IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO. II

Appeal No. E/3360/05

(Arising out of Order-in-Appeal No. BR/110/M-IV/2005 dated 18.7.2005 passed by the Commissioner of Central Excise (Appeals), Mumbai-IV).

For approval and signature:

Honble Shri Ramesh Nair, Member (Judicial)
Honble Shri Raju, Member (Technical)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes

3. Whether their Lordships wish to see the fair copy of the order? : Seen

4. Whether order is to be circulated to the Departmental authorities? : Yes

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M/s Siemens Ltd.
Appellant

Vs.

Commissioner of Central Excise, Mumbai-IV
Respondent

Appearance:
Shri Rajesh Ostwal, C.A.
for Appellant

Shri S.V. Nair, Assistant Commissioner (AR)
for Respondent

CORAM:
SHRI RAMESH NAIR, MEMBER (JUDICIAL)
SHRI RAJU, MEMBER (TECHNICAL)

Date of Hearing: 04.01.2016

Date of Decision: .2016

ORDER NO.

Per: Raju

The appellants, M/s Siemens Ltd., were clearing some parts of X-ray machines/instruments. They were clearing such parts on payment of duty to their depot from where the same were sold as part of composite contracts. The appellants were also clearing certain bought out items on reversal of CENVAT Credit from their factory to their depot. These bought out items were also sold from the depot as part of composite contracts which involved apart from sale of goods, installation also. Certain show-cause notices were issued to the appellants seeking to demand duty on the additional value recovered on the goods cleared from depot under composite contracts. The appellants, on their own, did reverse calculation from the value of composite contract to arrive at the gross assessable value of the goods sold at the depot. On the excess differential value collected by them, they were paying Central Excise duty of 5%/8%, which was applicable to the medical equipment manufactured by them during the relevant time. The Revenue issued show-cause notices seeking to demand duty on this value @ 15%, 18% and 20%.

2. Learned Counsel for the appellant challenged the manner in which calculations for the differential value have been made. He also argued that the rate of duty applicable to the differential value would be 5% or 8%, the rate applicable to the medical equipment. Learned Counsel tried to explain the method of calculation of extra amount collected. From the commercial value of the composite invoices, the Sales Tax paid was deducted first, thereafter the excise duty paid/reversal made was deducted. The net amount remaining after such adjustment was taken to be the gross assessable value at the depot. From this gross value determined for the composite contract, the assessable value calculated for clearance of parts manufactured by them and inputs cleared as such, was deducted to arrive at the net excess assessable value recovered at the depot. On this net assessable value, duty was demanded.

3. Learned AR relied on the impugned order.

4. We have gone through the rival contentions. We find that the appellants are clearing parts manufactured by them along with inputs as such to their depot. From the depot, against the composite contracts, these parts as well as inputs cleared as such are sold to various customers. Since they are recovering composite price and there is no sale of goods manufactured at factory gate, the price of goods manufactured by them needs to be established at depot. Since the goods are being sold at depot at a price different from the price at which the same have been cleared from the factory gate, the assessable value needs to be revised in respect of goods manufactured by the appellants. However, so far as inputs cleared as such are concerned, the liability is limited to reversal of actual credit taken by them. The learned Counsel has very correctly determined the method of arriving at the additional amounts received at depot, which can be attributed to the assessable value of the goods manufactured by them at the factory gate. It is arrived at after deducting (i) Sales tax, (ii) excise duty paid at factory, (iii) CENVAT Credit reversed for inputs cleared as such and, (iv) assessable value of manufactured goods and inputs cleared as such from the

gross composite price at the depot. The differential assessable value needs to be taxed.

4.1 So far as rate of duty applicable on the goods is concerned, it is noted that there is no evidence that any activity was being undertaken on the said goods at the depot. The goods are cleared from the depot in the shape in which they were received, although as part of a larger basket of goods, also containing certain inputs cleared as such. In these circumstances, it cannot be said that a different rate of duty can be applied to the parts manufactured by the appellant in their factory premises. The rate of duty is fixed when the parts leave the factory. It is only the value that needs to be re-determined in view of composite contracts.

5. In view of the above, it is clarified that the rate of duty applicable on the differential assessable value recovered at the depot premises attributable to the products manufactured by them would be the rate applicable to the said goods when they were cleared from the factory premises. No different rate can be applied to such goods. It is seen that the learned Counsel and learned AR were unable to immediately give the revised calculation of duty. The impugned order is therefore set aside and the matter is remanded to the original adjudicating authority to determine the liability on the above terms.

(Pronounced in Court on .)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

Sinha