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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [CENTRAL EXCISE]
ORIGINAL SIDE

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

CEXA/35/2024
IA NO: GA/1/2024
COMMISSIONER OF CENTRAL EXCISE KOLKATA II
VS
M/S SARRALLE EQUIPMENT INDIA PVT LTD

Mr. Bhaskar Prasad Banerjee, Advocate
Mr. Tapan Bhanja, Advocate ....for the Appellant.

Mr. Ankit Kanodia, Advocate
Ms. Megha Agarwal, Advocate . . .for the Respondent.

HEARD ON : 26.2.2025

JUDGMENT ON : 26.2.2025

T.S. SIVAGNANAM, CJ. :

1. This appeal filed by the revenue under Section 35G(1) of the Central Excise Act, 1944 questions the correctness of the order dated 15th December, 2023 passed by the Customs, Excise and Service Tax Appellate Tribunal, Kolkata, East Zonal Bench (Tribunal) in Appeal No.75307 of 2017.
2. Though the revenue in the memorandum of appeal had raised certain substantial questions of law, the learned advocate appearing for the

appellant/revenue has handed over a fresh set of substantial questions of law and prays for consideration of the same.

3. The questions of law suggested by the appellant are as hereunder :

> "(a) *Whether the process of assembling of certain brought out items with manufacturing items at site for erection of industrial furnace amounts to 'manufacture' under section 2[f] of the Central Excise Act, 1944 and whether the respondent is liable to pay central excise duty on the value of such brought out items ?*
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> *(b) When the respondent has procured order for industrial furnace and handling equipment system in complete form and when the bought out items on which duty has not been paid is essential ingredients for completion of the above orders, whether the respondent is liable to pay Central Excise duty on the value of bought out items as reflected in the Adjudication Order ?*
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> *(c) Whether the respondent is guilty of evading of payment of duty on the full value of the industrial furnaces manufactured and cleared by them by separately invoicing clearance of bought out items and manufactured items, when the bought out items and manufactured items formed a part of industrial furnace ?*

4. We have heard Mr. Bhaskar Prasad Banerjee, learned senior standing counsel assisted by Mr. Tapan Bhanja, learned counsel appearing for the appellant/revenue and Mr. Ankit Kanodia, learned counsel appearing for the respondent/assessee.

5. The respondent/assessee filed the appeal before the Tribunal challenging the order-in-original dated 18th November, 2016 passed by the Commissioner of Central Excise Kolkata - II. By the said order the proposal made by the show cause-cum-demand notice dated 22nd May, 2015 was affirmed and interest was also directed to be recovered in terms of Section 11AA of the Act and penalty

was also imposed under Section 11AC(1) of the Act. The question which fell for consideration before the learned Tribunal was whether the bought-out-items are includable in the assessable value of the industrial furnace. The department issued the show cause notice alleging that during the course of scrutiny of the documents and records while conducting the audit in the business premises of the assessee, it came to light that the assessee has not mentioned the components of value while making payments of duty and did not reflect the said materials in the return submitted to the department. This, according to the department, was with an intention to evade payment of duty and, therefore, the extended period of limitation was also invoked. Personal hearing was afforded to the assessee pursuant to the issuance of the show cause notice. The assessee's contention was that they entered into contract with different customers for design, fabrication, supply, erection and commissioning of different furnaces, fume extraction systems, plants etc. For such purpose, they manufactured and cleared parts of furnaces and handling equipment system and paid appropriate central excise duty in the stage in which those are cleared from the factory i.e. on the parts. The assessee further contended that the cost of bought-out goods directly supplied to the buyer's place for erection and commissioning cannot be included in the assessable value. Further, the assessee contended that with the help of the manufactured goods on which duty was paid by the assessee and bought-out-items sent directly to the buyer's premises, the assessee undertook erection and commissioning of furnace and equipment handling system, stage by stage, by fixing those parts to the earth which ultimately resulted in immovable property which ceases to be goods. Further, the assessee explained the type of activity done by them by pointing out that the furnaces and handling equipment systems are assembled and erected at site and attached to foundation to earth which cannot be dismantled without substantial damage to its components and thus cannot be re-assembled. Therefore, items are not immovable and hence not excisable goods. Further, the assessee submitted that the industrial furnaces comes into existence by fixing various parts, stage by stage, to the earth thereby rendering it an immovable structure which by any stretch of imagination cannot be called excisable goods. Therefore, the essentiality of the items used for erection and commissioning of such furnace for its functioning is not relevant at all in the assessee's case. Further, with regard to the invocation of the extended period of limitation, the assessee contended that they relied upon by several judicial pronouncements in support of their contention and the entire issue is a matter of interpretation and there was no deliberate attempt on the part of the assessee to evade payment of duty by resorting to suppression. Further, the assessee stated that if the issue is amenable to dual interpretation, longer period of limitation cannot be invoked. To support the contentions, the assessee relied upon various decisions. The adjudicating authority came to the conclusion that the assessee procured order for industrial furnace and handing equipment system in complete form so that it can start functioning. Therefore, the bought-out-items on which duty has not been paid is essential ingredient for completion of the machine i.e. for fulfillment of the orders procured by the assessee. Therefore, the adjudicating authority came to the conclusion that the value of the bought-out-items is includable and sustained the proposal in the show cause notice. After making certain observations on the decisions which were relied upon by the assessee, the adjudicating authority proceeded to confirm the demand made in the show cause notice. As pointed out earlier, the issue which fell for consideration before the Tribunal as well as this Court is whether the value of the bought-out-items supplied directly to the customer's place are includable in the assessable value of the industrial furnaces. The learned Tribunal has referred to various decisions and one such of the co-ordinate bench of the Tribunal and one such decision being in the case of Transrail Lighting Ltd. vs. Commissioner of Central Excise and Service Tax, Silvasa; [2023] 7 Centax 185 [Tri.-Ahmd]. In the said decision several decisions were relied upon and it will be beneficial to point out two of such decisions, the first of which is being in the case of Neycer India Ltd. vs. Commissioner; 2005 [192] ELT 620 [Tri. – Chennai] which was affirmed by the Hon'ble Supreme Court in the case of Commissioner of Central Excise, Trichy vs. Neycer India Ltd., 2015 (320) ELT 28 (SC). In Neycer India Ltd. the learned Tribunal relied upon the decision of the High Court of Bombay in Koron Business Systems Ltd. vs. Union of India; 1992 [58] ELT 48 [Bom.] and it was pointed out that the bought-out-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 buyer's option, these are supplied by parts should be included in the assessable value of the cistern. The appellant therein relied upon a decision of the Hon'ble Supreme Court in the case of Union of India Vs. Karon Business Systems Ltd., 1997 (93) ELT 663 which upheld the judgment of the Bombay High Court. In the judgment of the Bombay High Court it was 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 and, therefore, cannot be included in the value of the photocopier. The Tribunal also relied upon various other decisions and ultimately allowed the assessee's appeal.

6. The revenue challenged the order passed by the learned Tribunal before the Hon'ble Supreme Court which was dismissed, in Commissioner of Central Excise, Trichy vs. Neycer India Ltd. 2015 320 ELT (SC). The Hon'ble Supreme Court in the said case noted that the revenue wanted to add the value of handle assembly, ball wall assembly, overflow assembly etc. while arriving at the valuation of flushing cisterns manufactured by the assessee therein. It was held that it being an admitted position that those fittings are not manufactured by the assessee and it is also an admitted position that the assessee therein 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 supplied to the buyer's at their option and, therefore, if the Hon'ble Supreme Court upheld the decision of the Tribunal which declined to add the value of the aforesaid components which are not the part of flusing cistern manufactured by the assessee and with this finding the appeal was dismissed.
7. The other decision which was relied upon by the Tribunal in the case of Kerala State Electronics Development Corporation Vs. Commissioner of Central Excise, Trivandrum 2008 (224) ELT 88 (Tri. Bang.). In the said decision it was held that the value of bought-out-items cannot be included in the assessable value of the machinery. The decision in the case of Kerala State Electronics Dev. Corpn. Ltd. Vs. Commissioner was affirmed by the Hon'ble Supreme Court as reported in 2006 (199) ELT A130 (SC). In the impugned order the Tribunal has taken note of the decision in Transrail Lighting Ltd. (supra) which judgment was affirmed by the Hon'ble Supreme Court as mentioned above. The Tribunal then proceeded to examine the facts which were not in dispute and held that after erection of the furnace, the bought-out-items are part of the immovable property and therefore, held that they are not includable in the assessable value

for the purpose of charging central excise duty. Thus, we are of the view that the learned Tribunal rightly applied the legal principle and granted relief to the assessee and the impugned order does not call for interference.

8. The learned senior standing counsel for the appellant places reliance on the decision of the Hon'ble Supreme Court in the case of Mill India Ltd. Vs. Commissioner of Central Excise, Noida, 2007 (210) ELT 18 (SC). In the said case the department's contention was that the bought-out-items were necessary for the manufacturer of the plant at site which was erected and assembled by the two companies through their contractors. It was pointed out by the Hon'ble Supreme Court that the question whether value of bought-out-items should be added for computing the assessable value would depend on facts on each case. Thus, on facts, the Tribunal has found that the bought-out-items are supplied to the customer's place and they get embedded to earth and they are immovable property and the question of including the value in the assessable value for the purpose of demanding central excise duty would not arise.

9. In the result, the appeal fails and is dismissed. The substantial questions of law are answered against the revenue.

10. The application being GA/1/2024 stands closed.

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(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(CHAITALI CHATTERJEE (DAS), J.)

Pkd./S.Das
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