CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 89411 OF 2013

[Arising out of Order-in-Appeal No: SK/243/M-II/2013-14 dated 30th August 2013 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.]

Quantum Equipments Company Ltd
301 Rajashree Complex, LBS Marg,
Ghatkopar (W), Mumbai - 400086 … ***Appellant***

versus

Commissioner of Central Excise
Mumbai – II
9th Floor, Piramal Chamber, Jijiboy Lane
Lalbaug, Mumbai - 400012 ***…Respondent***

APPEARANCE:

Shri Sanjay Apte, Advocate 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: 85024/2024

DATE OF HEARING: 14/09/2023
DATE OF DECISION: 10/01/2024

PER: C J MATHEW

The appellant, M/s Quantum Equipments Co Ltd, dealing in 'metal spectrometer', 'laser marker/engraver' also provides annual maintenance as authorized distributors of several overseas entities including M/s Bruker Nano GmbH which are permitted to the marketed under the brand name 'Karatmeter' of the appellant and are sold after testing and calibration at the site of customers. On request of some of these, such original equipment is installed along with 'mild steel (MS) cabinets' which was held by the original authority as amounting to 'manufacture' and, thereby, liable to duty of ₹ 12,07,248 under section 11A of Central Excise Act, 1944, along with applicable interest under section 11AB of Central Excise Act 1944, besides being imposed with penalty of like amount under section 11AC of Central Excise Act, 1944. The upholding of the detriment in order[1] of Commissioner of Central Excise (Appeals)-II, Mumbai is now impugned here.

2. According to Learned Counsel for the appellant, the first appellate authority had proceeded on the assumption that the dispute was restricted to penalty alone whereas a finding on 'manufacture' was necessary - both for determination of correctness of recovery of duties of central excise and for resolving the contention that the issue itself was not sufficiently free of controversy for invoking the extended period of limitation, as well as imposition of mandatory penalty, without ascertainment of circumstances.

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[1] [order-in-appeal no. SK/243/M-II/2013-14 dated 30th August 2013]

3. We have heard Learned Authorized Representative.

4. On perusal of the impugned order, we find that the first appellate authority has, indeed, proceeded on the assumption that only penalty was in dispute. Furthermore, the impugned order has disposed off the decisions cited by appellant with nothing beyond superficial examination. The amenability of the finding of the original authority that placement of the original equipment within the cabinets amounted to manufacture was not subjected to scrutiny by the first appellate authority thus constraining decision on merit by us.

5. In view of these deficiencies in the impugned order, it is imperative that the claim of the appellant would need to be decided afresh. To enable that, we set aside the impugned order and remand the matter back to the first appellate authority for a fresh decision on merit as well as the plea of limitation raised by the appellant. Appeal is, accordingly, disposed off.

(Order pronounced in the open court on 10/01/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*