IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I

APPEAL No. C/126/08

(Arising out of Order-in-Original No. 121/07 CC(I)JNCH dated 31.12.2007 passed by Commissioner of Customs (Import), Nhava Sheva)

Jayaswal Neco Ltd. **Appellant**

Vs.

Commissioner of Customs (Import), Nhava Sheva **Respondent**

Appearance:

Shri T. Viswanathan, Advocate, for appellant
Ms. P.V. Shekhar, Joint Commissioner (AR), for respondent

CORAM:

Hon'ble Mr. Ramesh Nair, Member (Judicial)
Hon'ble Mr. C.J. Mathew, Member (Technical)

Date of Hearing: 12.2.2018
Date of Decision: 27.2.2018

ORDER NO.................................

Per: Ramesh Nair

The facts of the case are that the appellant has imported equipments for pulverized coal injection system under two Bills of Entry as per contract No.03/JNL-CISRI/PCI-01 dated 25.12.2003 with supplier M/s. Central Iron & Steel Research Institute. The case of the department is that apart from the value of the goods as per contract, there is a charge for designs and engineering. The value of the designs and engineering should be included in the assessable value of the imported machine. Accordingly the adjudicating authority enhanced the value invoking Rule 9(1)(b)(iv) of the Customs Valuation Rules, 1988. The goods were confiscated with option to redeem the same on payment of redemption fine of Rs.25,00,000/- under Section 125 of the Customs Act, 1962. A penalty of Rs.10,00,000/- was also imposed under Section 112(a) of the Customs Act.

2. Shri T. Viswanathan, learned counsel appearing on behalf of the appellant, submits that the adjudicating authority included the value of design and engineering which in fact related to erection, installation and commissioning of the machine. Therefore the same is not related to the imported machine, hence the same is not includible in the assessable value. He further submits that the appellant has made detailed submission in their reply and additional submission explaining that these charges sought to be included are on account of erection and installation. However, the learned adjudicating authority has not considered the said factual matrix. He further submits that the show cause notice invoked Rule 9(1)(e) of the Customs Valuation Rules, 1988 in order to include the value of design and engineering charges. However, in the adjudication order, the inclusion was made invoking Rule 9(1)(b)(iv) of the Customs Valuation Rules. Therefore, to this extent, the order

is beyond the scope of the show cause notice, hence not sustainable. He placed reliance on the following judgments:-

(i) *Tata Iron & Steel Co. Ltd. – 2000(116) ELT 422 (SC)*;

(ii) *Ferodo India Pvt. Ltd. – 2008 (85) RLT 59 (SC).*

3. Ms. P.V. Shekhar, learned Joint Commissioner (AR) appearing on behalf of the Revenue, reiterates the findings of the impugned order. She submits that as per the contract, the design and engineering charges for erection, installation and commissioning with the condition of sale of the goods. Therefore, it is rightly includible in the assessable value of the imported machine. As regards the issue raised by the learned counsel regarding incorrect rule was invoked for inclusion of the value of design and engineering, she submits that merely by quoting different statutory provisions, the order cannot be said to be illegal. She placed reliance on the following judgments:-

(i) *Essar Gujarat Ltd. – 1996 (88) ELT 609 (SC)*;

(ii) *Andhra Petrochemicals – 1997 (90) ELT 275 (SC)*;

(iii) *Mukand Ltd. – 1999 (112) ELT 609 (SC)*;

(iv) *Mukand Ltd. – 2000 (120) ELT 30 (SC)*;

(v) *Indian Seamless Metal Tubes Ltd. – 2016 (324) ELT 157 (Tri.-Mumbai)*;

(vi) *Otto India Pvt. Ltd. – 2002 (149) ELT 477 (Tri.-Kolkata)*;

(vii) *Pradyumna Steel Ltd. – 1996 (82) ELT 441 (SC)*;

(viii) *Otto India Pvt. Ltd. – 2003 (158) ELT A331 (SC)*;

(ix) *JK Steel Ltd. – 1978 (2) ELT J335 (SC)*;

(x) *Prerna Textiles Inds. – 2000 (117) ELT 241 (T)*;

(xi) *Prerna Textiles Inds. Ltd. – 2001 (34) ELT A169 (SC)*.

4. We have carefully considered the submissions made by both the sides and perused the records. We find that the limited issue involved in the present case is that whether the design and engineering charges paid by the appellant to the foreign supplier of machine are on account of erection, installation and commissioning and whether the same is includible in the assessable value of the imported goods, whether the demand is legal when the show cause notice and impugned order invoked different rules of Customs Valuation Rules. We find that as regards the issue whether the value of design and engineering is on account of erection, installation and commissioning despite the appellant made detailed submission in the reply and in their additional submission before the adjudicating authority, the adjudicating authority

has not considered properly. Therefore, the matter needs to be considered. As regards the issue that the show cause notice invoked Rule 9(1)(e) whereas the impugned order confirmed inclusion of value of design and engineering invoking Rule 9(1)(b)(iv), we are of the view that this issue also needs to be considered. Accordingly we set aside the impugned order and remand the matter back to the adjudicating authority for passing a fresh order after addressing both the issues raised by the appellant. Since we remand the matter on the preliminary issue raised by the appellant, we need not go into the judgments cited by the rivals.

5. The appeal is allowed by way of remand to the adjudicating authority.

(Pronounced in court on 27.2.2018)

(C.J. Mathew)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

tvu