CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 09.01.2018

Excise Appeal No. 52775 of 2016
(Arising out of order in original No. 30/COMM/DEHRADUN/2016 dated 24.06.2016 passed by the Commissioner, Central Excise, Dehradun).

M/s Advance Steel Tubes Limited Appellant

Vs.

CCE, Dehradun Respondent

Appearance:

Sh. Rajesh Chhibber, Advocate for the appellant
Sh. S. K. Bansal, AR for the Respondent

Coram:

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

Final Order No. 50140/2018

Per: **Justice (Dr.) Satish Chandra**:

The present appeal is filed against the order in original No. 30/COMM/DEHRADUN/2016 dated 24.06.2016 passed by the Commissioner, Central Excise, Dehradun.

2. Brief facts of the case are that the appellant are engaged in the manufacture of structures of transmission line. On 09.05.2013, a search was conducted at the business premises of the appellant where the shortage of the raw material was found. Further, it was found by the department that appellant is supplying some raw material. On the demand the appellant is also supply the bought out items which were procured from the open market. The department wants to add the value of these items for the

purpose of duty. Being aggrieved, the present appeal is filed by the appellant.

3. With this background, we heard Sh. Rajesh Chhibber, ld. Counsel for the appellant who submits that the first issue is related with the zinc which was lying in the tank and the same was accepted at the spot but no credit was given to the zinc. So, he submits that the shortage calculated by the department is not correct.

4. On the other hand, ld. AR Sh. S. K. Bansal justified the impugned order.

5. After considering the rival submission, we are of the view that the zinc was lying in the tank which is raw material. In the impugned order, there is no reference regarding the zinc which was lying in the tank. During the course of argument, it is submitted that six months before the computation of the raw material was also made where the element of the zinc was considered. When it is so, then we set aside the impugned order in this regard and remand the matter to the original authority to decide the shortage of the raw material.

6. Regarding the second and main issue pertaining to demand of the duty on supplied items, it was submitted that appellant has not manufactured these products. It may be mentioned that for the purpose, the appellant had manufactured only microwave tower. The dispute relates to the valuation of the goods which were not manufactured by the assessee, but consumed for the purpose of erection of the tower. In the absence of any

specific rule being applicable for the purpose of valuation, residuary clause under the said Rules and particularly which is comprised under Rule 11 is sought to be challenged by the assessee.

7. After hearing both sides and on perusal of material available on record, it appears that the identical issue has come up before the Tribunal in the case of Bharat Sanchar Nigam Ltd. vs. CCE, Raipur (Final Order No. 56901/2017 dt. 28.09.17) where it was observed that–

> "4. *After hearing both sides and on perusal of material available on record, it appears that for the earlier period, the issue has come up before the Tribunal in assessee's own case – M/s Bharat Sanchar Nigam Ltd. vs. CCE, Raipur-I (Final Order No. 55558-55563/2017 dated 24.07.2017) where it was observed that-*
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> > *"4. After hearing both sides and on perusal of material available on record, it appears that the matter relates to the year 2010 and obviously is governed by the Central excise Valuation (Determination of Price of Excisable Goods), Rules 2000. The Rule 8 thereof provides that:*
> >
> > *"Where the excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in the production or manufacture of other articles, the value shall be 110% of the cost of production or manufacture of such goods."*
>
> *Rule 11 provides that:*
>
> > *"If the value of any excisable goods cannot be determined under the preceding rule of the said Rules, the value shall be determined using reasonable means consistent with the principles and general provisions of the said rules and sub –section (1) of Section 4 of the Central Excise Act."*
>
> *Since the goods are not consumed in the production or manufacture of other articles, the question of ascertaining the value by referring to the cost of the product or manufacture of such goods would not arise.*
>
> *5. From the record, we find that for the subsequent period, in the identical facts and circumstances of the case, the Commissioner in his order No. 357-CE/RPR/APPL/RPR/2015/2596 dated 21.10.2016 has granted relief to the assessee-appellants.*

6. It may be mentioned that the Hon'ble Supreme Court in the case of PCC Pole Factory vs. CCE, 2003 (158) ELT 429 (SC), allowed the claim of the assessee-appellants where PCC Poles were used for transmission of the electric energy. There was no further activity of manufacture and no business was carried out by the Electricity Board. Identically, in the instant case, the towers were used by the assessee-appellants for only transmission of the signals without carrying out any further business activity.

5. By following our earlier decision (supra), we set aside the impugned order and allow the appeal.

8. By following our earlier decision (supra), we set aside the impugned order to this effect and allow the claim of the appellant in this regard.

9. In the result, appeal filed by the appellant is partly allowed.

(Dictated and pronounced in the open Court).

(V. Padmanabhan) (Justice (Dr.) Satish Chandra)
Member (Technical) President

Pant