CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court – I

Appeal No. E/951/2009

(Arising out of Order-in-Appeal No. 20/2009 (T) CE dated 27.07.2009 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Guntur)

Raghavendra Industries **…..Appellant(s)**

Vs.

Commissioner of Central Excise, Customs & Service Tax, Tirupati **…..Respondent(s)**

Appearance
Shri B. Venugopal, Advocate for the Appellant.
Shri. M. Chandra Bose, Additional Joint Commissioner (AR) for the Respondent.

Coram:
Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)
Hon'ble Mr. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 23/05/2018
Date of Decision: 23/05/2018

FINAL ORDER No. ____________________

[Order per: M.V. Ravindran]

This appeal is directed against Order-in-Appeal No. 20/2009 (T) CE dated 27.07.2009.

2. The relevant facts that arise for consideration, after filtering out of unnecessary details are the appellant entered into an agreement with Andhra Pradesh Southern Power Distribution

Company (APSPDCL), Tirupati for conversion of Low Voltage Distribution System into High Voltage Distribution System in certain feeders in Rajampeta division of Kadapa operation/circle, APSPDCL, Kadapa. As per the terms and conditions of the contract, the appellant had to procure all the raw material required for execution of such conversion and to complete the work; one of the main aspect of such works is supply, Erection and Commissioning of 16/25/KVA. The rate quoted by the appellant is inclusive of material and also taxes and duties. Since the appellants are manufacturing the transformers, they have arrived at the cost of 16/25 KVA cleared after considering the deductions like Vat, Cost of Mounting Arrangement / Jumpering and profit at the rate of 10%. This information was given to the Revenue Authorities by a letter dated 10.04.2008. The authorities informed the appellant that the valuation adopted by them is in correct and directed them to adopt the correct value by deducting the tax actually paid and arrived at the value for discharge of Central Excise duty. Appellant also submitted that the data certified by the Chartered Accountants. The said explanation of discharge of the duty liability based upon the deductions, was not accepted in the show cause notice was issued demanding differential duty. The Adjudicating Authority after following due process of law, confirmed the demands raised along with interest and imposed penalties. The appeal filed before the First Appellate Authority was partially allowed and the penalties were set aside.

3. Learned Counsel submits that the findings of the First Appellate Authority are incorrect as the assessable value arrived by the appellant is more than the assessable value arrived by the Chartered Accountant in the CAS-4 for the period in question. He draws our attention to the certificate issued by the Chartered Accountant and annexed at page No. 69 of the appeal memorandum, and submits that CAS-4 certificate was produced before the lower authorities. It is also his submission that similar issue came up before the Tribunal in the case of *Commissioner of Central Excise, Mumbai-III Vs. Blue Star Ltd.,* [2017 (352) ELT 110 (Tri.- Mumbai.)] wherein, the appeals filed by the Revenue were dismissed and discharge of duty liability under the Provisions of Rule 8 of the Valuation Rules were upheld; same is the view expressed by the Bench in the case of *Indian Hume Pipe Co. Ltd.,* [2015 (321) ELT (460) (Tri. – Chennai)]. It is his further submission that acceptance of CAS-4 certificate was upheld by the Tribunal in their own case in respect of Transformers supplied for turnkey project and (as reported at [2014 (304) ELT 100 (Tri. – Bang.)]. He would submit that the impugned order is set aside and the appeal be allowed.

4. The Learned Departmental Representative on the other hand, draws our attention to the findings recorded by the First Appellate Authority. It is his submission that the appellant had collected price from APSPDCL basing on the prices quoted by them

in their contract agreement but for the making the payment of duty adopted the price basing on the chartered accountant certificate which is on lower side, compared to the actual value because of non inclusion of value of accessories mounting arrangements / jumpering for the work under taken. It is his submission that the First Appellate Authority was correct in coming to the conclusion, that value of the accessories has to be added to the price of transformers and there is no evidence produced as these items were brought out items. He reiterated the findings of the lower authorities.

5. On careful consideration of the submissions made, the issue that falls for consideration in this appeal is whether the valuation of the transformer adopted by the appellant basing reliance on chartered accountant certificate, cleared to self for executing HVDs works under turnkey project is correct or otherwise, as there were price schedules in the agreement with APSPDCL and whether the cost of accessories under dispute to be included to the price of transformers or otherwise.

6. Both the lower authorities have confirmed the demand on the ground that appellant have adopted two types of valuation for the purpose of arriving at the price of transformers cleared to the site for execution of turnkey project and they have not fulfilled the conditions

stipulated in the Central Excise for the goods as per transaction value.

7. The factual matrix of the case as recorded by First Appellate Authority is as under:

> *"9. It is observed that in respect of the DTRs cleared during the months of March, 2008 to April, 2008, the appellants have adopted the basic values of Rs. 37,009.64 for 16 KVA and Rs. 48,581.44 for 25 KVA, arrived by them and quoted in the Contract agreement with APSPDCL. For the months of May, 2008 and June, 2008, they have adopted the basic values of Rs. 34,526.15 and Rs. 44,261.15 for 16 and 25 KVA DTRs respectively basing on the certification of the Chartered Accountant. However, it is noticed the appellants have collected the prices from APSPDCL basing on the prices quoted by them in their contract agreement dated 18.06.2007. The department's allegation is that, the appellants have to adopt the value of Rs. 46,613.69 and Rs. 61650.23 for 16 and 25 KVA DTRs respectively in as much as, the price of the DTRs and its accessories (as appearing under column 5 of the table in para 5 of the impugned order) mentioned in the contract agreement is inclusive of the cost of the mounting arrangement / jumpering and Taxes and Duties; that as per the valuation provisions, only the Sales Tax and other Taxes, if any paid actually are alone eligible for deduction for arriving at the "Cum-Duty Value", however, for arriving at the basic value of the DTRs, the assesses have deducted 10% gross profit from the total price of each DTR supplied; that deduction of gross profit etc., is not contemplated /admissible from the value of goods. Hence, the department has noticed short payment and issued show cause notice for recovery of the same."*

8. We find that both the Lower Authorities have mis-directed their findings. It is seen from the records, more specifically the CAS-4 certificate for the period in question, as submitted by the appellant before the lower authorities and also before us, It is seen from the CAS-4 certificate that the Chartered Accountant has certified the correct assessable value of the transformers sought to be cleared by the appellant. In order to appreciate the correct picture the certificate Chartered Accountant is reproduced:

CAS-4 Certificate for the Period March-08 To March-09

Name of the Manufacure : M/s Raghavendra Industries
Aodress of the Manufacture : 2/1183-2, Ukkayapalli (P),Macnupalli Road, Chinna Chowk Panchayat, KADAPA.
Reig'stration No of Manufacturer :
Disscription of Product capitively consumed 16 KVA,25 KVA.
Excise tariff heading : 85042300.

		16 KVA		25 KVA	
	Opening Balance	111			
		2637964.95	23765.45		
	Quantity Produced	554		216	
	Quantity despatched	665		216	
	Closing Balance	- - -		- - -	
		16 KVA		25 KVA	
1	Material Consumed	17465487.00	31526.15	8398953.00	38884.04
2	Direct Wages and Salaries	300000.00	541.52	114000.00	527.78
3	Direct expences	247500.00	446.75	94050.00	435.42
4	Works overheads	222054.00	400.82	84380.00	390.65
5	Quantity controlcost		0.00		0.00
6	Research & development		0.00		0.00
7	Adminitration overheads		0.00		0.00
8	Total(1 to 7)	18235041.00	32915.24	8691383.00	40237 89
9	Add : Opening stock or work in progress		0.00		
10	Less : Closing stock or work in progress		0.00		
11	Total (8+9-10)	18235041.00	32915.24	8691383.00	40237.89
12	Less : Credit for recoveries/scrap/		0.00		
13	Packing cost		0.00		
14	Cost of production	18235041.00	32915.24	8691383.00	40237.89
15	Add: Inputs received free of cost		0.00		
16	Add : Amorised cost of moulds		0.00		
17	Cost of product on for goods produced for capativety consumed	18235041.00	32915.24	8691383.00	40237.89
18	Add : Opening stock Finished goods	2637964.95			
19	cost of production for goods despatched (17+18-19)	20873005.95	31387.98	8691383.00	40237.89
20	Less : Closing stock Finished goods				
21	Profit 10%		3138.80		4023.79
	Assessable Value		34526.78		44261.68

I/We, have received above data on test check basis with reference to the books of account, cost accounting records and other records based on the information given to me/us, and the basas of generally accepted cost accounting practice followed by the industry. I/We certify that the above cost data reflact true and fair view of the cost of production.

Seal & Signature of Company's Authorised Representative.

M. No 23675
KADAPA
CHARTERED ACCOUNTANTS

Date 10.07.2009
Place : Kadapa

9. It can be seen from the above reproduced CAS-4 certificate the assessable value of the transformer was Rs. 34,526.78 for 16 KVA and Rs. 44,261.68 for 25 KVA transformer. From the records, it is seen that the appellant had cleared the 16 KVA transformers at the assessable value of Rs. 37,009.64 and 25 KVA at the assessable value of Rs.48,581.44 discharging both the transformers. The evidences in respect of the same are in the form of invoice which is as reproduced:

RAGHAVENDRA INDUSTRIES
Manufacturers of Power Distribution Transformers & Special Purpose Transformers
2-1 153-2, MACHUPALLI ROAD
UKKAPALLI (POST), KADAPA-516 002

INVOICE CUM CHALLAN
For removal of Excisable Goods from Factory or warehuse for clearance for home consumption / export (under Rule 11 of C. Ex. Rules 2002)
Invoice No. C16 Date 28.04.08
Original for Buyer 016/DT. 24.04.2008

Authenticated by
Authorised Signatory

Tel : 08562 - 248164 (F) 242023 (R)
Fax : 08562 - 277408, Cell : 94402 81393

APGST No. 1663/CTR/07/02
CGST No. 1551/CTR/07/02 31.3.96

Tariff Sub-Heading No : 8504.00
ECCNo. Acopp 6942 Q - XM001
Exem Notice No
Range : Kadapa Opp. to Dist.Court Dwaraka Complex, Kadapa - 516 003
Division : Kadapa Opp to Dist Court, Dwaraka Complex, Kadapa - 516 003.
Commissionarate Tirupathi

Name & Address of Consigee
M/S RAGHAVENDRA INDUSTRIES
WORK SPOT AT BHAKARAPETA
PEDDAPALLI (S.S) SIDDAVATAM (M)
KADAPA (DIST.)

G.S.T No. :
C.S.T No. :
E.C.C No. :
Sales against Form
P.O. No. & Date 16/2007-08/18.06.07

Sl. No.	Description and Specification of Goods	No. & Description of packages/identification marks & Sl.No.of the Goods	Total Qty. of the Goods	Assessable Value per Unit	Total Assessable Value
1.	ELECTRICAL DISTRIBUTION	16 KVA FROM RI/16-181 to 189	9 Nos	37009.[illegible]	[illegible]
2.	TRANSFORMERS	25 KVA FROM RI/25-156 TO 165	10 Nos	48581.44	4,85,814.40
					8,18,901.16
	CERTIFIED COPY		14% Central Excise Duty %		1,14,646.16
			2% Ed. Cess	Total	2292.92
			1% S.H. Cess	CST Etc.	1,146.46
	AUTHORISED SIGNATORY For RAGHAVENDRA INDUSTRIES			Add. Freight	--
	MACHUPALLI ROAD			TOTAL VALUE	9,36,986-70

EXCISE DUTY PAID PAYABLE Rs. [illegible] eighteen thousand [illegible] and eighty five and paise [illegible] four only
INVOICE VALUE : Rs. Nine Lakhs thirty six thousand nine hundred eighty six and paise seventy only

Mode of Transport : By Road.
Booking Station : Kadapa
Receiving Station : Bhakarapeta
Motor Vehicle No. : AP 04 V 7711
Delivery Challan No & Date : 016/28.04.08
Place : Kadapa
Date : 28.04.2008
Time of Issue of Invoice : 17.00 HOURS

Certified that the particulars given above are true and correct and the amount indicated represent the price actually arranged and these is no flow of additional consideration directly or indirectly from the buyer.

For M/s Raghavendra Industries

PROPRIETOR

Signature of Licensee or his authorised Agent

It can be seen from the above reproduced invoice and the Chartered Accountant Certificate, appellant had discharge the Central Excise duty at the higher assessable value then as certified by the Chartered Accountant. We find that in the appellant's own case, the Tribunal had recorded the following finding which accepts that the Central Excise liability needs to be discharged by the appellant on CAS-4 certificate which is reproduced as under:

> ***"5.*** *On going through the records and documents, we find that in this case, the appellants when they received the order for implementation of turnkey projects had intimated the department and submitted the cost structure to the department. The assessable value of the transformers was determined as per CAS-4 by a qualified Chartered Accountant and this was submitted on 31-7-2004 to the officer in respect of his letter dated 22-4-2004. Nevertheless, show cause notice was issued on 12-8-2005 invoking suppression and misdeclaration and proposing to revise the assessable value and demand of differential duty with interest and imposition of penalty as above. We find that what the department has done is to add the freight element from the factory gate to the sites in respect of transformers by invoking Rule 7 read with Rule 11 of the Central Excise Valuation Rules and also calculate the assessable value on the basis of transformer oil requirement indicated in the contract and adopt the one whichever is higher. There is no finding or evidence to show that actual quantum of oil used was higher than what was indicated in the CAS-4 and why the Chartered Accountant's certificate cannot be accepted. In the absence of any evidence of actual use of excess transformer oil and in the absence of any finding as to why Chartered Accountant's certificate cannot be accepted, stand taken by the Revenue to arrive at the assessable value by including the quantum of oil indicated as required in the contract cannot be sustained. Even if it is for captive consumption or use, there is no basis to include the freight element from the factory to site. There is no indication as to why the factory gate cannot be considered incurred from the place of removal in this case and why the freight involved in transportation of transformers from the factory gate to the sites should not be considered as cost of turnkey project rather than the cost of manufacture. Thus, we find that important statutory aspects regarding limitation as well as reasons for inclusion of elements of cost have not been given and hence cannot be sustained. In these circumstances, we find that the Revenue has not made out a case for increasing the assessable value on the ground of suppression, misdeclaration or on merits. In the result, the appeals have to be allowed with consequential relief if any to the appellant and we do so."*

10. In our considered view, the discharged duty liability by the appellant on specimen invoice reproduced above seems to be

inconsonance with the law. It is undisputed the transformers were used for erection at the project site deeming it as self consumption.

11. We find the Tribunal in the case of Blue Star Ltd., (supra) has come to a conclusion, which goods cleared on self basis to the site of the customer, valuation done should be in accordance with the provisions of Section 4(1)(b) of the Central Excise Act, 1944. The ratio which is in paragraph 4 is reproduced:

> ***"4.*** *We have carefully considered the submissions made by both the sides. From the facts which is not under dispute, we find that the respondent have cleared the goods on self basis to the site of the customer. Since the supply of Air Conditioners/Refrigeration equipments were not sold as such for the reason that the respondent has taken a turnkey project for supply, erection, installation and commissioning. Therefore the sale price of the Air Conditioners/Refrigeration equipment is not separately available, therefore the valuation cannot be done under Section 4((1)(a). In the present case, the value is applicable in terms of Section 4(1)(b) read with Central Excise Valuation Rules, 2000. If we go through the Valuation Rules sequentially, we find that in terms of Rule 11 most appropriately Rule 8 is applicable which prescribed the valuation of cost construction method at the rate of 115% of the cost of manufacturing. The respondent have valued the goods as per Rule 8, the computation of the value on the basis of Rule 8 was not disputed by the Revenue what is disputed is that only freight charges should be added in the value which was arrived at in terms of Rule 8. On a plain reading of Rule 8 it is clear that the value should be 115% of the cost of manufacture of the product. The provision does not provide to add any elements over and above the 115% of the cost of manufacture. Therefore addition of freight charges in the value of 115% is without authority of law. The Ld. Commissioner (Appeals) appreciated this legal position and given the following finding:*
>
> > *"As per C.B.E. & C. Circular No. 692/8/2003-CX, dated 13-2-2003, the valuation of goods for captive consumption was to be done strictly in accordance with CAS-4 (Cost Accounting Standard 4) issued by ICWAI. The appellants have submitted that they had determined the value as per CAS-4. The same was checked and verified by the Asstt. Director (Cost), Central Excise, Mumbai-I was found to be correct. Accordingly the impugned order, holding that the goods had been undervalued, resulting in short payment of duty cannot be sustained and has to be set aside. In the absence of any short payment, the penalty also has to be set aside."***"**

12. In view of the foregoing and the factual matrix, in the case in hand, we hold that the confirmation of the demand for the differential duty from the appellant is unsustainable and liable to be set aside and we do so. The impugned order is set aside and the appeal is allowed with consequential reliefs in any.

(Operative part of this order was pronounced in open court
on conclusion of hearing)

P. VENKATA SUBBA RAO
MEMBER (TECHNICAL)

M.V. RAVINDRAN
MEMBER (JUDICIAL)

Lakshmi….