CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing: 07.09.2017
Date of Pronouncement: 21.09.2017

Appeal No. E/55893/2014-EX[DB]

[Arising out of the Order-in-Appeal No. IND/CEX/000/APP/217/14 dated 03.09.2014, passed by the Commissioner of Central Excise, Indore]

M/s. Magadh Precision Equipments Ltd. … Appellant

Vs.

C.C.E. Indore ... Respondent

Appearance:

Present Shri M. Saharan, Advocate for the appellant
Present Shri R.K. Mishra, DR for the respondent

Coram: **Hon'ble Mr. Justice (Dr.) Satish Chandra, President**
Hon'ble Mr. V. Padmanabhan, Technical Member

FINAL ORDER No. 56665/2017

Per V. Padmanabhan:

The appeal is against the order in appeal no. 217/14 dated 03.09.2014.

2. The appellants are engaged in the manufacture of various excisable goods falling under chapter 84 of the Central Excise Tariff Act. The present dispute is for the period July 2006 to May 2007 during which the appellants supplied finished goods to M/s. Seimens SVAI Metal Technologies (P) Ltd. (SVAI). In terms of the purchase order placed by SVAI on the appellant, the former will supply drawings, design specifications and technical

knowhow required for the manufacture of the goods. The Department was of the view that the appellant was required to include the cost of such drawings, design and technical knowhow, supplied free of cost by SVAI, in the assessable value of the goods for payment of duty. The Department included an amount of Rs.89,22,940/- towards such cost and demanded the differential duty amounting to Rs.14,70,500/- along with interest and penalties. Aggrieved by the impugned order, the present appeal has been filed.

3. With the above background we have heard Shri M. Saharan, Advocate for the appellant and Shri R.K. Mishra, DR for the respondent.

4. The main contention, of the appellant is that goods supplied by them to SVAI have been supplied as per the negotiated price, appearing in the purchase order. Since no additional consideration has been received by the appellant, there is no question of payment of duty on design and drawing cost. They also relied on the following case laws:

i) CCE Pune Vs. Maharasthra Scooters Ltd. 2009-TIOl-722-CESTAT-Mum

ii) CCE Pune Vs. Bharat Forge Ltd. 2000 (122) ELT 169 (Tri)

iii) CCE Pune Vs. Luna Agro Industries Pvt. Ltd. 2009 (242) ELT 130 (Tri-Mumbai)

5. Valuation of goods for payment of excise duty is governed by the provisions of section 4 of the Central Excise Act 1944. As

per the terms of section 4, excise duty is required to be paid on the transaction value. However, when the price is not the sole consideration of sale, valuation needs to be done in terms of Central Excise Valuation Rules, 2000. Rule 6 of the Central Excise Valuation rules, reads as under:

> *"Where the excisable goods are sold in the circumstances specified in clause (a) of sub section (1) of section 4 of the Act except the circumstance where the price is not the sole consideration for sale, the value of such goods shall be deemed to be the aggregate of such transaction value and the amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assessee.*
> ***Explanation 1*** *- For removal of doubts, it is hereby clarified that the value, apportioned as appropriate, of the following goods and services, whether supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale of such goods, to the extent that such value has not been included in the price actually paid or payable, shall be treated to be the amount of money value of additional consideration flowing directly or indirectly from the buyer to the assessee in relation to sale of the goods being valued and aggregated accordingly, namely : -*
> *i)…………….*
> *ii) value of tools, dies, moulds, drawings, blue prints, technical maps and charts and similar items used in the production of such goods;*
> *iii)………………*
> *iv)……………..."*

6. The above rule makes a specific provision for addition of the value of drawings, blue prints, technical maps, etc. and similar items used in the production of such goods. It is an

admitted fact on record that the assessable value of the impugned goods on which appellant paid duty did not include the money value of drawings and designs and technical knowhow which was provided free of cost to the appellant. Such drawing and technical knowhow are essential for manufacture of the impugned goods. Supply of such drawings free of cost definitely constitutes additional consideration flowing from buyer to the appellant. Therefore, such value of designs and drawings, etc. has been rightly included in the assessable value by the authorities below.

7. We have also perused the case laws relied upon by the appellant. However, we note that all the decisions are pertaining to the period prior to 01.07.2000 when the new section 4 as well as the new Central Excise Valuation Rules was introduced. Consequently, the case laws will not be applicable to the facts of the present case.

8. In view of the above, impugned order is upheld and appeal filed is rejected.

[Order Pronounced in the open court on 21.09.2017]

(Justice Dr. Satish Chandra)
President

(V. Padmanabhan)
Technical Member

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