-barred. However, it is made clear that Rule 7 of the Valuation Rules, 1975 will not be invoked and applied to the facts of this case as it has not been mentioned in the second and the third show cause notices. It is well settled that the show cause notice is the foundation in the matter of levy and recovery of duty, penalty and interest. If there is no invocation of Rule 7 of the Valuation Rules 1975 in the show cause notice, it would not be open to the Commissioner to invoke the said rule.

5. Further, it may mention that the Hon'ble Supreme Court in the case of ***CCE Vs. Champdany Industries Ltd.*** - 2004 (241) ELT 481 (SC) has observed as under:

> "**50.** Apart from that, the point on Rule 3 which has been argued by the learned counsel for the Revenue was not part of its case in the show-cause notice. It is well settled that unless the foundation of the case, is made out in the show-cause notice, Revenue cannot in Court argue a case not made out in its show-cause notice. {See : *Commissioner of Customs, Mumbai* v. *Toyo Engineering India Limited* - (2006) 7 SCC 592, para 16}.
>
> **59.** Revenue also relied on another decision of this Court in *Kemrock Industries & Exports Ltd.* v. *Commissioner of Central Excise, Vadodara* - (2007) 9 SCC 52, for the purpose of essentiality test. As noted

> above, there is no whisper of the essentiality test in the show-cause notice. As no case of essentiality test has been made out in the show-cause notice, the same cannot be argued for the first time before this Court. As such the judgment in *Kemrock* (supra) on essentiality test is of no avail."

6. In view of the above, we cannot sustain impugned order, hence it is set aside.

7. In the result, all the appeals filed by the appellants are allowed.

(Dictated & pronounced in open Court)

(Ashok K. Arya)
Member (Technical)

(Justice Dr. Satish Chandra)
President

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