(2021) 08 CESTAT CK 0073

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Central Excise Appeal No. 42395, 42396, 42397 Of 2013, 40823, 42297 Of 2016

M/s. Unimech Industries Pvt. Ltd. APPELLANT

Vs

Commissioner Of GST And Central Excise RESPONDENT

Date of Decision : 23-08-2021

Acts Referred:

Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 — Rule 6
Central Excise Rules, 2002 — Rule 4, 6, 8

Citation : (2021) 08 CESTAT CK 0073

Hon'ble Judges : Sulekha Beevi C.S., J;P. Venkata Subba Rao, Technical Member

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Brief facts are that the appellants are engaged in the manufacture of tractor parts falling under CETH 8708 9900 on job work basis on the materials received from M/s. Tractors and Farm Equipments Ltd. (TAFE) and cleared the finished products to TAFE on payment of duty. On verification of accounts by Central Excise officers, it was noticed that the appellants have received raw materials from TAFE under invoice and availed CENVAT of duty paid on such materials. While clearing the finished products, instead of following the procedure specifically prescribed for the job work under Notification No. 214/1986-CE dated 25.3.1986, as amended, the appellant paid the duty on a lesser assessable value by not including the value of scrap generated during the course of manufacture and retained by themselves as consideration towards job charges. It appeared to the department that the appellant have themselves contravened Rule 6 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and the provisions of Rule 4, 6 and 8 of the Central Excise Rules, 2002. Show Cause Notice for different periods from 01/2010 to 03/2015 was issued. After due process of law the original authority confirmed the demands along with interest and imposed penalties. On appeal, the Commissioner (Appeals) upheld

the same. Hence these appeals.

2. The ld. Counsel Shri N. Viswanathan appeared for the appellants. He submitted that the issue involved in these appeals are whether the value of scrap arising during the course of manufacture and retained by the appellant has to be included as additional consideration in the assessable value for the purpose of discharging the duty. The very same issue was considered by the Tribunal in the appellant's own case vide Final Order No. 43165/2017 dated 18.12.2017 and the Tribunal has set aside the demand after following the decision in the case of P.R. Rolling Mills Pvt. Ltd. Vs. CCE, Tirupathi.

3. The ld. AR Ms. T. Sridevi appeared for the department. She supported the findings in the impugned order.

4. Heard both sides.

5. The details of the period involved and the demand confirmed are given in the Table below:-

S. No.

Appeal No.

Period

Order in Original No./Date

Amount (Rs.

1.

E/42395/2013

01/10 to 11/10

05/13 dt. 31.1.13

3,68,497

2.

E/42396/2013

11/10 to 06/11

06/13 dt. 31.1.13

2,95,239

3.

E/42397/2013

07/11 to 03/12

07/13 dt. 31.1.13

4,14,284

4.

E/40823/2016

04/13 to 09/13

04/15 dt. 27.2.15

4,01,265

5.

E/42297/2016

07/14 to 03/15

29/15 dt. 22.12.15

1,88,835

6. The demand pertaining for the earlier period from April 2004 to March 2009 was set aside by the Tribunal vide Final Order cited supra. The Tribunal in the said case followed the decision in the case of P.R. Rolling Mills Pvt. Ltd. reported in 2010 (249) ELT 232 (Tri. Bang.). The discussion in the said final order is as under:-

"2. Today when the matter came up for hearing, on behalf of the appellant, Ld. Advocate Shri N. Viswanathan submits that value of the scrap was included in the assessable value of the final products by including the cost of cast articles supplied to them and no deduction is made for the loss of metal during the process of machining which is permitted under CAS-4. He also submits that the matter is no longer res integra as the issue stands settled in a number of cases. He takes us to the decision of Tribunal in the case of P.R. Rolling Mills Pvt. Ltd. Vs CCE Tirupathi - 2010 (249) ELT 232 (Tri.-Bang.) where it has been held that scrap arising during conversion of blooms/billets into bars / section cleared on duty payment, value of scrap is not includible in the assessable value of the bars / section cleared by the job worker. He further points out that the appeal against this decision was dismissed by the Hon'ble Supreme Court both on the grounds of delay as well as on merit as reported in 2010 (260) ELT A84 (SC). He submits that decision of P.R. Rolling Mills was also relied upon in a subsequent decision of the Tribunal in the case of Campco Chocolate Factory Vs CCE Mangalore - 2010 (258) ELT 273 (Tri.-Bang.)

3. Ld. A.R supports the impugned order.

4. On going through the facts, we find that the ld. advocate is correct in his assertion. Hence following the ratio of the case laws cited supra, we hold that the impugned order cannot sustain, for which reason it is set aside. Appeal is therefore allowed with consequential relief, if any, as per law."

7. The decision of the Tribunal in P.R. Rolling Mills Pvt. Ltd. was affirmed by the Hon'ble Supreme Court as reported in 2010 (260) ELT A84 (SC). Similar issue was decided in the case of CCE, Pune Vs. Cadbury India Ltd. - 2006 (200) ELT 353 (SC). In the said decision, it was held that for determining the cost of production of the captively consumed goods, CAS-4 has to be applied which has been done by the appellant.

8. Following the above decisions, we are of the view that the impugned orders cannot sustain. The same is set aside and the appeals are allowed with consequential reliefs if any.

(Operative portion of the order was pronounced in open court)

