
(2024) 03 CESTAT CK 0046

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No.57910 Of 2013

M/s ASM Castings Private Limited

APPELLANT

Vs

Commissioner Of Central Excise, Delhi-IV

RESPONDENT

Date of Decision : 28-03-2024

Acts Referred:

Central Excise Valuation (Determination Of Price Of Excisable Goods), Rules 2000 — Rule 3, 8, 10A

Central Excise, Act 1944 — Section 4(1)(A), 4(1)(b), 11AC

Citation : (2024) 03 CESTAT CK 0046

Hon'ble Judges : S. S. Garg, Member (J); P. Anjani Kumar, Member (T)

Bench : Division Bench

Advocate : N.K. Sharma, Pawan Kumar

Final Decision : Allowed

Judgement

P. Anjani Kumar, Member (T)

1. M/s. ASM castings, the appellant, is engaged in the manufacture of brake shoes, falling under CETH 8714, for Motor Vehicles; the majority of the production is supplied to M/s Sunbeam Auto Limited (SAL); the appellant procures aluminum ingots from the manufacturers, like M/s Sharma Alloys Private Limited, Faridabad; Century Metal Recycling (P) Ltd, Palwal, as identified by their customer, under the cover of invoices directly from them and avail CENVAT credit of the same; as per the arrangement between the appellant and M/s SAL, M/s SAL pays to the manufacturers of Ingots, against the supplies made to the appellant. On the basis of an audit conducted on the records of the appellant, it appeared to the department that the appellants are job workers of M/s SAL; as per Rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods), Rules 2000 or CEVR, 2000 and therefore, Central Excise duty on the brake shoes supplied by them to M/s SAL needs to be discharged on the basis of 110% of the cost of production, under Rule 10(iii) of CEVR, 2000, read with Rule 8 ibid. A Show Cause Notice dated 19-12-2011, invoking

extended period, covering the period 01.01.2007 to 31.08.2011, was issued to the appellant demanding duty of Rs 71,12,413 along with interest and equal penalty under Section 11AC of Central Excise, Act 1944; Commissioner vide order dated 27 February 2013 confirmed the demand raised along with interest and imposed equal penalty. Hence, this appeal.

2. Shri N.K. Sharma, learned Counsel for the appellants submits that the relation between the appellant and M/s SAL was on Principal to Principal Basis; they were not Job workers of M/s SAL; the transactions were at arm's length; Purchase orders issued by M/s SAL clearly indicate that payment made by M/s SAL were for the price of brake shoes and not merely the Job charges; the appellant recovered the value of the brake shoes supplied by them to M/s SAL and not merely Job-Charges; though the payment for raw material was made by M/s SAL, the raw material was supplied directly to the appellant under cover of invoices; the appellant availed CENVAT Credit of duty paid on the same; the ownership of raw material was always with the appellant; the Commissioner erred seriously in assuming that the appellant was a Job-worker of M/s SAL.

3. Learned Counsel for the appellants submits further that as the price at which they cleared brake shoes to M/s SAL was as per section 4(1) (a) of Central Excise, Act 1944 and as it was not established that the appellant and SAL are related persons, taking recourse to CEVR, 2000 was not warranted. Commissioner's reliance on Audi Auto Mobiles 2010(249) ELT 124(T); Eicher Motors Ltd 2008(228) ELT 43 (Tri -LB) and Steel Complex Ltd 2005(180) ELT 137 (SC) in the impugned order is misplaced as the facts of the cases were not comparable. He submits that four show cause notices, issued by the department on the very same issue, for the subsequent periods i.e. September, 2011 to December 2014, to the appellants were dropped by Commissioner (appeals), vide order dated 29.06.2016; they have changed the practice of routing the payment for raw material through M/s SAL w.e.f. 01.04.2014.

4. Learned Counsel for the appellants submits further that the appellant had nothing to gain by claiming not to be a job worker as the exemption under Notification 214/86 was anyway available to them; moreover, duty even if paid on 110%, would have been available as credit to M/s SAL and therefore, the issue is revenue neutral. He submits that in the instant case, there was no justification for invoking extended period as there was no suppression etc. with intent to evade payment of duty; as there is no merit in the case, the question of penalty also does not arise.

5. Shri Pawan Kumar, learned Authorized Representative for the Revenue reiterates the findings of the impugned order.

6. Heard both sides, and perused the records of the case. Brief issue which requires our consideration in this case is as to whether the appellants are job-workers for M/s SAL and whether the valuation of the Brake Shoes manufactured by the appellant needs to be done taking recourse to CEVR,2000.

7. We find that as per the work orders issued by the M/s SAL, to the appellants, speak of supply of Brake Shoes and they do not mention the same to be on job-work basis. It is the case of Revenue that as M/s SAL are making payments for the aluminium ingots procured by the appellants from the suppliers. It is a moot point to see whether this act in itself renders M/s SAL as a manufacturer and the appellant a Job-worker. We find that the appellants submitted the correspondence between them and M/s SAL, which indicates that though M/s SAL are making payments to the suppliers of ingots, the same is but on behalf of, the appellants, by debiting to the account of the appellants. It is seen that this is only a financial arrangement and it in itself does not render the appellants to be the job-workers of M/s SAL.

8. We further find that, there is no indication either in the orders placed by M/s SAL on the appellants or in the invoices issued by the appellants to M/s SAL, that the whole arrangement is of any job-work. We find force in the argument of appellants that in case they were performing only the job-work for M/s SAL, there was no need to recover full value of Brake Shoes in place of mere job charges. We also find that the argument of the appellant that if they were job-workers for M/s SAL, M/s SAL would have availed the benefit of notification no. 214/86. We find that there is no reason for M/s SAL to pay for the full value of Brake Shoes rather than job charges, if the manufacture by the appellant was only on job-work basis.

9. Learned Counsel for the appellants submits that in their own case, learned Commissioner (Appeals) has dropped the issue, raised vide four show cause notices issued, for the subsequent period, on the very same issue. We find that Revenue cannot accept a preposition for a later period and agitate the same for an earlier period, particularly when there is no change in the facts and circumstances. We find that Ld. Commissioner (appeals), vide order dated 29/06/2016, comes to a categorical conclusion that the value declared by the appellants is correct as per Section 4(1)(A) of central excise Act, 1994. Ld. Commissioner finds as follows:

(iv) I find that the Adjudicating Authority has not disputed that the (1) the goods are sold by the appellant to M/s Sunbeam, for delivery at the time and place of the removal (2) the appellant and the buyer of the goods (M/s Sunbeam) are not related (3) and the price charged by the appellant to M/s Sunbeam is the sole consideration for the sale. Thus, the appellant has satisfied at the three conditions supra for the valuation of their goods under Section than set the Central Excise Act. 1944. As per Rule 3 of the Central Excise Valuation (Determination of price of excisable goods) Rules, 2000 (here-in-after referred to as "Valuation Rules"), the valuation under Rule 10A is done under the provisions of Section 4 (1)(b) of the Central Excise Act, 1944. The aforesaid Section 4(1)(b) comes into the picture only and only when the valuation under Section 4(1)(a) is not applicable. I reiterate that the Adjudicating Authority has not bothered to write even a single word to show as to why the above-mentioned Section 4 (1)

(a) is not applicable in this case. The Hon'ble Apex Court of India in *Saci Allied Vs CC1*: [2005 (183) ELT 225 (SC)] has held that "Section 4(1)(b) of Central Excise Act, 1944 applicable only when Section 4(1)(a) *ibid* is not applicable". From the above analysis, it can easily be concluded that the valuation of impugned goods is to be done under Section 4(1)(a) *ibid* and Rule 10A of Valuation Rules is not applicable in this case.

(v) I also find that the Adjudicating Authority has not put forth any evidence, whether in the form of a agreement or in some other form, to prove that the appellant has been manufacturing his goods on behalf of M/s Sunbeam from. the inputs supplied by M/s Sunbeam. The invoices of the appellant raised to M/s Sunbeam as well as various purchase orders executed between the appellant and M/s Sunbeam are sufficient proof to substantiate that impugned transactions are on sale basis', 'on principal-to-principal basis and also at arm's length. The observations/conclusions of Adjudicating Authority are based on his own assumptions and presumptions and lack necessary evidences to support his conclusions. The impugned inputs Aluminium Alloy Ingots have been purchased by the appellant on his own account and the price thereof have also been paid by the appellant. Moreover, it is not disputed that Aluminium Alloy Ingots as well as other inputs have also been purchased from the vendors other than the vendor specified by M/s Sunbeam. It is also evident that the final product sold by the appellant to M/s Sunbeam i.e. Rear Brake Shoe cannot be made of Aluminium Alloy Ingots alone and many other inputs have also been used by the appellant from his own account. I also find that one of the bases taken by the Adjudicating Authority to confirm the demand i.e. to route the payment to the supplier of Aluminium Ingots through M/s Sunbeam ceased to exist from 01.04.2014 as the appellant has started to make the payment directly to the impugned supplier from this date. As the basis of this demand is non-existent from 01.04.2014, the demand after the period 01.04.2014 is liable to be set aside on this ground alone. As regards. the period prior to 01.04.2014, the demand thereof is also not sustainable in view of above analysis of this case.

10. In view of the above, we are of the considered opinion that Revenue has not made out any case for rejection of declared value and fixing it at 110% of the cost of production as it is not established the appellants are job-workers of M/s SAL. Therefore, the impugned order cannot be legally sustained. We set aside the same and allow the appeal.