CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 86216 of 2016

(Arising out of Order-in-Original No. 27-46/COMMR/M-III/SR/2015-16 dated 23.02.2016 passed by the Principal Commissioner of Central Excise, Mumbai-III)

M/s Emco Ltd. .... **Appellant**

Versus

Principal Commissioner of Central Excise, Mumbai-III .... **Respondent**

Appearance:

Shri Prakash Shah, Advocate for the Appellant

Shri Bidhan Chandra, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/86048 / 2019

Date of Hearing: 14.02.2019

Date of Decision: 14.02.2019

Per: Dr. D.M. Misra

This is an appeal filed against Order-in-Original No. 27-46/COMMR/M-III/SR/2015-16 dated 23.02.2016 passed by the Principal Commissioner of Central Excise, Mumbai-III.

2. Briefly stated the facts of the case are that the appellants are engaged in manufacture of electric transformers, meter etc. falling under Chapter 85 and 90 of Central Excise Tariff Act, 1985. The appellants sell the

products to various Electricity Boards and deliver the goods at the premises of the customers as per the agreed terms and conditions. They discharged excise duty on ex-factory price and separately collected freight and transit insurance charges from the customers, which they have not included in the value of manufactured goods, while discharging duty. Alleging that the freight and insurance charges are required to be included in the assessable value of the finished goods, show-cause notices were issued from time to time commencing from November, 2001 to May, 2015 for recovery of the total duty of Rs.10,60,37,935/- with interest and penalty. Hence, the present appeal.

3. At the outset, learned Advocate for the appellant submits that this Tribunal vide order dated 14.6.2016, on examination of the conditions of sale and supply of the manufactured goods at the customer's premises/site for the period September, 96 to December, 2000 and January, 2001 to October, 2001, dropped the proceedings initiated against them following the judgments of the Hon'ble Supreme Court in the case of *Commissioner of Central Excise & Customs, Nagpur Vs. Ispat Industries Ltd. – 2015 (325) ELT 670 (SC).* He submits that, therefore, demand for the subsequent period is not sustainable.

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

5. Heard both sides and perused the records.

6. We find that this Tribunal in the appellant's own case vide Order No. A/87958-87959/16/EB dated 14.6.2016, after examination of the conditions of sale and following the judgment of the Hon'ble Supreme Court in the case of *Commissioner of Customs & Central Excise, Aurangabad Vs. Roofit Industries Ltd. – 2015 (319) ELT 221 (SC) and Ispat Industries Ltd.'s case (supra)* observed as follows: -

> *"7 However, subsequent to remand by the Hon Supreme Court in the instant case and subsequent to the decision of the Hon Apex Court in the case of ROOFIT INDUSTRIES LTD (Supra), we find that Hon Supreme Court in the case of ISPAT INDUSTRIES LTD. 2015 (324) E.L.T. 670 (S.C.) has distinguished the decision in case of ROOFIT INDUSTRIES LTD (Supra) by observing as follows:*
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> > ***32.*** *It will be seen that this is a decision distinguishing the Escorts JCB's case on facts. It was found that goods were to be delivered only at the place of the buyer and the price of the goods was inclusive of transportation charges. As transit damage on the assessee's account would imply that till the goods reached their destination, ownership in the goods remained with the supplier, namely, the assessee, freight charges would have to be added as a component of excise duty. Further, as per the terms of the payment clause contained in the procurement order, payment was only to be made after receipt of goods at the premises of the buyer. On facts, therefore, it was held that the sale of goods did not take place at the factory gate of the assessee. Also, this Court's attention was not drawn to Section 4 as originally enacted and as amended to demonstrate that* ***the buyer's premises cannot, in law, be "a place of removal" under the said Section.***
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> *Hon Supreme Court in the case of ISPAT INDUSTRIES LTD (Supra) has observed that '****the buyer's premises cannot, in law, be "a place of removal" under the said Section'.*** *This categorical observation leaves no scope for any interpretation. The allegation that the buyers premises are the place of removal cannot, therefore, be sustained in view of these observations. Therefore we allow the appeal No.E/3026/02 of M/s. EMCO Ltd. and dismiss the appeal of Revenue No. E/3359/03."*

7. We do not find any reason not to follow the aforesaid precedent of this Tribunal in absence of any contrary facts and judgments placed by the Revenue. In the result, the impugned order is set aside and the appeal is allowed.

(Operative portion of the order pronounced in court)

(Dr. D.M. Misra)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

Sinha