CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench

Court – I

Appeal No. E/1236/2010

(Arising out of Order-in-Appeal No.60/2009 (H-IV) CE, dated 21.12.2009 passed by CCCE & ST (Appeals-II), Hyderabad)

Usha International Ltd ….. **Appellant(s)**

Vs.

CCCE & ST, Hyderabad - IV ….. **Respondent(s)**

Appearance

Shri V.J. Sankaram, Advocate for the Appellant.

Shri Bhanu Kiran, Asst. Commissioner/AR for the Respondent.

Coram:

Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 06.08.2018
Date of Decision: 06.08.2018

FINAL ORDER No. A/30891/2018

[Order per: M.V. Ravindran]

1. This appeal is against Order-in-Appeal No.60/2009 (H-IV) CE, dated 21.12.2009.

2. Heard both sides and perused the records.

3. The issue that falls for consideration in this appeal is that appellant being manufacturer of Nozzles (8409 99 20), Injectors (8409 99 30), Pumps

(8413 30 10), delivery valves & elements (8413 30 10) claimed assessment of the goods under Sec.4 of the Central Excise Act, 1944 and discharged the duty liability. A show cause notice dated 05.12.2008 was issued to the appellant demanding differential duty for the period 01.12.2007 to 31.03.2008 on the ground that the products viz., Nozzles, injectors, etc., are commonly used for manufacturing of automobiles and these items have to be construed as parts, components and assemblies of automobiles merit assessment under provisions of Sec.4A of Central Excise Act, 1944 and notification issued there to [11/2006-CE(NT) amended by Notification No.02/2006-CE(NT)]. Appellant contested the show cause notice on the ground that the goods manufactured by them would not be considered as products suitable for use in automobiles only and are used for various other applications. The adjudicating authority did not agree with the contentions raised and confirmed the demands so raised along with interest and imposed penalties. The first appellate authority in the impugned order also did not agree with the contention of the appellant and differing with the views of earlier Commissioner (Appeals) held view that the products need assessment under Sec.4A of the Central Excise Act, 1944.

4. Learned Counsel draws our attention to the fact that the allegation in the show cause notice is that these products are used as parts, components and assemblies of automobiles while the show cause notice dated 05.12.2008 is invoking the period 01.12.2007 to 31.03.2008 is incorrect. It is his submission that various show cause notices were issued on the same issue to the appellant for the period 01.06.2006 to 30.11.2007, 01.04.2008 to 31.01.2010 and all these show cause notices culminated in adjudicating authority confirming the demands but on an appeal, the first appellate

authority has set aside the said findings and since the amounts involved in all these appeals were less than Rs.10,00,000/-, Tribunal has dismissed the appeals on mandatory limit and in some cases since the amounts involved is meagre, revenue did not file any appeal. He submits that both the lower authorities have gone beyond the show cause notice in as much that the first appellate authority has regarded that appellant had cleared these parts to automobile dealers who had sold the same on payment of VAT which indicates that the items manufactured and cleared by appellant are parts, components and assemblies of automobiles. It is his submission that this reasoning of the Commissioner in the impugned order is beyond the allegations made in the show cause notice. He takes us through the show cause notice and the Order-in-Appeal.

5. Learned Departmental Representative reiterates the findings of the first appellate authority.

6. We perused the records and noticed that the facts as stated herein above are that demand of the differential duty has been raised on the basis, that the items manufactured by the appellant would get covered under parts, components and assemblies of automobiles. The show cause notice itself is stating in Para 2 that the items manufactured by the appellant are commonly used for manufacture of stationary diesel engines meant for drawing water, for generating power and for automobiles and tractors. In the show cause notice, there is no allegation or any relied upon document to indicate that the allegation was made that these products are sold by automobile dealers, hence, they would fall under parts of automobiles. In our view, both the lower authorities were in error in traversing beyond show

cause notice and confirming the demands raised on the ground and reasoning that goods manufactured by appellant were in a solitary case sold by automobile dealers while essentially the allegation was only that these goods are used as parts, components and accessories of automobiles but the allegations in the show cause notice and the factual position is that the appellant is clearing these goods for various other applications like used in pumps, used for drawing water, generation of electricity, etc. In our view, the demands confirmed by the lower authorities in this case is traversing beyond show cause notice, hence, is liable to be set aside and we do so.

7. On this ground only the impugned order is set aside and the appeal is allowed with consequential relief, if any.

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

(P.VENKATA SUBBA RAO) MEMBER (TECHNICAL)	(M.V. RAVINDRAN) MEMBER (JUDICIAL)

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