CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 85010 of 2016

(Arising out of Order-in-Original No. NSK/EXCUS/002/COM/012/2015-16 dated 07.10.2015 passed by the Commissioner of Central Excise &Customs, Nashik-II)

Popular Switchgear Pvt. Ltd. **.... Appellant**
D-19, MIDC, Ambad, Nashik – 422 010

Versus

Commissioner ofCentral Excise, Nashik-II **.... Respondent**
Kendriya Rajaswa Bhawan,
Old Agra Road, Gadkari Chowk,
Nashik - 422 002

Appearance:

Shri Rajesh Ostwal, Advocate for the Appellant

Shri Dinesh Nanal, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87447/2024

Date of Hearing: 04.12.2024

Date of Decision: 04.12.2024

PER: S.K. MOHANTY

Heard both sides and examined the case records.

2. Briefly stated, the facts of the case are that the appellants are engaged in the manufacture of Electrical Panels and fabricated parts of Panel, falling under Chapter 85 of the Central Excise Tariff Act, 1985. During the disputed period, M/s ABB Ltd. had issued the purchase order to the appellants for manufacturing of Electrical Control Panels and Ducts on their behalf. For such manufacturing activity, M/s ABB Ltd. had supplied the components/parts 'free of cost'. The appellants had also used their own components for manufacture of the said final product. Based on the cost of components purchased by the appellants and the labour element for completing the manufacturing activity, the appellants had discharged the central excise duty liability on clearance of the final product to M/s ABB Ltd. Payment of central excise duty on the cost of component and element of

labour alone was disputed by the Department. The Department had alleged that on the components supplied by M/s ABB Ltd., on free of cost basis, should be considered as an additional consideration and such cost should be included in the assessable value for discharge of the central excise duty liability. On the basis of such understanding, the Department had initiated the show-cause proceedings against the appellants, which were culminated into the adjudication order dated 07.10.2015 (impugned herein), wherein learned Commissioner of Central Excise and Customs, Nashik has confirmed the central excise duty demand of Rs.50,68,213/- alongwith interest and also imposed equal amount of penalty on the appellants. Feeling aggrieved with the impugned order dated 07.10.2015, the appellants have preferred this appeal before the Tribunal.

3. The issue involved in the appeal for consideration by the Tribunal is, whether the components supplied free of cost by the buyer M/s ABB Ltd. alongwith the labour component should be considered as an additional consideration for the purpose of payment of central excise duty thereon. We find that the issue arising out of the present dispute is no more *res integra,* in view of the judgment of Hon'ble Supreme Court in the case of International Auto Products (P) Ltd. Vs. Commissioner of Central Excise, Bihar, reported in 2005 (183) E.L.T. 239 (S.C.). The relevant paragraphs in the said judgment are extracted herein below: -

> *"5. Before us learned Counsel appearing on behalf of the appellant has submitted that the entire transaction between the TELCO and the appellant was covered by Rule 57F(2)(b) of the Central Excise Rules, 1944. Under these Rules the assessee is the manufacturer of the final product, in this case, excavators. The manufacturer of the final product is permitted to remove inputs to a place outside the factory for the purpose of manufacture of intermediate products so that they are returned to the factory for further use in the manufacture of final products. In such a case the credit is taken by the manufacturer of the final products on the inputs purchased by it which are made available to the intermediate product produces. Modvat credit is taken by the manufacturer of the final product on the inputs supplied by it to the manufacturer of the intermediate products which credit is reversed ultimately when the final product is removed from such manufacturers' factory. As far as the appellant, (the intermediate purchaser) is concerned, it is not liable to pay duty on the inputs supplied by TELCO since it had not taken the credit for the Modvat in respect of inputs. It is submitted that it cannot be called upon to pay the duty in respect of those inputs nor can the value of the inputs be added to the excisable value of the assemblies.*
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> *6. We are of the view that the submission of the appellant is correct. The Tribunal appears to have been confused between the manufacture of the final product, namely, excavators and the manufacture of the intermediate product, namely, the floor plate assemblies. The scheme of Modvat permits the person who clears the ultimate final product to take the benefit of the Modvat scheme at the time of clearance of such final product. The manufacturer of the final product, in this case TELCO, would therefore, be entitled not only to*

adjust the credit on the inputs supplied by it to the intermediate purchaser such as the appellant but also to the credit for the duty paid by the intermediate purchaser on its products. The reliance on the decision in Burn Standard Company Ltd. (supra) by the Tribunal was misplaced. That case has no doubt held that the value of the free inputs were to be included in the final product. In that case, the final product was wagons and the question was whether the items which were supplied free by the Railway Board to the assessee could be included in the value of the wagons. This Court came to the conclusion that it could. The first distinguishable feature is that this Court in that case was neither concerned with the Modvat scheme, nor with the provisions of Rule 57F(2)(b). Furthermore, the Court was not considering a situation where the question was of the liability of an intermediate product being subjected to excise duty. What was in consideration was the final product, namely, wagons.

7. In this appeal as we have already noted, the final product was the excavator. According to the Modvat scheme, it is the Modvat of such final product which would have to include the cost of the inputs and in respect of which Modvat credit could be taken at the time of clearance of the final product. The Tribunal having misconstrued the provisions of Rule 57F(2)(b), its decision cannot stand. The decision of the Tribunal is accordingly set aside and the appeal is allowed."

4. We find that the learned Commissioner (Appeals) vide order dated 07.12.2015, in the case of the appellants' other unit located at Nashik, has set aside the adjudication order, wherein the central excise duty liability was confirmed on the identical set of facts. The said order dated 07.12.2015 passed by the learned Commissioner (Appeals) has been accepted by the Department, inasmuch as no appeal was preferred there against before the higher appellate authority. Thus, the Department cannot change their stand subsequently to fasten the duty liability on the appellants, holding that the material supplied free of cost by the buyers of the goods should be added to the assessable value for the purpose of computation of central excise duty liability thereon.

5. In view of the foregoing discussions, we do not find any merits in the impugned order, insofar as it has confirmed the adjudged demands on the appellants. Therefore, the impugned order is set aside and appeal is allowed in favour of the appellants.

(Dictated and pronounced in open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha