CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 86311 OF 2013

[Arising out of Order-in-Original No: 511/07/V/2012/COMMR/ANS dated 20th December 2012 passed by the Commissioner of Central Excise, Mumbai – V.]

Warp Engineers Pvt Ltd
Unit No. 3-5, Rajprabha Meenakshi Indl Estate No.3
Nr Mohan Bhagat High School, Naik Pada, Waliv Phata
Vasai (E), Dist: Palghar- 401208 … ***Appellant***

versus

Commissioner of Central Excise
Mumbai - V
C-24 Utpad Shulk Bhavan, Sector E,
Bandra-Kurla Complex , Bandra (E), Mumbai - 400051 ***…Respondent***

WITH

EXCISE APPEAL NO: 86319 OF 2013

[Arising out of Order-in-Original No: 511/07/V/2012/COMMR/ANS dated 20th December 2012 passed by the Commissioner of Central Excise, Mumbai – V.]

Ramakant D Bhagawat
Warp Engineers Pvt Ltd
Unit No. 3-5, Rajprabha Meenakshi Indl Estate No.3
Nr Mohan Bhagat High School, Naik Pada, Waliv Phata
Vasai (E), Dist: Palghar- 401208 … ***Appellant***

versus

Commissioner of Central Excise
Mumbai - V
C-24 Utpad Shulk Bhavan, Sector E,
Bandra-Kurla Complex , Bandra (E), Mumbai - 400051 ***…Respondent***

AND

EXCISE APPEAL NO: 86320 OF 2013

[Arising out of Order-in-Original No: 511/07/V/2012/COMMR/ANS dated 20th December 2012 passed by the Commissioner of Central Excise, Mumbai – V.]

Prabhudas N Golla
Warp Engineers Pvt Ltd
Unit No. 3-5, Rajprabha Meenakshi Indl Estate No.3
Nr Mohan Bhagat High School, Naik Pada, Waliv Phata
Vasai (E), Dist: Palghar- 401208 … ***Appellant***

versus

Commissioner of Central Excise
Mumbai - V
C-24 Utpad Shulk Bhavan, Sector E,
Bandra-Kurla Complex , Bandra (E), Mumbai - 400051 ***…Respondent***

APPEARANCE:

Shri J C Patel, Shri S P Mathew and Shri Stebin Mathew, Advocates for the appellant

Shri P K Acharya, Superintendent (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A / 87063-87065/2023

DATE OF HEARING: 27/06/2023
DATE OF DECISION: 26/10/2023

PER: C J MATHEW

These appeals of M/s Warp Engineers Pvt Ltd and of two Directors of the appellant-company are before us for the second time; on the former occasion, the appeal[1] against order[2] of Commissioner of

[1] [no. E/725 to 727/2010]
[2] [order-in-original no. 24/01/V/2010/COMMR/KS dated 29/01/2010]

Central Excise, Mumbai – V was decided by the Tribunal, *vide* final order[3], while disposing off application for stay[4] directing that

> *'4. After hearing both the sides, we find that, as submitted by the learned counsel, in respect of the major demand of Rs. 1,60,90,582/- the important submissions made by the appellants such as report of the Chartered Engineer, expert opinion, the sale of welding machines manufactured by others, treating the items as accessories which have been held to be components by the Revenue have not been considered or discussed. The conclusion of the learned Commissioner seems to be mainly based on the ground that during the visit of the officers to the factory of the appellants, some welding machines were found in the factory. The learned counsel submits that the welding machines were brought to the factory for testing and affixing brand name. He submits that since the appellants were extending warranty for welding machines, testing the same was necessary and affixing the brand name was also required and, therefore, a portion of the welding machines were brought to the factory. Since all these factors have not at all considered, we consider it appropriate that at this stage itself, the matter should be remanded to the original adjudicating authority so that principles of natural justice are observed and considering all the submissions made by the appellants during the original adjudication proceedings and also submissions made before us are also considered and a well reasoned order covering all the submissions is passed. Further, we also take note of the submissions with regard to cross-examination and that now the appellants have the reasons for rejecting the request for cross-examination, they should be able to make fresh*

[3] [final order no. A/340-342/11/EB/C-II dated 25th April 2011]
[4] [no. E/Stay-849 to 851/2010]

> *submissions. Based on the submissions which will be made before the Commissioner, the request for cross-examination can be considered afresh.*
>
> *5. At this juncture, it is necessary for us to take note that in respect of the demand to the extent of Rs. 9,14,123/- relating to the clearances under the brand name "WE", the appellants have not been able to show conclusive proof that there was an assignment. Therefore, we find that in respect of these clearances, the appellants have not been able to make out any prima facie case in their favour. The learned counsel, in view of this, submitted that though he feels that he would be able to convince by offering appropriate explanation, he would willing to make an offer to deposit an amount of Rs. 10 lakhs which would cover the amount relating to the clearances under the brand name "WE" so that the request for stay may be allowed and the appeals themselves be remanded at this stage so that no further time is lost in litigation.'*

2. The remand was, thus, intended to permit examining certain aspects that had not been considered despite submissions of noticees at the stage of adjudication and on other aspects that had not been placed before the original authority.

3. We have heard Learned Counsel for the appellants at length as also Learned Authorised Representative.

4. The impugned order under challenge, for recovery of duties of central excise amounting to ₹ 1,60,90,582/-, held that the appellant had carried out activity of 'manufacture' in accordance with note 6 in

section XVI of schedule to Central Excise Tariff Act, 1985 on 'welding machines' imported by them. A further demand of ₹ 9,14,123/- pertained to ineligibility for exemptions available to 'small scale industrial (SSI) units' in terms of notification no. 8/2003-CE dated 1st March 2003. Taking note of the remand order, we find that the adjudicating authority has observed that

> *'62. The voluminous order of nearly 100 pages of the original adjudicating authority did not meet approval of the CESTAT, the first appellate authority, as noticed, since, the original adjudicating authority did not consider the allegedly expert evidence, such as, the report of the Chartered Engineer and other experts and the catalogues of welding machines, which treated the items to be accessories, while averred by the notice to be components. They related to the major demand of the unpaid duties of excise aggregating ₹ 1,60,90,582/-'*

and has gone on to issue a no less elaborate order comprising 89 pages. Beyond that too, we find that the impugned order, insofar as it relates to the first issue contributing to substantial portion of the demand, contains frequent reference to the order that had been set aside by the Tribunal with a direction to be remanded afresh. It does not bear elaboration that it is beyond the scope of remand proceedings before an adjudicating authority to refer to an order that had ceased to exist by order of appellate authority and thus strictly barred from either relying on findings therein or drawing upon assertions therein in *denovo* proceedings. Further, the order now impugned before us appears to be replete with defence of findings in the order that had been set aside by the Tribunal. This is not the intent of a remand by the Tribunal and exemplifies a casual disregard for the nicety of adjudication proceedings and lack of diligence in complying with the orders of appellate authority. Such an order is not amenable to appellate resolutions for those reasons.

5. Accordingly, we set aside the impugned order and remand the matter back to the original authority to undertake fresh proceedings and issue an order that ultimately reflects the application of known law to establish facts by the adjudicating authority in office.

6. Appeals are allowed by way of remanded.

(Order pronounced in the open court on 26/10/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*