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

Appeal No. E/930/2009

(Arising out of Order-in-Appeal No. AH/110/M.II/2009 dt. 13/03/2009 passed by the Commissioner (Appeals) Central Excise, Mumbai Zone-II)

M/s. Mechanalysis (India) Ltd. : **Appellant**

VS

Commissioner of Central Excise, Mumbai : **Respondent**

Appearance

Shri Sachin Chitnis, Advocate for Appellant

Shri M.R. Melvin, Superintendent (A.R) for respondent

CORAM:

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

Date of hearing : 22/01/2018
Date of pronouncement : 21/05/2018

ORDER NO. A/86454/2018

Per : Ramesh Nair

The issue involved in the present case is whether the value of the parts and accessories cleared along with machinery should be included in the assessable value of the machinery.

2. Shri Sachin Chitnis, Ld. Counsel appearing on behalf of the appellant submits that an identical issue of the appellant itself was heard in appeal No. E/462/2008 on 6.11.2017, the order passed in that appeal may be followed for passing the order in the present appeal.

3. The Ld. AR appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. On careful consideration of the submission made by both the sides and on perusal of record, we find that in the appellant's own case this Tribunal on identical issue heard the matter in Appeal No. E/464/2008 heard on 6.11.2017 and passed order No. A/85025/18 dt. 11.1.2018 wherein the following order was passed:

> *"5. We have gone through the rival submissions, we find that in so far as first issue is concerned it is not in dispute that the appellants are including the value of the bought out parts and accessories when cleared along with the main machine in the assessable value. The appellants are however not paying duty when such parts and accessories are cleared independently as replacement. The impugned order does not deal with this issue. It is not in dispute that the parts and accessories are bought out items and if the same are supplied as such no duty liability would arise as there is no manufacturing activity. Consequently the demand on this count is set aside.*
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> *6. In so far as demand of duty on the amount collected as sales tax but not disputed with the government is concerned there is not doubt that the said amount would be includible in the assessable value. The appellant have relied on the following case laws to assert that if the amount collected by them is as excess of the amount actually paid to government then no demand can be raised and the said value cannot be included in the assessable value.*
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> *(i) 1997 (94) ELT 13 (SC)- Baroda Electric Meters Ltd.*
> *(ii) 2006 (195) ELT 279 (T) Indica Chemicals*
> *(iii) 2005 (187) ELT 382 (T) Pepsico India Holdings*

(iv) 2005 (191) ELT 641 (T) –Gujarat Guardian

It is seen that all the case laws relied by the appellant relates to the freight charges collected in excess of the actual. In these circumstances the said profit margin on the transportation service was held to be not includible in the assessable value. In the instant case however the deduction of sales tax is available only on actual basis and thus any amount collected in excess of the actual would form part of the assessable value. In view of above, the demand on the second count is upheld.

7. The appellants have also raised the issue of limitation on the ground that their unit was audited and along with their RT-12 Returns they had also submitted invoices. It is seen that from the invoices it cannot be made out if the amount collected by them is actually paid to the government exchequer. There is no such declaration in the RT-12 return as well in these circumstances invocation of extended period is justified and penalty under Rule 173Q can be imposed. However considering the fact that the demand of duty on the parts and accessories the supplier independent of the main machine is set aside. The quantum of penalty is reduced from Rs.50,000/- (Rupees fifty thousand only) to Rs.10,000/- (Rupees ten thousand only). Appeal is partly allowed on the above terms."

In view of the above decision, it is undisputed that if the parts and accessories cleared along with machinery the value of such parts has to be included in the value of the machine. The contention of the appellant is that they have included the value of parts and accessories when such parts are cleared along with machine in set. However when the parts and accessories were cleared as such in that case on the value of such parts the duty is not sustainable. On observation of the above impugned order, we find that the Ld. Commissioner (Appeals) considered that the parts and accessories are cleared along with the machine. Therefore there is a contradiction in the finding given by the Ld. Commissioner and the submission made by the appellant in the grounds of appeal. In such a case the facts need to be verified that whether the parts and accessories are cleared along with machine if it is so the value should be included and if the parts and accessories cleared independently then no duty is demandable on such clearances on the parts. Considering this observation, the adjudicating authority must pass a fresh order also considering this Tribunal decision in the appellant's own case vide order No. A/85025/18 dt.11.1.2018. The appeal is disposed of by way of remand to the adjudicating authority in the above terms.

(Pronounced in court on 21/05/2018)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

SM.