CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
WEST ZONAL BENCH
COURT No. 2

Appeal No. E/1215/2010

(Arising out of Order-in-Appeal No. VSK/18/MV/2010 dated 05.02.2010 passed by Commissioner of Central Excise (Appeals), Mumbai-I)

Commissioner of Central Excise **Appellant**
Mumbai-V
5th floor, Utpad Shulk Bhavan,
Plot No. C-24, Block 'E',
Bandra-Kurla Complex,
Bandra (E), Mumbai 400 051.

Vs.

Mahindra & Mahindra Ltd. **Respondent**
(Farm Equipment Sector)
(R & D), Otis Premises,
Akurli Road, Kandivali (E),
Mumbai 400 101.

Appearance:

Shri Ajay Kumar, Authorised Representative for the Appellant
Ms. Ritika Singh for the Respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. C.J. Mathew, Member (Technical)

FINAL ORDER NO. **A/85949/2019**

Date of Hearing: 18.01.2019
Date of Decision: 18.01.2019

PER: S.K. MOHANTY

Brief facts of the case are that the respondent is engaged in the manufacture of Crank Shaft (parts of engine), falling under CETH 8409 of the First Schedule to Central Excise Tariff Act, 1985. The said manufactured goods were exclusively supplied to their (FES) Tractor Division on inter-unit transfer basis, for captive consumption. The respondent discharged the duty liability on the assessable value in terms of Rule 8 of the Central Excise Valuation Rules, 2000. The case of the department is that the respondent had evaded payment of central excise duty and suppressed the material fact from the department and willfully contravened the provisions of the Central Excise Rules, 2002. It has specifically been observed by the department that the assessable value was not correctly determined as per Rule 8 of the rules, CAS-4 guidelines issued by ICWA and as per Circular No.692/08/2003-CX dated 13.02.2003 issued by the CBEC. The show cause notice issued by the department was adjudicated vide order dated 27.08.2008, wherein central excise duty demand of Rs.29,63,336/- was confirmed along with interest and also equal amount of penalty was imposed on the respondent. On appeal against the said order, the learned Commissioner (Appeals) vide the impugned order dated 05.02.2010 has remanded the matter to the original adjudicating authority with the direction to re-examine the adjudged demand, keeping in view the CAS-4 certificate and the report submitted by the respondent.

2. Revenue has assailed the impugned order, *inter alia*, on the ground that under the amended provisions of Section 35A of the Central Excise Act, 1944 (with effect from 11.05.2001), the learned Commissioner (Appeals) has no power to remand the matter back to the adjudicating authority and the Commissioner (Appeals) continues to exercise the powers of the adjudicating authority in the matter of assessment.

3. Heard both sides and perused the records.

4. We find that the respondent had cleared crank shaft from their R&D unit to the Tractor Division on payment of duty on a provisional basis. Upon finalization of the accounts, the respondent had paid additional duty, over and above the duty already paid at the time of initial clearance of the goods. The said additional duty was paid by the respondent, based on the audited CAS-4 certificate prepared for the relevant financial year. However, the original authority had not taken cognizance of such certificate and confirmed the adjudged demand, proposed in the show cause notice. Since the audited CAS-4 certificate was not examined at the original stage, the learned Commissioner (Appeals) vide the impugned order has remanded the matter for fresh adjudication. The power of remand by the Commissioner (Appeals) has specifically been taken away by amending Section 35A with effect from 11.05.2001. Thus, Revenue has strong ground in this case for filing appeal against the impugned order passed by the learned Commissioner (Appeals), so far as the matter was remanded by him to the original authority.

5. However, considering the fact that the audited CAS-4 certificate along with other relevant documents/records are required to be verified at the original stage for proper appreciation, we are of the view that the matter should be examined by the original authority. So far as the remand power of the Tribunal is concerned, Section 35B of the Act has not provided any restriction for the same.

6. Therefore, after setting aside the impugned order, we remand the matter to the original authority for passing of fresh adjudication order on the issue, whether duty liability can be fastened on the respondent as per the audited CAS-4 certificate. Needless to say that opportunity of personal hearing should be granted to the respondent before deciding the issue afresh.

7. In the result, the appeal is allowed by way of remand.

(Pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

(C.J. Mathew)
Member (Technical)

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