CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Excise Appeal No. 36 of 2010

(Arising out of Order-in-Original No. 21/NR-17/TH-I/2009 dated 15.09.2009 passed by the Commissioner of Central Excise, Thane I)

Commissioner of Central Excise, Thane I **…..Appellant**
4th Floor, Navprabhat Chambers,
Ranade Road,
Dadar (West), Mumbai

Vs.

Spectron Engineers Pvt. Ltd. **…..Respondent**
B-18, Additional Ambernath,
MIDC, Anand Nagar, Thane,
Ambernath

APPEARANCE:

Shri A.B. Kulgod, AC (AR)for the appellant
Shri M.S. Murthy, Advocate for the respondent

CORAM: **HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)**
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER No: A/86106 / 2019

DATE OF HEARING : 03.01.2019
DATE OF DECISION : 14.06.2019

PER: C J MATHEW

Vide order-in-original no. order-in-original no. 21/NR-17/TH-I/2009 dated 15th September 2009, Commissioner of Central Excise, Thane I dropped the proceedings initiated in show cause notice dated 20th January 2009 for recovering of ₹68,87,304/-, as duties of central excise on finished goods valued at ₹4,23,36,072/- that were allegedly cleared between April 2005 and March 2008, after deducting clearance of ₹3,50,00,000/- available as exemption to units operating under the small scale industry scheme. Aggrieved, Revenue seeks setting aside of this order which accepted the claim of respondent that fabrication of structures, such as silos, pressure vessels, bridges etc., out of the principal raw material i.e. 'mild steel plates' occurring on site in accordance with design given by the customers does not amount to manufacture.

2. According to Learned Authorised Representative, the impugned order rests on the erroneous conclusion arrived at by the adjudicating authority, *viz.*, that the material supplied free of cost should be excluded from the value for computation of the threshold for dutiability along with the value of intermediate product and value of such goods as are entered for export. He argues that ownership of the goods at any stage is not relevant for valuation under central excise law and that such adjudicatory legislation is beyond his competence and authority. In pursuing this line of submission, he invites our attention to the decision of Tribunal in *Burn Standard Co Ltd v. Commissioner of Central Excise, Calcutta II [2000 (119) ELT 650 (T)]* wherein it was held that the cost of raw materials supplied free of cost must necessarily be added for determining value of goods and informs that this judgment was also followed in *Chinttpurni Engineering Works v. Commissioner of Central Excise, Lucknow*

[2003 (154) ELT 427 (T)]. In this connection, attention was also drawn to rule 6 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, which provides for addition of cost of raw material that are supplied by the buyer, either without or on partial payment, for use in the production and sale of such goods. If the finding of the adjudicating authority is to be accepted then it would, according to him, render rule 6 redundant and superfluous. Similarly, the conclusion of the adjudicating authority on the exclusion of the value of intermediate goods is equally not in conformity with the provisions of law. The details in the Form H submitted by the respondent herein, in the course of the adjudication proceeding, does not match the quantum of exports claimed by them as deductible from the value of clearances. He informs that the noticee had submitted only three of the 'H' forms, amounting to ₹15,66,497/- and pertaining to 2005-06 only, without any documents evidencing the remaining exports as claimed by them which does not suffice to accept that proposition *in toto.*

3. According to Learned Counsel for the respondent, the original authority has assessed the facts on record and, therefore, there is no scope for reversal of the decision on non-excisability. It is further contended that certain goods are only subjected to 'job work' and such goods do not attain final form at the premises of respondent but elsewhere and by having been worked on by others. Appellant undertakes 'gas cutting,' 'bending/pressing,' 'welding and drilling of

steel plates.' The test to be applied, according to Learned Counsel, is the retention of original character and identity of a commodity that is processed and such a distinct identity should be such as are recognised in the trade. Hence, he claims that goods, that are in semi-finished condition and yet to attain its final and marketable form, are not saleable as such, by the buyer. It is further contended that there is no evidence on record that appellant was in possession of machinery or had those installed in their premises for completion of the manufacturing process.

4. Having heard both sides, we find ourselves confronted with a dispute in which the jurisdictional central excise authorities seek to levy duties under Central Excise Act, 1944 while respondent claims leviability under Finance Act, 1994. That the respondent had been discharging service tax liability on 'job work' and had been paying VAT on the material component is not in doubt. The original authority has placed reliance on the decision of the Tribunal in *Osnar Chemical Pvt Ltd v. Commissioner of Central Excise, Bangalore-II [2009 (240) ELT 115 (Tri-Bang)]* to hold that discharge of tax liability under one law precludes the invoking of another law merely for garnering revenue that has thereby escaped one of the jurisdictions. By discharging the tax liability on the job work charges as well as by discharge of VAT liability on 'brought out' items used for fabrication at site, the scope for considering the activity as manufacture is eclipsed entirely. In this context of mutually exclusive

levies under the scheme of taxation in the Constitution, the activity of the respondent is works contract and hence not leviable to duty under Central Excise Act, 1944.

5. Consequently the appeal of Revenue is without merit and is dismissed.

(Order pronounced in open court on 14.06.2019)

(C J Mathew)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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