IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. III

Excise Appeal No. 42787 of 2014

(Arising out of Order-in-Appeal No. CMB-CEX-000-APP-165-14 dated 18.09.2014 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), 6/7, A.T.D. Street, Race Course Road, Coimbatore – 641 018)

M/s. Unimech Industries Private Limited **: Appellant**
1/179, Pollachi Main Road,
Malumichampatti Post, Coimbatore – 641 021

VERSUS

The Commissioner of Central Excise **: Respondent**
Coimbatore Commissionerate,
6/7, A.T.D. Street, Race Course Road, Coimbatore – 641 018

WITH

Excise Appeal No. 41588 of 2017

(Arising out of Order-in-Appeal No. CMB-CEX-000-APP-088-17 dated 11.04.2017 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals-I), 6/7, A.T.D. Street, Race Course Road, Coimbatore – 641 018)

M/s. Unimech Industries Private Limited **: Appellant**
1/179, Pollachi Main Road,
Malumichampatti Post, Coimbatore – 641 021

VERSUS

The Commissioner of Central Excise **: Respondent**
Coimbatore Commissionerate,
6/7, A.T.D. Street, Race Course Road, Coimbatore – 641 018

APPEARANCE:

Shri N. Viswanathan, Advocate for the Appellant

Smt. Sridevi Taritla, Authorized Representative for the Respondent

CORAM:

HON'BLE MRS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NOs. 40222-40223 / 2022

DATE OF HEARING: 08.06.2022

DATE OF DECISION: **10.06.2022**

Order : Per Hon'ble Ms. Sulekha Beevi C.S.

Brief facts are that the appellants are engaged in the manufacture of tractor parts and components on job work basis to M/s. TAFE Ltd. and are clearing the same to M/s. TAFE Ltd.

2. The Department was of the view that the appellants had not included the value of the scrap and have not discharged Excise Duty on the same. Show Cause Notices were issued proposing to demand Excise Duty on the value of scrap generated during the course of manufacture of tractor parts on job work basis.

3. After due process of law, the Original Authority confirmed the duty along with interest and imposed penalty. The appellants filed appeals before the Commissioner (Appeals), who vide orders impugned herein upheld the orders passed by the Adjudicating Authority. Hence, these appeals.

4.1 On behalf of the appellant, Shri N. Viswanathan, Learned Counsel, appeared and argued the matter. He submitted that the appellant is a job worker for M/s. TAFE Ltd. and is converting cast articles into tractor parts. For the manufacture of components on job work basis, the appellant was receiving raw materials from the principal manufacturer; the appellant paid Excise Duty based on the value determined on cost construction basis under CAS-4 in which the landed cost of the cast articles was taken into account. During the course of manufacture on job work basis, certain waste and scrap of metal is generated. The appellant cleared the scrap on payment of appropriate duty; the Department has now objected to the method of valuation adopted by the appellant alleging that the value of scrap which was sold on payment of Central Excise Duty has to be included in the value of parts cleared to the principal manufacturer. He argued that since the appellant has already discharged duty on the scrap, the present demand cannot sustain.

4.2 It is submitted by the Learned Counsel for the appellant that on identical facts, in the appellant's own case for an earlier period from April 2004 to March 2009, the Tribunal vide *Final Order No. 43165 of 2017 dated 18.12.2017* had set aside the demand. Similarly, for the period from January 2010 to March 2012 and from April 2013 to March 2015, the demand was set aside by the Tribunal vide *Final Order Nos. 41772 to 41776 of 2021 dated 23.08.2021*, by relying upon the decision in the case of *M/s. P.R. Rolling Mills Pvt. Ltd. v. Commissioner of C.Ex., Tirupathi* reported in *2010 (249) E.L.T. 232 (Tribunal – Bangalore)*. The said decision has been later affirmed by the Hon'ble Supreme Court as reported in *2010 (260) E.L.T. A84 (S.C.).*

4.3 He prayed that the appeals may be allowed.

5. Ms. Sridevi Taritla, Learned Authorized Representative for the respondent, supported the findings in the impugned orders.

6. The issue to be considered is whether the value of scrap arising during the process of manufacture and retained by the job worker is includible in the value of the goods cleared by the job worker to the principal manufacturer.

7. The said issue was considered in detail in the case of *M/s. P.R. Rolling Mills Pvt. Ltd. (supra*). The issue was held in favour of the assessee therein.

8. In the present case, it has to be noted that while estimating the value of the goods cleared to the principal manufacturer, the appellant has taken the value of the entire raw materials received by them. The scrap generated during the process of manufacture has been cleared by them on payment of appropriate duty. The

scrap is generated after the process of manufacture and the same is not includible in the assessable value of the goods cleared by the job worker to the principal manufacturer.

9. In the appellant's own case for a different period, the Tribunal has relied upon the decision and discussions in *M/s. P.R. Rolling Mills Pvt. Ltd. (supra)* and set aside the demand.

10. Following the decision passed in the appellant's own case, we are of the opinion that the demand cannot sustain.

11. The impugned orders are set aside.

12. The appeals are allowed with consequential reliefs, if any, as per law.

(Order pronounced in the open court on **10.06.2022**)

Sd/-
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

Sd/-
(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Sdd