IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Excise Appeal No. 511 of 2011

(Arising out of Order-in-Appeal No. 15/RAN/2011 dated 21.03.2011 passed by Commissioner (Appeals) of Central Excise & Service Tax, Ranchi.)

M/s Schenk Process India Limited,
(Plot No. 67-82, Tupudana Industrial Area (New), Hatia, Ranchi-834003.)

....Appellant (s)

VERSUS

Commissioner of Central Excise & Service Tax, Ranchi,
(6^{th} Floor, Mahabir Towers, Main Road, Ranchi.)

....Respondent(s)

APPERANCE :
Shri Indranil Banerjee, Advocate for the Appellant
Shri J. Chattopadhyay, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. ASHOK JINDAL MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)

FINAL ORDER No...76177/2023

DATE OF HEARING : 13.07.2023
DATE OF DECESION : 13.07.2023

PER K. Anpazhakan:

M/s Schenck Process India Ltd., (The Appellant) are manufacturers of finished products namely Pitless Electronics In- Motion weigh Bridge (hereinafter referred to as the "said finished products"). In the manufacture of the "said finished products", they procure the personal Computer, Printer, UPS, Stabilizer and Air-Conditioner from market but they were not including the value of these bought out items for the purpose of payment of Central Excise duty. Accordingly, Central Excise duty amounting to Rs.2,07,264/-, including Education Cess was demanded from the Appellant for the period January 2006 to February

2006. The Notice was adjudicated vide Order-in-Original dated 20.08.2009, wherein the duty demanded was confirmed along with interest and equal amount of duty as penalty. On appeal, the demands were confirmed vide Order-in-Appeal dated 21.03.2011. Aggrieved against the impugned order, the Appellant filed the present appeal.

2. In their submissions, the Appellant stated that they have sent the impugned goods along with the basic equipment i.e. weigh bridge, as 'bought out' duty paid items against which they have not availed any Cenvat Credit. These items are not integral part of the system and Weigh Bridge System can run smoothly without these items as controller 'DISOMAT-C' is sufficient for taking weighment of the system.

3. They have also enclosed the copy of catalogue, wherein the functions of the bought out items are mentioned as under:-

(i) PC & Printer- for storing date and printing.

(ii) UPS- for supply of un-interrupted power of the PC and Printer.

(iii) Stabilizer – for voltage controlling for PC

(iv) Lamp Post- for providing signal light at Railway track

(v) Air-Conditioner- for keeping the weigh bridge control room cool.

A perusal of the Catalogue shows that these items perform their specific functions not related with weighing function and hence they contended that their value is not includible in the assessable value for the purpose of payment of Central Excise duty.

4. The Ld. A.R. reiterated the findings in the impugned order.

5. Heard both sides and perused the appeal records.

6. We observe that the Appellant purchased items such as personal Computer, Printer, UPS, Stabilizer and Air-Conditioner' and supplied along with their finished goods namely ' Pitless Electronics In- Motion weigh Bridge'. A perusal of the functions performed by these goods, which were supplied along with the said finished products, reveal that they were not essential parts, as they were not required for performance of the main function ie, weighment of goods/railway wagons. The Weigh Bridge System supplied by the Appellant can run smoothly without these items, as controller 'DISOMAT-C' is sufficient for taking weighment of the system

4. Transaction value" as defined under Section 4(3) (d) of the Central Excise Act, 1944, means that the price actually paid or payable for the goods when sold and includes in addition to the amount charged as price any amount that the buyer is liable to pay, to or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or any time thereafter. We observe that the value of the bought out items are not payable or paid to the manufacturers of the weigh bridge. The prices of these goods have been paid to the dealers of those goods who sold it to the Appellant. Further the Appellant has not taken Cenvat Credit of the duty paid on these bought out items. Hence, the value of bought out items will not be part of the Transaction Value, in this case.

5. In the instant case, we find that the bought out items have not been attached with the weigh bridge. Even after installation of the weighbridge, they perform their functions independently. Thus we hold

that these items are not essential part of the weigh bridge and the value of these bought out items are not includable in the assessable value.

6. We observe that this view has been supported by the decisions various Tribunals.

6.1 In the case of Neycer India Ltd Vs Commissioner of Central Excise, Trichy, reported in 2015(320)ELT 28 (SC), it has been held as under:

> ***"4.****We have gone through the rival contention. The point at issue is whether the boughtout items are accessories or parts of the cistern. In our view, relying on the decision of the Bombay High Court in the case of Koron Business Systems Ltd., the boughtout items required to make the cistern functional should be considered as accessories only. These accessories are of different types and made of different materials. At the buyers option, these are supplied by the parts should be included in the assessable value of the cistern. The appellants relied on the decision of the Hon'ble Supreme Court in its judgment in the case of Union of India v. Koron Business Systems Ltd. - 1997 (93) E.L.T. 663 which upheld the judgment of the Bombay High Court. In that case the Bombay High Court held that plates and black shields are required for working of the photocopier but that by no stretch of imagination lead to the conclusion that plates and black shields are part and parcel of the machine. It was held that the value of plates and black shields cannot be included in the value of the photocopiers. Ld. Advocate argued that no doubt that the above-mentioned fittings are required to make the cistern functional but on account of that they cannot be called as parts of these cistern. The Tribunal in the case of EID Parry India Ltd. v. CCE - 2000 (124) E.L.T. 815 has held that the value of the fittings which were removed from godown after testing under a separate invoice is not includable in the assessable*

value of the cistern. The Tribunal in the case of Super Electronics v. CCE - 2001 (127) E.L.T. 302 held that even though speaker in audio-decks is essential, the same cannot be integral part of the main item that is audio-decks appellants. What the appellants manufactured is only the cistern which is made of ceramics. In these circumstances relying on the various case laws cited by the appellants, we hold that the value of the boughtout items is not includable in the assessable value of the cistern. The case relied on by the Revenue is distinguishable. In that case the Bombay High Court held that the documents copier machine is not complete without camera and there cannot be a camera without timer and lens. Therefore we allow the appeal with consequential relief by considering the boughtout items as accessories only."

6.2 In the case of Sur Iron& Steel Co.(P) Ltd Vs Commissioner of Central Excise, Kolkata-IV, reported in 2018(363)ELT 373(T), it has been held as under:

> ***"10.*** *In the instant case, these items, which were bought out, are totally independent and optional. These are not even the accessories as stated by the Ld. Counsel for the appellant during the course of argument. In this regard, the Hon'ble Supreme Court in the case of Commr. of Central Excise, Trichy v. Neycer India Ltd. : 2015 (320) E.L.T. 28 (S.C.), observed that the value of the bought out items cannot be included in the assessable value of own manufactured goods under Section 4 of the Central Excise Act, 1944. In the instant case, it is admitted position that the assessee supplied the bought out items to the buyers only to ask for. In such a situation, the assessee buys the aforesaid co2mponents/items from the market and supplied to the buyers on their option. When it is so, then we find no reason to sustain the impugned order and the same is hereby set aside.*

> ***11.*** *In the result, the appeal filed by the appellant is allowed."*

6.3, In the case of Kerala State Development Corporation Vs Commissioner of Central Excise, reported in 2008(224)ELT 88(T), it has been held as under:

> ***"5.*** *The Revenue proceeded against the appellants for inclusion of the value of bought out items, (uncoaded cards, armoured cables, communication cables, etc.) to the assessable value of Attendance Data Management Systems (ADAMS). The original authority demanded duty of Rs. 54,207/- under Section 11A(1) of the Central Excise Act, 1944. Interest under Section 11AB was also imposed. Equal penalty under Section 11AC was imposed. It was submitted that ADAMS is a single piece of machine capable of functioning independently usually installed at the entrance of a office/factory. The cards supplied to the employees are inserted in the slot of the machine and the time is recorded by the machine. It is connected to the computer, by means of cables. Then, the data is recorded and stored in the computer. The appellants used additional item such as cables cards etc. required for installation. The above items were bought from outside. Revenue has sought to demand duty on the bought out items. It is very clear that the bought out items such as cable, cards, etc., are used for installation of the system manufactured by the appellants. They may be necessary for function of the system. However the fact remains that they are all bought out items on which excise duty has already been paid. Therefore, there is no reason to add the value of these bought out items to the value of the goods supplied by the appellants. There is also no justification for imposing any penalty on the appellant in both the cases and for invocation of*

> *the longer period. Therefore, the appeal is allowed with consequential relief if any."*

7. Following the decisions cited above, we hold that the demands made in the impugned order are not sustainable. Since the duty itself is not liable to be paid, the question of demanding interest and imposing penalty does not arise.

8. In view of the above discussion, we allow the appeal filed by the Appellants.

(Dictated and pronounced in the open court)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

Tushar