IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.

Appeal No. E/56,57,58/2009

(Arising out of Order-in-Original No. 27-31/CEX/2008 dt. 21.10.2008 passed by the Commissioner of Central Excise & Customs, Pune-III)

M/s. Shogini Technoarts Pvt. Ltd. : **Appellant**
Shri Vijay M. Athawale
Shri Vinayak M. Athawale

VS

Commissioner of Central Excise, Pune-III : **Respondent**

Appearance

Shri M.P. Joshi, Advocate for Appellant

Shri A.B. Kulgod (A.R) for respondent

CORAM:

Hon'ble Shri Ramesh Nair, Member (Judicial)
Hon'ble Shri Raju, Member (Technical)

Date of hearing : 19/12/2017
Date of pronouncement : 22/03/2018

ORDER NO. 85731-85733/2018

Per : Ramesh Nair

The Appellants are engaged in manufacture of Printed Circuit Board. In some cases they themselves carry out the Art Work/ Cad development and manufactures PCB's for the customer and recovers the development charges from the customers. In other cases the Appellant manufactures PCB from the design/ Art work/Photo film supplied by their customers. They were issued five show cause notices for the period 01.04.98 to 31.05.2006 alleging that in case where the

PCB is manufactured on the design/ Art work/Photo film supplied by their customers in all such cases the cost of the same has to be included in assessable value of the PCB and duty is payable. The show cause notice thus proposed demand of duty and imposition of penalty. The adjudicating authority vide the impugned order confirmed the demand alongwiith interest and also imposed penalties upon the Appellant. Further penalty was also imposed upon directors Shri Vijay M Athwale and Shri Vianayk M Athwale. Hence the present appeal by the Appellant and its directors.

2. Shri M. P. Joshi, Ld. Advocate appearing for the Appellants submits that in the present case either the impugned charges are to be included in assessable value or has to be amortized in the value of the goods cleared over the period. That amortised cost can be ascertained by way of dividing the cost of drawings by the number of finished products that can be manufactured using the said drawing as per Larger bench judgment in case of Mutual Industries Ltd. 2000 (117) ELT 578. That in their case it is impossible to expect the life of a drawing and secondly even if it is expected the result shall be infinity. In many cases they are using drawings supplied by the customer over more than 10 – 20 years and during the span they would be manufacturing thousand and lakhs of PCB. If the cost of drawing is divided by number of PCBs manufactured till date the result would be approximately zero and hence no value is required to be added and the demand confirmed against them is to be set aside. He also submits that the demand raised by invoking extended period and

penalties are not sustainable as there is no suppression as apparent from the facts of the case.

3. Shri A. B. Kulgod, ld. AC (AR) appearing for the revenue reiterates the findings of the impugned order and supports the same.

4. We have carefully considered the submissions of both the sides and perused the case records. We find that the adjudicating authority has confirmed the demand by adopting the values given by the Appellant. We find that it is the third round of litigation before the Tribunal. On first occasion the case was remanded back by the Tribunal to adjudicating authority following the decision of Larger Bench in the case of Mutual Industries supra. In second round the order passed by the Commissioner was set aside as he has not followed the Tribunal's direction. This is now third round of litigation. We find that the adjudicating authority by following the Tribunal's order has amortized the development/ film/ drawing charges and quantified the demand. The Appellant has challenged the method of this valuation. However we find that the method of valuation was ordered by the Tribunal and the adjudicating authority has followed those directions. The order passed by the Tribunal was not challenged by the Appellant or the revenue and has thus attained finality. Therefore no fault can be found with the method of such valuation. WE find from the Para 42 of the impugned order that the cost charges of films per sq cm has been worked out and on that basis the assessable value has been derived and duty thereupon was calculated. We thus find that the demand has been worked out as per

the Tribunal's order and is correct. However we find from the facts of the case that the issue involved has remained disputed. In such case we also do not find any intention to evade duty payment by the Appellant as all the information were appearing and no attempt has been made to suppress the same. In such view of facts we find that the demands raised by invoking extended period of limitation and penalties under section 11AC and Rule 25 is not sustainable. We thus hold that the demand for the extended period and the penalties against the Appellant are not sustainable. For the same reason we set aside the penalties imposed upon both the directors. The impugned order is modified to the above extent. The appeal of company is partly allowed. The appeal of directors are allowed.

(Pronounced in court on 22/03/2018)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

SM.