(2024) 05 CESTAT CK 0042

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No.75071, 75072 Of 2014

M/S. Mageba Bridge Products Private Limited (Unit-III) And Others — APPELLANT

Vs

Commissioner Of Central Excise, Kolkata-II — RESPONDENT

Date of Decision : 22-05-2024

Acts Referred:

Citation : (2024) 05 CESTAT CK 0042

Hon'ble Judges : R. Muralidhar, Member(J);K. Anpazhakan, Member(T)

Bench : Division Bench

Advocate : Aditya Dutta, S.S.Chattopadhyay

Final Decision : Allowed

Judgement

R. Muralidhar, Member (J)

1. The Appellant is engaged in the manufacturing of excisable goods viz Bridge Bearing/Section falling under Central Excise Tariff sub-heading No.7308 90 90. They have sent their goods to M/s. Hindustan Construction Co. Ltd. (hereinafter referred to as “HCC”) for usage in Bandra-Worli Sea Link Project Approach Bridges. They have been awarded a contract wherein the Appellant is required to design THE specifications of the bearings required, supply the same and also install these bearings in the project. The Appellants were clearing the goods on payment of Excise Duty. They were raising two Bills, the first one comprising of 70% of the contract value. On such clearances, the Appellant was making the Excise Duty payment. The balance 30% amount was collected subsequent to installation of these bearings in the project. On the ground that the value of the second Bill for 30% also is required to be added towards assessable value and the same was not done, a Show Cause Notice dated 25.03.2013 was issued proposing to recover the Excise Duty. The Show Cause Notice was also issued to their Director seeking to know as to why penalty should not be imposed on him. The basis for issuance of Show Cause Notice emanated from the audit taken up for the period under consideration in March/June 2012. After due process, the

Adjudicating authority confirmed the demand against the appellant company with interest and penalty. He also imposed penalty of Rs.10.00 Lakhs on the Director. Being aggrieved, the Appellants are before the Tribunal.

2. The Ld.Counsel for the Appellants submits that the Appellants were awarded contract by HCC vide letter Ref. No.HCC/MIM/VS/556/138 dated 28.01.2002, wherein it is clearly mentioned that the Appellant is liable to take up the work right from designing, manufacturing, supplying to ultimately installing the same in the project. They have undertaken the costing involved and they have come to a conclusion that about 70% would be the material cost and balance would be on account of installation and other charges. Accordingly, they were raising one Bill for the material cost @ 70% of the contract value and they were paying Excise Duty and clearing to HCC. In respect of the installation undertaken, subsequently they were raising the Bill under supplementary invoice for the balance 30%. Since there was no supply of material involved in the supplementary invoice, the Appellant was not required to pay any further Excise Duty. In order to link the two activities together, they were raising the supplementary invoice wherein also it was shown that materials were supplied, but in fact it was only towards the service portion of the bearings at the work site. Therefore, he submits that no Excise Duty is required to be paid as demanded and confirmed by the Revenue.

3. He takes further pleading that the bearings installed at the work site have become part of the immovable property. Therefore, even on this count, the additional charges received by the Appellant from HCC cannot be held as part of the assessable value for supply of material.

4. He submits that being Registered Manufacturer, they were filing their ER-1 Returns showing the value of clearances and the Excise Duty paid for them. The audit was undertaken in March 2012 and the Appellant had filed their detailed reply in June 2012. Hence, the Department was aware of the activities and accordingly he submits that the Revenue is in error in invoking the extended period provisions to confirm the demand.

5. As an alternate pleading he submits that it is on record that they have always been maintaining that the balance 30% is for the service portion. He takes us through Page 142 of the Appeal Paper Book wherein Bill-wise statement of HCC, clearances have been taken up for quantifying the demand. He points out that the Department also while quantifying the amount of Rs.24,23,278/- has mentioned that the amount is on account of “duty payable on the service value”. This itself shows that the issue is that of service and not that of total value of the manufactured product. Therefore, without prejudice to their submissions that they are not required to pay the excise duty, as an alternate pleading, since the issue is purely that of service, the Department is in error in adding the same to the value of the manufactured goods. In fact if they wished to take up any proceedings, the Show Cause Notice should have been issued for recovery of Service Tax for the 30% service portion, which was not done in this case. Therefore, even on this count, he submits that the confirmed demand is liable to

be set aside.

6. The Ld.AR for the Department submits that the contract details very clearly shows that they are inclusive of Excise Duty, Education Cess etc.. Therefore, the entire value received by them is inclusive of Excise Duty and is purely on account of supply of material only. If any other services like designing and installation has been taken up, they form a small percentage of the total activity. The main and foremost activity is that of manufacture and supply of the goods. The Appellants have divided their total Bill into 70% and 30% and paid the duty only on 70% and thereby avoided payment of Excise Duty on the balance 30%. He further submits that even in the supplementary invoice raised by the Appellant, they have not mentioned that it is on account of service provided. So far as the value adopted by the Appellant is concerned, they have not come out with any detail that they have followed CAS-4 cost construction method to arrive at the value of manufactured goods cleared to HCC. Thus, it clearly points out that the Appellant has deliberately divided total contract into two parts and paid the Excise Duty only on the 70% of the contract value. Therefore, he justifies the order passed by the Adjudicating authority.

7. Heard both sides and perused the appeal papers and documentary evidence placed before us.

8. Admittedly, HCC has given contract on 28.02.2002, wherein service Agreement is signed by both the parties. In the service agreement, it has been mentioned that the Appellants have "extensive experience and knowledge as contractors in the subject field and have offered their expertise and services to achieve the intended objective of HCC". It is seen from Clause 99 that all drawings and documents provided by the Appellant would become the property of the main client MSRDC. From the Annexure-4 of this Agreement it is seen that the entire contract is towards "works contract" which would be paid by HCC. Since the "work contract" is involved, it clearly shows that there would be supply of material as well as supply of services. In the present case, without any dispute, the Appellant has divided the contract into two parts and paid any Excise Duty on 70% of the value treating the same as the value of goods supplied. For the balance 30% value of the contract, they have not paid any Excise Duty. We are of the view that for the second portion of this contract value amounting to 30% realization by the Appellant would in fact should be termed as service and the Department should have demanded Service Tax on the same. Considering the fact that the main contractor HCC was awarded the contract under "Works Contract" and both materials and services are involved even in respect of the goods to be cleared by the Appellant, it is clear that designing, installation etc. form part of the services rendered by the Appellant. Therefore, we hold that the Revenue is in error in treating this as a valuation case by enhancing the value of manufactured goods to arrive at the quantified/confirmed demand.

9. So far as the points raised by the AR about non-following of CAS-4 valuation in this case by the Appellant, since this is not a case where the Appellant is

supplying to their own unit and the goods are not cleared on stock transfer basis, they are not required to follow CAS-4 value. Even otherwise, irrespective of the value declared for the manufactured goods cleared, we are holding that in the normal course on the balance 30% portion the appellant would have been liable to pay the Service Tax. However, the Department has failed to issue the Show Cause Notice demanding the Service Tax.

10. In view of the foregoing, we hold that the confirmed demands are not sustainable on merits. Accordingly, we set aside the confirmed demand and penalty on the Appellant company.

11. Coming to the issue of time bar, the Show Cause Notice has been issued within one year from the date of Audit getting the reply from the appellant. But it is noted that the appellants are registered manufacturer. As such they have been filing their Monthly Returns showing the value adopted by them. Even under the self assessment regime, scrutiny of the ER-1 Returns are still to be taken up by the Range officials. There is nothing to indicate that the self-assessed ER-1 were taken up for scrutiny and any query was raised towards the assessable value adopted by the appellant for their clearances. Therefore, we set aside the confirmed demand for the extended period.

12. Since we are holding that the confirmed demand is not sustainable against the Appellant company, the question of imposing penalty on the Director would not arise. Accordingly, the penalty imposed on him is also set aside.

13. Thus, the Appeals are allowed with consequential relief, if any, as per law.

