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

Appeal No. E/1511/2010 & E/958/2011

(Arising out of Order-in-Appeal No. SB(57)57/MV/2010 dated 24.5.2010 passed by the Commissioner of Central Excise (Appeals), Mumbai-V).

M/s Sanwarmal Durgadutt	Appellant

Vs.

Commissioner of Central Excise, Mumbai	Respondent

Appearance:

Shri V.S. Sejpal, Advocate	for Appellant
Shri M.P. Damle, AC (AR)	for Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. P ANJANI KUMAR, MEMBER (TECHNICAL)

Date of Hearing: 15.03.2019

Date of Decision: 15.03.2019

ORDER NO. **A/85566-85567/2019**

Per: Dr. D.M. Misra

Heard both sides.

2. These two appeals are filed against Order-in-Appeal No. SB(57)57/MV/2010 dated 24.5.2010 passed by the Commissioner of Central Excise (Appeals), Mumbai-V.

3. Briefly stated the facts of the case are that the appellants are engaged in the manufacture of Aluminium and Zinc Castings and articles thereof, which they classified under Chapter Sub-heading 7907.90 and 7616.90, whereas the Department proposed to classify the same under CSH 8708.00 as Motor vehicle parts. Periodical show-cause notices were issued demanding differential duty during the pendency of the approval of the classification of these products. Aggrieved by the same, the appellant preferred an appeal before this Tribunal. This Tribunal vide order No. 82-83/2000-B dated 18.1.2000 observed that since the castings manufactured by the appellant requires further process like machining, grinding and drilling the surface, which can be verified only after visiting the factory premises of the appellant, and since this plea was not taken up before the authorities below, hence, remanded the matter back to the adjudicating authority for fresh consideration taking into account the principles laid down by this Tribunal in the case of *M/s Shivaji Works Ltd. Vs. Commissioner of Central Excise, Aurangabad – 1994 (69) ELT 674 (T).* Pursuant to the said order, the adjudicating authority visited the factory premises of the appellant and examined the process undertaken by the manufacturer, so as to arrive at the correct classification of the goods. The said adjudication order was annulled by the learned Commissioner (Appeals) later, on the ground that the order of this Tribunal dated 18.1.2000 was not followed in letter and spirit. Another attempt was made to adjudicate the case without making any visit to the premises of the appellant and studying the process of manufacture. The adjudicating authority

confirmed the demands observing that the goods are classifiable as Motor vehicle parts. Aggrieved by the said order, the appellant filed an appeal before the Commissioner (Appeals), who in turn, upheld the said order. Hence, the present appeal.

4. At the outset, learned Advocate Shri V.S. Sejpal for the appellant submits that the classification lists were provisionally approved. Further, he has submitted that complying with the direction of this Tribunal, they have produced end use certificate from various customers, which are enclosed at pages 165 to 170 of the appeal paper book. He submits that castings manufactured by the appellants are used in various industries including Automobile industries after carrying out further process of machining, grinding, drilling etc. These averments in the application were not accepted by the authorities below on the ground that the same was issued by private persons. He submits that the adjudicating authority on visit to their premises found that there were no machinery available, which can carry out the finishing process like, machining, grinding etc. In spite of that, on assumption and presumption, it was observed that such machines could have been removed by the appellant before arranging the visit of the departmental officer.

5. Learned AR for the Revenue reiterates the findings of the learned Commissioner (Appeals).

6. We find that this Tribunal in the earlier round after analyzing the issue had observed as follows: -

> *"4. We have heard the submissions made by both sides. The appellants have now submitted that their customers undertake further process on their castings such as machining, grinding, drilling the surface etc. They had not taken this plea of any such details before the adjudicating authority. We also observe that the law regarding classification of castings has been settled by the appellate Tribunal in the case of Shivaji Work P. Ltd. (supra), benefit of which is not available either to the adjudicating authority or to the Collector (Appeals). We are, therefore, of the view that in the interest of justice, the matter should go back to the adjudicating authority to re-adjudicate the matter after ascertaining the process undertaken by the appellant and in the light of the decision in the case of Shivaji Works P. Ltd. (supra). We, therefore, remand both the maters to the Assistant Commissioner for re-adjudicating the same. The appellants will be at liberty to adduce the evidence which they deem fit within two months of receipt of the order. The appeals are thus allowed by way of remand."*

7. Pursuant to the said direction, initially the Asstt. Commissioner has visited their factory and did not find any facility for machining, grinding etc. Even though, the adjudicating authority subsequently could not visit the factory but on assumption and presumption confirmed the demand without considering the end-use certificates issued by their customers pursuant to the direction of this Tribunal. We have carefully considered the end-use certificates issued by the respective customers. In the said certificate, it is clearly indicated that the castings, which had been supplied to the customers were subjected further process of machining, grinding and drilling etc.; only thereafter the finished products emerges. Considering the facts that the appellant did not have the facility of machining, grinding, finishing etc. in their factory premises as found by the officers of the department, and also end-use certificate produced by them that such processing are being carried out after being cleared from the premises of the appellant at the premises of the customer, we do not find any merit in the impugned order in classifying the product as motor vehicle parts, which is

classifiable as casting under respective sub-headings as claimed by the Appellant. Consequently, we set aside the impugned order and allow the appeals with consequential relief, if any, as per law.

(Dictated and pronounced in Court)

(P. Anjani Kumar)	**(Dr. D.M. Misra)**
Member (Technical)	**Member (Judicial)**

Sinha