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

Date of hearing/decision: 15.01.2018

Excise Appeal No. 1402 of 2012
(Arising out of order in appeal No. 49(AK)CE/JPR-I/2012 dated 02.04.2012 passed by the Commissioner (Appeals), Central Excise, Jaipur).

M/s Himalaya Asbestos Cement Products Pvt. Limited — Appellant

Vs.

CCE, Jaipur — Respondent

Appearance:

Sh. Kumar Vikram, Advocate for the appellant
Sh. H. R. Sharma, AR for the Respondent

Coram:

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

Final Order No. 50199/2018

Per: **V. Padmanabhan**:

The present appeal has been filed against the Order-in-Appeal No.49(AKJ)CE/JPR-I/2012 dated 02.04.2012 passed by the Commissioner (Appals), Central Excise, Jaipur.

2. The appellant is engaged in the manufacture of asbestos pipes which are being supplied to Public Health Engineering Department of State Government of Rajasthan. As per the contract with PHED, the

appellant was required to supply AC Pressure Pipes alongwith jointing material. The prices were also inclusive of jointing material, transportation, insurance, packing, forwarding, stacking, loading and unloading charges. During the course of audit of the record of the assessee for the period February 2008, the audit party noticed that the assessee is manufacturing AC Pressure Pipes and clearing them with jointing material to various PHED offices for payment of excise duty. The Department was of the view that the appellant was required to pay duty on the price arrived at after deducting the landed cost of the bought out items and post removal expenses i.e. transportation, insurance, packing, forwarding, stacking, loading and unloading charges. Taking the view that the appellant has short paid duty, show cause notice was issued which resulted in both the authorities below confirming the duty demand alongwith interest and penalty. Being aggrieved, the present appeal has been filed by the appellant.

3. With this background, we heard Shri Kumar Vikram, ld. Advocate for the appellant and Sh. M. R. Sharma, ld. AR for the Revenue.

4. Ld. Counsel submitted that the appellant is manufacturing only AC Pressure pipes and purchasing the jointing material from outside and supplying the same alongwith the pipes to PHED. He submitted that the value of bought out goods is not required to be included for payment of

excise duty. Accordingly, there is no basis to include the profit margin also.

5. Ld. AR on the other hand justified the impugned order. He emphasised the fact that the packing, loading and unloading charges etc. are required to be added when the appellant has included the value of bought out components. He justified the inclusion of notional profit also.

6. After hearing both the sides and on perusal of record, we find that the present dispute is with reference to value of goods on which excise duty is required to be paid. The goods have been supplied to the PHED of the State Government of Rajasthan as per the contract entered into by the appellant with the Government department. The contract specified that the appellant supply asbestos pipes alongwith jointing material. After perusal of record, we note that the joining material has been purchased by the appellant from outside and supplied alongwith pipes. Since this material is not manufactured by the appellant but only supplied alongwith pipes, we are of the view that there is no mandate for including the value of such joining material. But, we find that the appellant is including the value but has deducted the notional profit. Since there is no justification in the first place, to include the make of bought out item, there can be no objection to the notional profit being deducted from the assessable value.

7. We find that the dispute also involves other components of valuation such as packing, stacking and loading charges etc. In terms of Section 4 of the Central Excise Act, 1944 transportation expenses and insurance can be excluded from the price for payment of duty. However, the cost of packing and loading charges are required to be included.

8. On perusal of record, we find that the split up of various elements of cost are not available on record. Hence, for purposes of requantification on the basis of above observation, we remand the matter to the adjudicating authority after setting aside the impugned order who shall redecide the issue denovo. The quantification of penalty also will be redecided after re-determining the value of the goods after hearing the parties.

9. In the result, appeal filed by the appellant is allowed by way of remand.

(Dictated and pronounced in the open Court).

(V. Padmanabhan)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

Pant