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

APPEAL NO.E/1747/2010

(Arising out of Order-in-Appeal No.PKS/189/BEL/2010 dated 23/07/2010 passed by the Commissioner of Central Excise (Appeals), Mu7mbai-III)

Bombay Transportation Electrical Components (P) Ltd.,	:	**Appellant**
VS		
Commissioner of Central Excise Mumbai-III	:	**Respondent**

Appearance

Shri.H.C. Dharmadhikari, Advocate for Appellant
Shri.Sanjay Hasija, Supdt. (A.R) for respondent

CORAM:

Hon'ble Dr. D.M. Misra, Member (Judicial)
Hon'ble Shri P Anjani Kumar, Member (Technical)

Date of hearing : 12/02/2019
Date of decision : 12/02/2019

ORDER NO. A/85924 / 2019

PER: ANJANI KUMAR

The appellant, M/s.Bombay Transportation Electrical Components Pvt. Ltd., have been alleged by the department that the appellants have not included the value of drawings and designs of such

2. A show-cause notice was issued to the appellant demanding differential duty of Rs.2,02,960/- along with interest and penalty. Learned Assistant Commissioner vide order dated 29/04/2009 has confirmed the duty and interest. However, he dropped the penalty under Section 11AC and Rule 26 of the Central Excise Rules, 2002. An appeal filed by the department, the Commissioner (Appeals) vide order dated 19/07/2010 has confirmed the duty demand along with interest and also imposing equal penalty under 11AC. Hence, the appeal.

3. Learned Counsel for the appellant submitted that the appellants were under bonafide belief that the expenses incurred on drawings by the principal manufacturer are not includable as held by the Tribunal in the case of Bharat Forge Ltd. – 2000 (122) ELT 169. Like all other vendor, the appellants had a reasonable belief and therefore, no malafides are attributable. After the introduction of new valuation Rules in 2000, the Tribunal in the case of Tata Motors has held that cost of drawings and designs provided by the manufacturers are includable in the assessable value of the vendors. However, the same case, the Tribunal held that the demand was hit by limitation. The impugned period in the instant issue pertains to June 2003 to March 2008, which was prior to the decision of the Tribunal in the case of Tata Motors (supra). Therefore, in view of the same, demand should be restricted to a period of one year only. Ld. Counsel also submitted

buyer of the appellant is entitled to credit. He also relied upon the following cases:

a) P .R. Rolling Mills Pvt. Ltd. – 2010 (249) ELT 232

b) Siddeshwar Textile Mills Pvt. Ltd. – 2009 (248) ELT 290 (Tri - Mum)

3.1 Learned Counsel also submitted that in view of the absence of intent to avoid payment of duty, penalty cannot be imposed as held in the following cases:

a) Rajasthan Spinning & Weaving Mills – 2009 (238) ELT 3 (SC)

b) Kisan Mouldings Ltd. – 2010 (260) ELT 167 (SC)

c) Tata Motors – 2009 (237) ELT 147 (Tri -Kolkata)

d) Shree Gobinddeo Glass Works Ltd. – 2008 (223) ELT 476 (Tri - Kolkata)

e) Ubique Metamed Pvt. Ltd. – 2007 (217) ELT 241 (Tri -Kolkata)

4. Learned AR has reiterated the findings of the OIO and relied upon the following cases:

a) Avtec Ltd. – 2017 (7) GSTL 115 (Tri.Del)

b) Palm Tech India Ltd. – 2017 (354) ELT 154 (Tri - Hyd)

c) Simplex Engg. & Foundry Works Pvt. Ltd. – 2016 (343) ELT 458 (Tri - Del)

5. Heard both sides and perused the records of the case.

6. We find that the issue pertains to period prior to the settlement of the issue by the Tribunal in the case of Tata Motors. Therefore, we find that there is force in the argument of the appellant that their belief that the cost of drawings and designs supplied free are not includable in the assessable value. We find that the ratio of the case submitted by the learned AR are different from the facts of the instant case, as all the cases, the judgements are rendered after the issue was settled by the Tribunal in Tata Motors. Therefore, we are inclined to accept the contentions of the appellant that in the absence of intent to evade payment of duty extended period cannot be invoked and consequently penalty under Section 11AC cannot be imposed. In the result, we allow the appeal by restricting the demand to normal period and we set aside the penalty imposed under Section 11AC.

(Pronounced in Court)

(D.M. Misra)
Member (Judicial)

(P Anjani Kumar)
Member (Technical)

PJ