

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

Division Bench
Court – I

Excise Appeal No. 297 of 2012

(Arising out of Order-in-Original No. 55/2011 (MP) dt.28.11.2011 passed by Commissioner of Customs, Central Excise & Service Tax, Visakhapatnam-I)

Steel Exchange India Ltd

Sreerampuram Village, L. Kota Mandal,
Vizianagaram Dist., Andhra Pradesh – 535 161

.....Appellant

VERSUS

**Commissioner of Central Tax
Visakhapatnam - I**

Central Excise Building, Port Area,
Visakhapatnam, Andhra Pradesh – 530 035

.....Respondent

Appearance

Shri Y. Sreenivasa Reddy, Advocate for the Appellant.
Shri B. Sangameshwar Rao, AR for the Respondent.

Coram:

HON'BLE MR. R. MURALIDHAR (JUDICIAL)

HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30372/2024

Date of Hearing: 21.08.2024

Date of Decision: 30.08.2024

[Order per: R. MURALIDHAR]

The Appellant is working as a job worker for principal manufacturer M/s Sri Bhava Steel & Power Ltd (SBSPL). The principal manufacturer was giving some raw materials and the Appellant was adding some more raw materials and consumables from his side and manufacturing sponge iron. Thus, in view of the job work undertaken, actual manufacturing takes place at the end of the Appellant. Such manufactured goods are being cleared by the Appellant to various parties specified by the principal manufacturer. Such clearances are made to those parties based on the price decided between the principal manufacturer and the ultimate buyer and given to the Appellant. Based on such price, the Appellant is paying Excise duty on the same. As per the contract with SBSPL, the Appellant gets consideration as per the agreed terms and also consideration in terms of the scrap generated at his end.

2. On 30.09.2010, SCN was issued to the Appellant on the ground that the Appellant was paying the Excise duty on the Assessable Value which is undervalued. The Revenue took the stand that Excise duty is payable on the cost construction method and not as per the price being charged on the buyers of the principal manufacturer. The SCN was issued for the period 2005-06 to 2006-07 by invoking extended period provisions. An amount of Rs.86,30,228/- was demanded for the period September, 2005 to July, 2006. After due process, the Adjudicating Authority held that the value of scrap (which was part of the consideration received by the Appellant) need not be added to the total cost for arriving at the assessable value. Accordingly, he dropped part of the demand and confirmed the demand of Rs.46,29,121/-. Being aggrieved, the Appellant is before the Tribunal. Being aggrieved by the part dropping of the demand, the Revenue had filed an Appeal before the Tribunal. However, in view of the instructions contained in the National Litigation Policy, the Appeal filed by the Revenue was dismissed as withdrawn.

3. Learned Counsel appearing on behalf of the Appellant submits that no proper procedure was followed in the entire adjudication proceedings. He submits that even cost construction method followed by the Department is erroneous. He further submits that there is no dispute that the Appellant has followed the price given by the principal manufacturer for clearance of the goods. It is also not in dispute that the finished goods were cleared to non-related third parties only. In such case, the Department could not have discarded the transaction value arbitrarily and gone on to cost construction method directly, without discarding the transaction value with proper reason. He further submits that the price was finalized by the principal manufacturer and this fact is acknowledged by the Department in the SCN and OIO. However, since he is an important person in the entire proceedings, the SCN should have also been issued to the principal manufacturer so as to ascertain the procedure by which he was fixing price with the ultimate buyers. In the entire proceedings, it is very clear that the Appellant had no role in fixing up the price to the ultimate buyers by the principal manufacturer. Thus, by not making the principal manufacturer as one of the co-noticees, the present proceedings are vitiated.

4. He submits that the very fact that the principal manufacturer was fixing up the price and paying the VAT on the same would clarify that the price received by him from the buyers was the transaction value. It is fundamental principle that when transaction value is available and Department has no other corroborative evidence to doubt such transaction value, the Department cannot go on to Rule 8 of the Valuation Rules to fix up the assessable value based on the cost construction method. In view of these submissions, he prays that the Appeal may be allowed on merits.

5. Coming to the aspect of limitation, he submits that after entering into an agreement with the principal manufacturer on 17.08.2005 vide their letter dt.29.08.2005 (submitted on 31.08.2005) to the Range officials, the Appellant had clearly stated that they would be undertaking manufacturing of sponge iron on job work basis for SBSPL and the finished goods would be cleared on payment of duty. For the goods sold at their factory, the price fixed by SBSPL for their buyers would be taken for payment of Excise duty. After this, the Appellant had followed the same procedure for clearing the goods under their invoices and they were also filing their RT12/ER1 Returns. Apart from this, a query was raised by the audit officials on this in 2009 for which they have clarified vide their letter dt.18.03.2009 that they are following the transaction value based on the final sale price of SBSPL to their buyers. After this, one more letter was submitted by the Appellant on 25.05.2009 about the method being followed by them towards their clearances. These factual details prove that there was no suppression on the part of the Appellant about the transactions being carried out by them for SBSPL. He also draws our attention to the relied upon documents in the SCN wherein it is admitted that job worker agreement dt.17.08.2005, the letters of the Appellant on 05.11.2008 & 18.03.2009 and ER1 Returns are relied upon documents. Therefore, the SCN issued on 30.09.2010 by invoking the extended period provisions in respect of the clearances made during the period September, 2005 to July, 2006 is fully time barred.

6. Learned AR submits that the Appellant has failed to follow cost construction method for arriving at the assessable value. He submits that only after the detailed investigation and verification, the Department could detect the undervaluation adopted by the Appellant. Therefore, he justifies the confirmed demand.

7. Heard both sides and perused the Appeal papers and other documents placed before us.

8. We find that there is no dispute that the Appellants are carrying on job work which amounted to manufacture in terms of Section 2(f) of the CEA, 1944. They were also paying Excise duty for the goods cleared at their end. For such clearances, they were adopting the price given by the principal manufacturer for clearance to the ultimate buyers. There is nothing to indicate in the entire proceedings that the Appellant had any role to play in fixing up of this price. There is also no allegation that the buyers of sponge iron were in any way related to the Appellant or to the principal manufacturer. Therefore, in such case, the assessable value has to be determined based on the transaction value only. The transaction value concept can be ignored only if it comes to light that the Appellant has received any further consideration from the buyer. In this case, the Revenue is trying to take the stand that the scrap generated and taken as consideration by the Appellant is forming part of additional consideration. Incidentally, even the demand on such scrap value has been dropped by the Adjudicating Authority. Therefore, the Revenue's argument that this is an additional consideration is wholly erroneous. The consideration is required to flow from the buyer and not from any other third party. Therefore, we take the view that the entire proceedings have been taken up on a wrong notion that the Appellant is barred from relying upon transaction value for their clearances. On this count itself, the confirmed demand is required to be set aside. We do so.

9. Secondly, without any dispute, the price is fixed by the principal manufacturer for sale to the ultimate buyers. In such case, the evidence and submissions of the principal manufacturer would be very crucial to ascertain as to how the price was fixed by them. Therefore, they should necessarily have been made a part of the SCN by making them a co-noticee, which has not been done in this case. This is a major error on the part of the Revenue by issuing the SCN, which vitiates the proceedings.

10. So far as the Department's contention that the cost construction method adopted by them would result in higher assessable value, it is also questionable. Apparently, if the price for the finished goods is fixed by the

principal manufacturer, he would have taken into account all his costs plus the cost of conversion for the job work and cost of the consideration on account of scrap being given free of cost to the Appellant plus his own profit margin to arrive at the total price. That being so, even hypothetically the cost construction method at the end of the job worker cannot be presumed to be higher than the ultimate sale price (transaction value) adopted by the principal manufacturer unless the Department brings in any evidence towards additional consideration flowing back from the buyer. Even on this count, we find that the proceedings have been taken up on assumption and presumptions basis.

11. In view of the above observations, we set aside the confirmed demand on merits.

12. We also find considerable force in the Appellant's argument that the SCN issued on 30.09.2010 is time barred. The Appellant has produced copy of the letter submitted by them on 31.08.2005 clearly specifying the procedure being adopted by them for the sponge iron being cleared to the buyers of the principal manufacturer by adopting the price given by him. Apart from this, audit queries have been raised in February, 2009 for which the Appellant has filed reply on 18.03.2009. The Appellants have been following this method and filing their monthly ER1 Returns. All these go on to show that all the transactions were being carried out openly and there was no attempt for any suppression on the part of the Appellant. Therefore, we hold that confirmed demand for the extended period is also liable to be set aside on account of time bar.

13. Thus, the Appeal stands allowed both on account of merits and on account of limitation with consequential relief, if any, as per law.

(Pronounced in the Open Court on 30.08.2024)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)