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**(2023) 04 CESTAT CK 0003**

**In the Customs, Excise And Service Tax Appellate Tribunal**

**Case No :** Excise Appeal No. 10512 Of 2017, 11633 Of 2019

Transrail Lighting Limited

APPELLANT

Vs

Commissioner Of Central Excise & ST, Silvasa

RESPONDENT

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**Date of Decision :** 10-04-2023

**Acts Referred:**

Central Excise Act, 1944 — Section 4, 53

**Citation :** (2023) 04 CESTAT CK 0003

**Hon'ble Judges :** Ramesh Nair, Member (J); C.L. Mahar, Member (T)

**Bench :** Division Bench

**Advocate :** Anand Nainawati, Ghanasyam Soni

**Final Decision :** Allowed

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## **Judgement**

Ramesh Nair, Member (J)

1. The issue involved in the present case is as to whether the value of bought out items supplied as such along with manufactured goods is liable to be included in the assessable value of manufactured goods cleared on payment of excise duty.

2. The brief facts of the case are that the appellant are engaged in the manufacture of 'lattice mast' (also referred to as High Mast/Pole) falling under Chapter 73 of the first schedule to the Central Excise Tariff Act, 1985 which are cleared on payment of excise duty. The appellant are registered with Service Tax department for providing taxable services under the category of Erection & Commissioning. Lattice mast manufactured by the appellant are cleared in the domestic market on payment of excise duty as well as are cleared for export. In some cases, the customers who buy lattice mast manufactured by the appellant for their convenience, also place orders on the appellant for supply of Winches, NN Wire Rope, Electric Motor, Control Panel, Eight fixture etc. (hereinafter referred to as the "bought out items") to be used by the customers for erection/commissioning of High Mast Tower. In some cases, the customers also place purchase orders on the appellants for supply of bought out items only. The

appellant purchase the bought out items either from the manufacturer or the traders. The appellants do not take Cenvat credit of excise duty paid on such bought out items as they are not used for manufacture of their finished goods. The appellant are paying VAT/CST on such sales. However, in few cases where customer requires appellant to supply Arm Brackets which are to be fixed on poles, value of such Arm Brackets is included in the assessable value and excise duty is paid as they are part and parcel of the manufactured pole. Periodical show cause notices were issued to the appellant proposing demand of differential duty on the ground that value of the bought out items purchased is includible in the assessable value of the so called High Mast Tower cleared by the appellant. The Adjudicating Authority, confirmed demand against the appellant and penalties have been imposed therefore, these appeals are filed by the appellant.

3. Shri Anand Nainawati, learned Counsel appearing on behalf of the appellant submits that the appellant are engaged in the manufacture of Lattice Mast (only pole) and they do not have facility to manufacture any other item so as to manufacture not High Mast Lighting Tower (complete lighting system emerging in immovable position). The bought-out items are not assembled by the Appellant along with the lattice mast. Lattice mast and bought-out items are assembled at the time of erection of High Mast Lighting Tower at the site by the customers. There are number of cases in which the Appellants have only sold the lattice mast to the customers and have not sold the bought-out items. In fact, in some cases, the customers place purchase order on the Appellants for supply of bought-out items alone and not for the lattice mast. Further, there is no evidence on record to show that in all cases wherever the appellants have sold lattice mast, the Appellants have also sold bought-out items to their customers. The customers never placed purchase order on the Appellants for supply of High Mast Lighting Tower. He submits that bought-out items may be essential part for High Mast Lighting Tower but the same are not parts /components of the lattice mast manufactured by the appellants. Lattice mast is complete in itself even without bought-out items. Therefore, the value of the bought-out items need not be added to the assessable value of the lattice mast manufactured and cleared by the appellants. He submits that it is settled legal position that even though bought out items are essential for functioning of machine used along with the manufactured items however, the value of the bought out items is not includible in the value of lattice mast. He placed reliance on the following judgments:-

(a) Neycer India Limited vs. CCE – 2005 (192) ELT 620 (Tri. Chennai)- Affirmed by Hon’ble Supreme Court reported at CCE vs.

(b) CCE Vs Unitech Power Transmission Limited - 2018 (364) ELT 1048 (Tri. Mumbai)

(c) Kores (India) Limited vs. CC - 2014 (303) ELT 83 (Tri. Mumbai)

(d) CCE Vs Ingersoll Rand (India) Ltd 1999 (105) ELT 549 (SC)

(e) Sur Iron & Steel Co. (P) Limited vs. CCE - 2018 (363) ELT 373 (Tri. Kolkata)

(f) CCE vs. Thermax Limited - 2009 (235) ELT 737 (Tri.Mumbai)

(g) CCE VS Sterlite Industries (I) Limited vs. 2006 (195) ELT 231 (Tri.Mumbai)

(h) CCE vs. Ravi Krishna Castings Limited – 2004 (176) ELT 556 (Tri. Bang.)

(i) Emerson Network Power India P. Ltd vs. CCE – 2004 (176) ELT 168 (Tri. Mumbai)

3.1 Without prejudice to above submissions he further submits that in any event of the matter, the so called High Mast Tower is emerged at the site of the customers, the appellants are not manufacturer of High Mast Tower. The show cause notices have been issued without any jurisdiction therefore, the impugned orders are not sustainable and demand raised in the aforesaid show cause notices are liable to be set-aside. The proceedings have been initiated assuming that appellants are manufacturing High Mast Tower. Though incorrect, however even if this assumption is taken to logical end even then admitted factual position is that the High Mast Tower had emerged at the site of the customers at various different locations which are not necessarily fall within the jurisdiction of the Commissioner, Silvassa.

Therefore, he submits that Commissioner Silvassa has no jurisdiction to examine the correctness of the excise duty paid on the High Mast Tower.

3.2 Without prejudice, he further submits that High Mast Tower had emerged as an immovable property at the site of the customers. The High Mast Tower is permanently attached to the earth and has to be dismantled for removal and what would emerge on such dismantling would only be individual parts and not complete High Mast Tower. Hence, no duty is liable to be paid on the same. This submission is fully supported by the decision of the Hon'ble Supreme Court in the case of Triveni Engineering & Industries Vs. CCE-2000 (120) ELT 273 (SC). In view of the above judgment, even if the activity has amounted to manufacture, no excise duty can be charged on the same. This legal position has also been accepted by the CBEC vide Board Circular No. 58/1/2002-CX dated 15.01.2002.

3.3 Learned Counsel further submits that merely for the reason that the appellants have given warranty in respect of the bought out items cleared by them does not mean that the same is part of the lattice mast cleared by the appellants. Without prejudice to the above, he further submits that if demand is confirmed in the present case on the bought out items, the credit of the duty paid on bought-out items is available to the appellants. Without prejudice, he also submits that the benefit of cum duty price is available to the appellants.

3.4 Learned Counsel further submits that in the present case extended period of limitation is not invocable since the appellants had neither wilfully suppressed the fact nor mis-stated the fact with intent to evade payment of duty. Therefore, demand beyond normal period of limitation is time barred.

3.5 He further submits that the fact regarding trading of bought out items by the

appellant is known to the department. The appellant submits that they export their goods through merchant exporter. Merchant exporter issues CT-1 certificate to the appellant on which excise duty is shown on the lattice mast as well as accessory on lattice mast. On this basis, the merchant exporter executed bond to the department in respect of export clearances. However, at the time of export, excise duty is paid only on the lattice mast and not on the accessories. This is clear from the ARE-1 filed with the department. Since, the merchant exporter issued CT-1 for higher excise duty element, therefore, later-on, the merchant exporter requested the appellant to get the non-utilisation certificate for the remaining amount of CT-1 amount. As per the instructions of the merchant exporter, the appellant requested the Superintendent, Central Excise, Range-V, Silvassa to issue non-utilisation certificate. The correspondence in this regard have been annexed with the appeal memo. From the said documents it is clear that the fact of payment of excise duty only on lattice mast and not on the bought out items was well within the knowledge of the department. Therefore, the demand for the extended period is incorrect. He placed reliance on the following judgments:-

(a) CCE vs. Punjab Chem & Pharm - 2001 (135) ELT 227 (T)

(b) Asia Automotive Limited vs. CCE-1999 (113) ELT 841

(c) Nadiad Silicate & Chem vs. CCE-1995 (80) ELT 891

(d) Haryana Co-op. Sugar vs. State-1997 (107) STC 103

4. Shri Ghanasyam Soni, learned Addl. Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

5. We have carefully considered the submissions made by both the sides and perused the record. We find that there is no dispute on the fact that appellant are manufacturing lattice mast and during the course of manufacture no bought out items are used in the manufacture. The bought out items which is subject matter of the present dispute are purchased and thereafter sold as trading activity by the appellant. Even though the bought out items are supplied by the appellant as trading activity but the same is not part and parcel of the manufacture of lattice mast. At the most, this bought out items are used for completing and erection and installation of High Mast Tower. There is clear distinction between lattice mast manufactured by the appellant and High Mast Tower erected and installed at the site of the customers. The appellant have provided the details of use of the bought out items at the site which is as under:-

Sr.

No.

Name of the equipment/ Bought-out item

Purpose/ Use

1

#### Wire Grip Clamp

This is to firmly hold wire ropes & for holding bobbin set in position.

2

#### Bobbin Set

Prevents entangling & twisting of cables.

3

#### Single groove cable clamp

This is to hold cable firmly in it's position.

4

#### Double groove wire rope clamp

Holding cable with rope & for simultaneous movement of both rope and cable.

5

#### Wire Rope

To hold the luminaire at top with winch at bottom. Acts as medium to raise and lower the fittings as and when required. It is used for holding the lantern carriage during maintenance and to support, if required, on top of High Mast Tower.

6

#### Electric Motor

To raise and lower the fittings with the help of wire rope. It's used for operation of winch if customer wants to operate on higher speed.

In general manual handing is an option in absence of motor.

7

#### Cables

For carrying current from high mast bottom to luminaires mounted on top.

8

#### Panels

For converting electric supply from input to high mast. It is use if customer want to operate automatically without any manual efforts.

## Winch

It's used for rising & lowering of lantern carriage during maintenance and installation of Fixture only.

## Electrical fixture

There are multi brand fixtures available in market and customer should design the fittings as per the area and purpose required for Illumination of space. Upon that Number of fixtures and its wattage is decided and installed. Rate also varies from brand, wattage and capacity of the fixtures. There are more than thousand types of different electrical fixtures available in the open market. These are mounted on the top of the mast with the help of Lantern

Carriage for illumination.

From the above details of bought out items and its uses, it is clear that bought out items are neither used as parts nor accessories of the lattice mast as they are not required for manufacture of lattice mast. Therefore, trading activity of above items is separate activity which is independent from the manufacturing activity of the appellant.

6. It is also not even a case that appellant have provided the standard set of bought out items along with lattice mast but only in few cases it is supplied along with lattice mast. There are also cases where appellant are supplying only bought out items as a trading activity and not with lattice mast. This shows that the bought out items are optional for the customers to buy from the appellant manufacturing lattice mast. We find that the manufacturing of lattice mast is an independent manufacturing activity for which except the material used in making lattice mast no further bought out items are required. Therefore, the bought out items in any way not taking part in the manufacture of lattice mast. This issue has been considered in various judgments that if any bought out items are supplied along with manufactured items, the value of the same cannot be included in the value of manufactured goods and this issue has been considered in the following decisions:-

(a) In the case of Unitech Power Transmission Limited (*supra*), the Mumbai bench of this Tribunal on the identical facts passed the following order:-

"4. We have carefully considered the submissions made by both sides. We find that the appellant is engaged in the manufacture of transmission line towers. The entire activity of the manufacturing is completed without the need of nuts, bolts, etc. The bought out nuts and bolts were sent directly from the supplier to the customer's site. Therefore, the same is obviously not taking part in the manufacture of the final product of the respondent. Any additional consideration

can be included in the assessable value of the goods manufactured and sold. In the present case, the goods in question is transmission line towers, which is manufactured and sold by the respondent. The nuts and bolts, etc., are optional item which is sold as a bought out item to the customers, which is nothing but a trading activity. Therefore, the same cannot be considered as extra consideration towards the manufacture of excisable goods produced by the respondent.

4.1 On going through the orders passed by both the lower authorities, we observe that both the authorities have correctly considered the issue in its entirety and analyzed the relevant provisions and settled case law and came to the conclusion that the value of nuts, bolts, etc., is not includible in the assessable value of the transmission line towers manufactured by the respondent. The findings of the Commissioner (Appeals) in the impugned order are as under :-

"51. I have carefully gone through the case records and submissions made by the appellant/respondent both written and oral. The appellant received the impugned Order-in-Original on 24-10-2008 and the appeal has been filed on 14-11-2008. The appeal is within time as per Section 53 of the Central Excise Act, 1944.

52. The issue to be decided is that whether the value of bought out items viz. Nuts, Bolts and Other Tower Parts/accessories directly supplied to buyer's site from open market is to be included in the assessable value/transaction value or otherwise. The Respondent has recovered the cost of Nuts, Bolts and Other Tower Parts/accessories from the buyers on separate commercial invoices. As per the appellant they have supplied the towers in CKD condition to the buyers with whom they had written contracts.

53. I find that there is no dispute regarding the fact that the said items are duty paid. The credit of the same has neither been taken by the appellant nor disputed by the Department. In the appeal filed by the Department reliance is placed on the definition of transaction value it has been averred that the respondent is liable to pay duty on the entire contract price which includes cost of nuts, bolts, washers, shackles, hangers, since those are integral parts of transmission line towers and without these transmission line tower cannot be erected and made operational. The definition of transaction value i.e. the price actually paid or payable has to be read in the context of the words i.e. "for the goods when sold and it includes". The price paid or payable should have nexus with the excisable goods manufactured and sold by the manufacturer. Obviously, the contracts provide for the price of the transmission line towers manufactured by the respondent and it is only this price which could be termed as the price actually paid for the transmission line towers manufactured by the respondent. The said definition cannot be applied to the cost of the goods which are not manufactured by the respondent. Admittedly the nuts and bolts and the other accessories are neither manufactured by the respondent, nor are those cleared from its factory. The ground raised in the appeal by the Department is an

attempt to stretch the definition of transaction value to an illogical extent.

54. In so far as the reliance placed on the decision of Vishwa Industrial Co., Pvt. Ltd. is concerned. The ratio of the said decision is not relevant to the present case inasmuch as in that case the question was of classification of the conveyor system. Some parts of which were manufactured by the manufacturer and some parts and components were purchased from the market. The said decision has been distinguished by the Hon'ble Tribunal in the case of Otis Elevator Co. (India) Ltd. v. Commissioner of C. Ex. Mumbai-V reported in 2007 (208) E.L.T. 114 (Tri.-Mumbai).

55. Coming to the reliance placed on the case of Bajaj Auto Ltd., which cannot be applied here as there the issue involved was regarding to the inclusion of the value of the foot rest of the scooter and since the foot rest was an essential part of the scooter, its value was includible. Whereas in the present case nuts, bolts and accessories are purely optional items. As far as the decision in the case of Indoprint Enterprises is concerned, this was the case of inclusion of the cost of bought out items, which were intrinsic part of the industrial paint shop. This case is also distinguished by the Hon'ble Tribunal in the case of Collector of C., Ex. Pune v. Statfied Systems (Coating) Pvt. Ltd., 1996 (87) E.L.T. 510 (Tribunal) wherein it was held;

"Valuation (Central Excise) - Value of bought out items used in the fabrication of plant at site not includible in the assessable value while computing the value of clearance for determining the eligibility to SSI exemption under Notification No. 105/80-C.E. - Section 4 of the Central Excises and Salt Act, 1944"

56. The case of Steel Crafts is misplaced since it was a case of includibility of the cost of the items which were fitted to the body of the trailer at the time of its clearance from the factory. The judgment of the Hon'ble Supreme Court in the case of Texmaco Ltd., was rendered in the' context of valuation of wagon-bodies mounted on "wheel sets". Here again the case is totally different than those involved in respondent's case. The ratio of the decision of Commissioner of Central Excise, Pune-I v. Thermax Bobcock & Wilcox Ltd., 2005 (182) E.L.T. 336 (Tri.-Mumbai) in which it was held that the value of bought out items received at site and used in erection of boilers, includible in assessable value of boilers, because such bought out items are necessary to make boiler functional. The ratio of this case is not applicable for the fact that the transmission line towers have no functional attributes. Further the said case is pending before the Hon'ble Supreme Court as reported in 2007 (207) E.L.T. A186 (S.C.)

57. Further in the case of Kerala State Electronics Dev. Corporation Ltd. v. Commissioner of C. Ex., Cochin it is held that bought out items sent to the site where they were assembled along with the traffic controllers for manufacture of traffic signal system bought out items become part of the immovable property and not part of the traffic controller - Value not addable to the duty paid goods cleared by the assessee from their factory - Section 4 of Central Excise Act,



1944. The nuts, bolts and other accessories in the present case are used at site for erection of the transmission line towers which come into existence being as permanently affixed to earth and hence become an immovable property. The said decision has been upheld by the Hon'ble Supreme Court as reported in 2006 (199) E.L.T. A130 (S.C.).

58. (a) In the case of BEST & Crompton Engineering Ltd. v. CCE, Chennai, 2002 (147) E.L.T 344 (Tri.-Chennai) it is held -

"Value of bought out items line control panels, surge protection devise, transformers, etc., purchased from market, taken directly to installation site and utilized for installation of plant not includible in assessable value of Bus Ducts manufactured in assessee's factory."

(b) In the case of Kerala State Electronic Dev. Corporation v. CCE, Trivandrum, 2008 (224) E.L.T. 88 (Tri.-Bang.) it is held -

"Bought out items such as cable, cards, etc., used for installation of machinery and its functioning, fact that they are bought out items on which excise duty has already been paid is not disputed - Hence value of such bought out items cannot be included in assessable value of machinery."

(c) In the case of Cimmco Birla Ltd. v. CCE, Jaipur - 2003 (156) E.L.T. 1019 (Tri.-Del.) it is held;

"Value of bought out goods, which do not form part of finished goods, not includible in assessable value - Mere requirement of bought out goods for completion of contract of erection of unit will not make them part of finished goods."

5. On going through the above findings, we do not find any infirmity therein.

Accordingly, the impugned order is upheld and Revenue's appeal is dismissed

(b) A similar view was taken by the Chennai bench in the case of Neycer India Limited (supra):

"4. We have gone through the rival contention. The point at issue is whether the boughtout items are accessories or parts of the cistern. In our view, relying on the decision of the Bombay High Court in the case of Koron Business Systems Ltd., the boughtout items required to make the cistern functional, should be considered as accessories only. These accessories are of different types and made of different materials. At the buyers option, these are supplied by the parts should be included in the assessable value of the cistern. The appellants relied on the decision of the Hon'ble Supreme Court in its judgment in the case of Union of India v. Koron Business Systems Ltd. - 1997 (93) E.L.T. 663 which upheld the judgment of the Bombay High Court. In that case the Bombay High Court held that plates and black shields are required for working of the photocopier but that by no stretch of imagination lead to the conclusion that plates and black shields are part and parcel of the machine. It was held that the value of plates and black

shields cannot be included in the value of the photocopiers. Ld. Advocate argued that no doubt that the above-mentioned fittings are required to make the cistern functional but on account of that they cannot be called as parts of these cistern. The Tribunal in the case of EID Parry India Ltd. v. CCE - 2000 (124) E.L.T. 815 has held that the value of the fittings which were removed from godown after testing under a separate invoice is not includable in the assessable value of the cistern. The Tribunal in the case of Super Electronics v. CCE - 2001 (127) E.L.T. 302 held that even though speaker in audio-decks is essential, the same cannot be integral part of the main item that is audio-decks appellants. What the appellants manufactured is only the cistern which is made of ceramics. In these circumstances relying on the various case laws cited by the appellants, we hold that the value of the boughtout items is not includable in the assessable value of the cistern. The case relied on by the Revenue is distinguishable. In that case the Bombay High Court held that the documents copier machine is not complete without camera and there cannot be a camera without timer and lens. Therefore we allow the appeal with consequential relief by considering the boughtout items as accessories only."

This decision of the Tribunal was upheld by the Hon'ble Supreme Court reported at CCE vs. Neycer India Limited reported at 2015 (320) ELT 28 (SC), wherein the Hon'ble Supreme Court passed the following order:-

"[Order]. - The Department/Revenue wanted to add the value of Handle assembly, Ball valve assembly, overflow assembly, Syphon assembly, Outlet flange assembly and Flush pipe assembly, while arriving at the valuation of the flushing cisterns manufactured by the respondent. It is an admitted position that the aforesaid fittings are not manufactured by the assessee. It is also an admitted position that the assessee supplied the same to those buyers only who asked for that and in such a situation the assessee buys the aforesaid components from the market and supply to the buyers at their option. In these circumstances, the Tribunal has rightly declined to add the value of the aforesaid components which are not the part of flushing cistern manufactured by the assessee. Even otherwise, the amount of tax involved is not much. For these reasons we dismiss this appeal."

(c) Similar view was taken by Kolkata Bench in the case of Sur Iron & Steel Company (P) Limited (supra):

"9. After considering the totality of the facts and circumstances of the case, it appears that the objection of the Department is towards the trading goods which were bought out by the appellant. The value was includible in the value of manufactured goods.

10. In the instant case, these items, which were bought out, are totally independent and optional. These are not even the accessories as stated by the Ld. Counsel for the appellant during the course of argument. In this regard, the Hon'ble Supreme Court in the case of Commr. of Central Excise, Trichy v. Neycer

India Ltd. : 2015 (320) E.L.T. 28 (S.C.), observed that the value of the bought out items cannot be included in the assessable value of own manufactured goods under Section 4 of the Central Excise Act, 1944. In the instant case, it is admitted position that the assessee supplied the bought out items to the buyers only to ask for. In such a situation, the assessee buys the aforesaid components/items from the market and supplied to the buyers on their option. When it is so, then we find no reason to sustain the impugned order and the same is hereby set aside."

(d) Mumbai bench in the case of Kores (India) Limited (supra) considered the similar issue and taken the same view:

"5. Having considered the rival submissions, we find that ruling of Thermax Bobcock & Wilcox Ltd. (supra) relied upon by the learned AR for the Revenue, is clearly distinguishable because boiler is not cleared in its assembled form as such but cleared in several consignments part by part and assembled, whereas in the facts of the present case, the drill rig is complete when removed or cleared from the factory, and thus, the ruling of Thermax Bobcock & Wilcox Ltd. is not applicable in the present case."

(e) The Hon'ble Supreme Court in the case of Ingersoll Rand (India) Limited held that drill rods/ pipes and drill bits are not to be treated as parts of the drilling rig. The relevant order of Apex Court is reproduced below:

"[Order]. - This appeal has been filed by the Revenue against the judgment of the Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as 'the Tribunal') dated December 8, 1993. The question raised is whether the drill rods/pipes and drill bits are essential parts of a drilling rig and the price of the same have to be included in the price of drilling rig for the purpose of payment of excise duty. By the impugned judgment the Tribunal has held that the drilling rods/pipes and drill bits are not to be treated as parts of the drilling rig and they have to be assessed for the purpose of excise duty separately and not to be included in the value of the drilling rig. In taking the said view, the Tribunal has placed reliance on its earlier judgment in Collector of Customs v. Premier Mills Stores, 1992 (57) E.L.T. 197 (Tribunal). The said view of the Tribunal in Collector of Customs v. Premier Mills Stores has been upheld by this Court in Civil Appeal No. 7602/93 filed by the Revenue against the said judgment of the Tribunal was dismissed by order dated November 20, 1995 [See 1996 (84) E.L.T. A49 (S.C.)]. In the circumstances, we do not find any merit in this appeal and it is accordingly dismissed. No order as to costs."

7. Likewise, there are so many judgments cited by the learned Counsel wherein it was consistently held that value of bought out items supplied along with manufactured goods cannot be included in the assessable value of the manufactured goods. Therefore, the issue is no longer res-integra. Since we have decided the matter on merits, the other issues raised by the appellant are not taken up. Accordingly, the impugned orders are set-aside and the appeals are

allowed with consequential relief.