CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 87943 OF 2017

[Arising out of Order-in-Appeal No: MKK/37/RGD APP/2017 dated 12th September 2017 passed by the Commissioner of Central Excise & Service Tax (Appeals), Raigad.]

Crompton Greaves Ltd
(Transformer Division - T1)
Kanjur Marg (E), Mumbai - 400042 … ***Appellant***

versus

Commissioner of CGST & Central Excise
Navi Mumbai
16th Floor, Satra Plaza, Palm Beach Road
Sector 19D, Vashi, Navi Mumbai …***Respondent***

APPEARANCE:

Shri Viraj Reshamwala, Advocate for the appellant

Shri AK Shrivastava, Assistant Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: 86756/2025

DATE OF HEARING: 12/08/2025
DATE OF DECISION: 03/11/2025

PER: C J MATHEW

In this appeal of M/s Crompton Greaves Ltd, against order[1] of

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[1] [order-in-appeal no. MKK/37/RGD APP/2017 dated 12th September 2017]

Commissioner of Central Tax, Central Excise & Service Tax (Appeals), Raigad, challenge is to the correctness of including ‘type test’ charges in assessable value of ‘transformers’ cleared by them. On the finding that section 4 of Central Excise Act, 1944 requires such charges to be included among the elements therein, demand of ₹ 2,20,875, on clearance effected between April 2015 and October 2015, was confirmed as recoverable by the original authority under section 11A Central Excise Act, 1944, along with applicable interest under section 11AA of Central Excise Act, 1944, while imposing penalty of ₹ 22,088 under rule 25 of Central Excise Rules, 2004.

2. Learned Counsel for the appellant submitted that some customers of ‘transformers’ cleared by them required such test to be carried out with cost thereof chargeable separately in accordance with corresponding contract. It was submitted that the original authority held these charges to be part of the contracted price on the ground that tests were undertaken before clearance from the factory of manufacture as condition of clearance with assessable value to be enhanced accordingly. It was his contention that such tests are not mandatory for the product and were being undertaken as facilitation on behalf of some customers which, in effect, was a ‘service’ and, consequently, not liable to duties of central excise. He further submitted that the Tribunal, in *Crompton Greaves Ltd v. Commissioner of Central Excise, Mumbai III,*

in final order[2] disposing off appeal[3] against order[4] of Commissioner of Central Excise (Appeals), Mumbai Zone II had held that undertaking of such tests before clearance does not, of itself, validate inclusion thereof in the assessable value.

3. We have heard Learned Authorized Representative who reiterated the impugned order.

4. We find that the Tribunal had indeed, in the case of the appellant itself, considered the validity of inclusion of the charges so recovered for an earlier period and, relying upon the decision of the Tribunal in *Ericsson India Pvt Ltd v. Commissioner of Central Excise, Pondicherry [2007 (212) ELT 198 (Tri-Chennai)]* and the ratio of the decision of Hon'ble High Court of Karnataka in *Essar Telecom v. Union of India [2012 (275) ELT 167 (Kar)]*, held that

> *'8. In re Ericsson India, it has been held that*
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> *'9. We have carefully gone through the records and considered the submissions made by both sides. In the instant case, the appellants had imported various equipment comprising the Transmission Apparatus for Radio Telephony network such as MSC, BSC and BTS and installed the same at various locations spread over several districts. The adjudicating authority has found that the Mobile Switching Centre, the Base Station Controller and the Base Transceiver Station imported by Aircel installed in several districts in the State by ECPL are excisable goods. It was admitted by the appellants that components of the system were movable goods, but could not be moved as their alignment was software specific in relation to their relative locations in the network. If the network was considered to be a complete equipment the same could not be considered a movable item*

[2] [no. 86090-86092/2024 dated 1st October 2024]
[3] [E/86716/2015]
[4] [order-in-appeal no. CD/358/M-III/2014-15 dated 25th May 2015]

> *as the same could be moved only by dismantling the network. In such cases, the item could not be considered to be movable as decided by the Apex Court in the case of Triveni Engineering & Industries Ltd. (supra). We are not in a position to accept this claim as it is an undisputed position that the components had been tested after assembly in a network/system before they had been dismantled and exported to India. We find that what the appellants had done was to install and commission the Transmission Apparatus for Radio Telephony with the components imported. They had paid Service tax for the said activity. Therefore, tax cannot be charged under the Central Excise Act on the same activity. As per the submissions of the appellants, the article decided to be excisable comprises MSCs, BSCs and BTSs. No MSC or BSC is situated in the jurisdiction of the adjudicating authority. This claim is not contested by the Department. Hence the adjudicating authority was not competent to decide installation/assembly of several equipments as constituting manufacture when critical components of that system were situated outside his jurisdiction. In the circumstances, we find that the impugned order is devoid of merits. Accordingly we set aside the impugned order and allow the appeals.'*

> *9. Learned Authorised Representative has relied upon the decision of Commissioner of Central Excise v. Cera Boards and Doors [2020 (373) ELT 794 (SC)]. The dispute therein was in the context of clearance prior to the revision in section 4 of Central Excise Act, 1944 with effect from 1st July 2000; we find that there is no justification for collection of duties of central excise on the consideration realised for an activity which has been subjected to levy under the Finance Act, 1994.'*

5. In the light of above, the demand and detriments in the impugned order are set aside to allow the appeal.

(Order pronounced in the open court on 03/11/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*