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

Appeal No. E/695/09

(Arising out of Order-in-Appeal No. SN/79/NGP/2009 dated 26.2.2009 passed by the Commissioner of Central Excise & Service Tax (Appeals), Nagpur).

Commissioner of Central Excise, Nagpur	Appellant

Vs.

M/s Unitech Power Transmission Ltd.	Respondent

Appearance:

Shri A.B. Kulgod, Asstt. Commissioner (AR)	for Appellant
Shri D.H. Nadkarni, Advocate	for Respondent

CORAM:

HON'BLE SHRI RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE SHRI RAJU, MEMBER (TECHNICAL)

Date of Hearing: 01.02.2018

Date of Decision: 21.03.2018

ORDER NO. **A/85766/2018**

Per: Ramesh Nair

The fact of the case is that the respondents are engaged in the manufacture and supply of transmission towers. They are also supplying bought out Nuts & Bolts and other accessories required for erection and installation of towers at site and supplied the same directly to the site. The case of the department is that nuts, bolts and other accessories supplied directly to the site, the value of the same should be included in the value of the towers or in other words whether the said bought out items are liable for duty. Both the lower authorities have consistently held that the value of bought out items supplied directly to the site of customer is not liable to excise duty. Accordingly, the proceedings were dropped. Being aggrieved by the impugned order, the Revenue filed the present appeal.

2. Shri A.B. Kulgod, learned Asstt. Commissioner (AR) appearing on behalf of the Revenue submits that the assessee has entered into a contract with Maharashtra State Electricity Board (MSEB) and Rajasthan Rajya vidyt Prasaran Nigam Ltd. for supply of transmission line towers. As per the said contract, it includes supply of super structures, tower accessories, nuts and bolts, washers, shackles, hangers and other tower parts which is the integral part of the transmission line towers, without which transmission line towers cannot be operational and functional. Therefore, even though the bought out nuts and bolts and other accessories supplied directly to the site, its value should be included in the assessable value of the transmission towers as per Section 4(3)(d) of Central Excise Act, 1944 and Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, as an additional consideration of sale should be included in the assessable/transaction value for calculation and payment of Central Excise duty. He placed reliance on the following decisions: -

(i) *Vishwa Industrial Co. P. Ltd. – 1999 (107) ELT 774 (Tri-Cal)*

(ii) *Bajaj Auto Ltd. – 1989 (44) ELT 63 (Tri-Del)* This Tribunal's decision was upheld by the Hon'ble Apex Court reported in 1993 (64) ELT A84 (SC).

(iii) *CCE Vs. Indoprint Enterprises – 1988 (36) ELT 513 (Tri-Del)*

(iv) *Steel Crafts Vs. CCE, Belgaum – 1995 (75) ELT 897 (Tri-Del)*

(v) *Texmaco Ltd. Vs. CCE - 1992 AIR SCW 2020.*

(vi) *Thermax Bobcock & Wolcox Ltd. – 2005 (182) ELT 336 (Tri-Mum).*

3. On the other hand, Shri D.H. Nadkarni, learned Counsel appearing on behalf of the respondent submits that firstly bought out nuts and bolts and other items were directly supplied to the site which is used for erection and installation of the transmission towers. Therefore, the said goods do not take part in or in relation to manufacture of transmission towers. These accessories are required only for erection, installation of the transmission towers. The erection installation activity is separate part from the manufacturing of transmission towers. Therefore, the manufacturing activity gets completed when the transmission towers are manufactured and cleared from the factory. Any additional part being not a part of manufacturing activity cannot be considered as part of the manufacturing of transmission towers. Hence, its value should not be included in the assessable value of transmission tower. He further submits that the erection, installation activity taken place at the site brings out the transmission tower as immovable property, therefore, the nuts bolts etc. used for bringing out product into immovable property is not

part of the excisable goods. Hence, neither dutiable nor its value can be included in the manufacture of transmission towers. In support of his submissions, he placed reliance to the following judgments: -

(i) *Statfield Systems (coating) Pvt. Ltd. – 1996 (87) ELT 50 (Tri)*

(ii) *Radiant Electronics Ltd. – 1996 (85) ELT 102 (Tri)*

(iii) *Mihir Engineering (P) Ltd. – 1999 (107) ELT 756 (Tri)*

(iv) *BEST & Crompton Engineering Ltd. – 2002 (147) ELT 344 (Tri-Chennai)*

4. We have carefully considered the submissions made by both sides. We find that the appellant is engaged in the manufacture of transmission line towers. The entire activity of the manufacturing is completed without the need of nuts bolts etc. The bought out nuts bolts were sent directly from the supplier to the customer's site. Therefore, the same is obviously not taking part in the manufacture of the final product of the respondent. Any additional consideration can be included in the assessable value of the goods manufactured and sold. In the present case, the goods in question is transmission line towers, which is manufactured and sold by the respondent. The nuts and bolts etc. are optional item which is sold as a bought out item to the customers, which is nothing but a trading activity. Therefore, the same cannot be considered as extra consideration towards the manufacture of excisable goods produced by the respondent.

4.1 On going through the orders passed by both the lower authorities, we observe that both the authorities have correctly considered the issue in its entirety and analyzed the relevant provisions and settled case law and came to the conclusion that the value of nuts bolts etc. is not includible in the assessable value of the transmission line towers manufactured by the respondent. The findings of the Commissioner (Appeals) in the impugned order are as under: -

> "51. I have carefully gone through the case records and submissions made by the Appellant/Respondent both written and oral. The Appellant received the impugned Order-in-Original on 24-10-2008 and the appeal has been filed on 14-11-2008. The appeal is within time as per Section 53 of the Central Excise Act, 1944.
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> 52. The issue to be decided is that whether the value of bought out items viz. Nuts, Bolts and Other Tower Parts/accessories directly supplied to buyer's site from open market is to be included in the Assessable value/Transaction value or otherwise. The Respondent has recovered the cost of Nuts, Bolts and Other Tower Parts/accessories from the buyers on separate commercial invoices. As per the appellant they have supplied the towers in CKD condition to the buyers with whom they had written contracts.
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> 53. I find that there is no dispute regarding the fact that the said items are duty paid. The credit of the same has neither been taken by the appellant nor disputed by the Department. In the appeal filed by the Department reliance is placed on the definition of Transaction value it has been averred that the respondent is liable to pay duty on the entire contract price which includes cost of nuts, bolts washers, shackles, hangers, since those are integral parts of transmission line towers and without these transmission line tower cannot be erected and made operational. The definition of transaction value i.e. the price actually paid or payable has to be read in the context of the words i.e. "for the goods when sold and it includes " The price paid or payable should have nexus with the excisable goods manufactured and sold by the manufacturer. Obviously, the contracts provide for the price of the transmission line towers manufactured by the respondent and it is only this price which could be termed as the price actually paid for the transmission line towers manufactured by the respondent. The said definition cannot be applied to the cost of the goods which are not manufactured by the respondent. Admittedly the nuts and bolts and the other accessories are neither manufactured by the respondent, nor are those cleared from its factory. The ground raised in the appeal by the Department is an attempt to stretch the definition of Transaction value to an illogical extent.
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> 54. In so far as the reliance place on the decision of Vishwa Industrial Co., Pvt. Ltd. is concerned. The ratio of the said decision is not relevant to the present case in as much as in that case the question was of classification of the conveyor system. Some parts of which were manufactured by the manufacturer and some parts and components were purchased from the market. The said decision has been distinguished by the Hon'ble Tribunal in the case of OTIS ELEVATOR CO., (INDIA) LTD. VS. COMMISSIONER OF C.EX. MUYMBAI-V REPORTED AS 2007(208)ELT--114 (Tri. Maumbai).
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> 55. Coming to the reliance placed on the case of Bajaj Auto Ltd., which can not be applied here as there the issue involved was regarding to the inclusion of the value

of the foot rest of the scooter and since the foor rest was an essential part of the scooter, its value was includible. Whereas in the present case nuts bolts and accessories are purely optional items. As for as the decision in the case of Indoprint enterprises is concerned, this was the case of inclusion of the cost of bought out items, which were intrinsic part of the industrial paint shop. This case is also distinguished by the Hon'ble Tribunal in the case of Collector of C.,Ex. Pune V s. Statfied Systems (Coating) Pvt. Ltd., 1996(87)ELT- 510 (Tribunal) wherein it was held;

"Valuation (Central Excise) _ Value of bought out items used in the fabrication of plant at site not includible in the assessable value while computing the value of clearance for determining the eligibility to SSI exemption under Notification No. 1 05/80-CE _ Section 4 of the Central Excise and Salt Act, 1944 (Para 9)"

56. The case of Steel Crafts is misplaced since it was a case of includibility of the cost of the items which were fitted to the body of the trailer at the time of its clearance from the factory. The judgement of the Hon'ble Supreme Court in the case of Texmaco Ltd., was rendered in the context of valuation of wagon-bodies mounted on "wheel sets". Here again the case is totally different than those involved in respondent's case. The ration of the decision of Commissioner of Central Excise Pune-I V s. Thermax Bobcock & Wilcox Ltd., 2005(1 82)ELT -336(Tri. Mumbai) in which it was held that the value of bought out items received at site and used in erection of boilers, includible in assessable value of boilers, because such bought out items are necessary to make boiler functional. The ration of this case is not applicable for the fact that the transmission line towers have no functional attributes. Further the said case is pending before the Hon'ble Supreme Court as reported 2007(207)EL T-A 186(SC)

57. Further in the case of Kei ala State Electronics Dev. Corporation Ltd., Vs. Commissioner of C.Ex. Cochin it is neld that Bought out items sent to the site where they were assembled alongwith the traffic controllers for manufacture of traffic signal system bought out items become part of the immovable property and not part of the traffic controller - Value not addable to the duty paid goods cleared by the assessee from their factory - Section 4 of Central Excise Act, 1944. The nuts bolts and other accessories in the present case are used at site for erection of the transmission line towers which come into existence being as permanently affixed to earth and hence become an immovable property. The said decision has been upheld by the Hon'ble Supreme Court as reported in 2006(199)ELT -A 130(SC).

58.(a) In the case of Best & Crompton Engineering Ltd., Vs. CCE Chennai, 2002(14 7)EL T -344 (Tri. Chennai) it is held _

"Value of bought out items line control panels, surge protection devise, transformers etc. purchased from market, taken directly to installation site and utilized for installation of plant not includible in assessable value of Bus Ducts manufactured in assessee's factory '-

(b) In the case of Kerala State Electronic Dev. Corporation Vs. CCE Trivandrum 2008(224)ELT-88(Tri. Bang.) it is held _

" Bought out items such as cable, cards, etc. used for installation of machinery and its functioning, fact that they are bought out items on which excise duty has already been paid is not disputed _ Hence value of such bought out items cannot be included in assessable value of machinery. _"

(c) In the case of Cimmco Birla Ltd., Vs. CCE Jaipur 2003(l56)ELT-1019

> (Tri. Del.) it is held;
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> ., Value of bought out goods, which do not form part of finished goods, not includible in assessable value - Mere requirement of bought out goods for completion of contract of erection of unit will not make them part of finished goods."

5. On going through the above findings, we do not find any infirmity therein. Accordingly, the impugned order is upheld and Revenue's appeal is dismissed.

(Pronounced in Court on 21.03.2018)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

Sinha