

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 22 of 2012

(Arising out of Order-in-Appeal No. 373/2011-CE dated 30.11.2011
passed by the Commissioner of Central Excise(Appeals-I),
Bangalore.)

M/s. Valere Power (I) Pvt. Ltd.,

No.18A/19, Doddanekundi,
Mahadevapura Post,
Bengaluru – 560 048.

Appellant(s)

VERSUS

**The Commissioner of Central
Excise, Bangalore-I
Commissionerate,**

C.R. Buildings, Queens Road,
Bengaluru – 560 001.

Respondent(s)

APPEARANCE:

Mr. B.N. Gururaj, Advocate, for the Appellant

Mr. K. Vishwanatha, Superintendent(AR) for the Respondent

**CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS R BHAGYA DEVI, MEMBER
(TECHNICAL)**

Final Order No. 20641 /2024

DATE OF HEARING: 19.02.2024

DATE OF DECISION: 14.08.2024

PER : DR. D.M. MISRA

This is an appeal filed by the appellant against the Order-
in-Appeal No.373/2011-CE dated. 30.11.2011 passed by the
Commissioner of Central Excise (Appeals-I), Bangalore.

2. Briefly stated the facts of the case are that the appellant was initially registered as a dealer and later had taken registration for manufacture of 'Rectifier Power Supply Systems' falling under Chapter sub-heading No.85044010 of Central Excise Tariff Act, 1985 w.e.f. 11.07.2005. During the course of audit, it was observed that in their Profit & Loss account for the year 2004-05 has shown the sales income as Rs.2,78,69,001/-, out of which Rs.2,46,40,000/- in respect of sale of Rectifier Modules and Rs.32,29,001/- in respect of sale of regular Switch-mode Power Supply (SMPS) systems. On verification of the invoices, it revealed that 39 numbers of SMPS were sold as regular systems during the period December 2004 to February 2005 without discharging duty. Consequently, show-cause notice was issued to them for recovery of duty of Rs.5,26,973/- on the said 39 numbers of SMPS alleging that these were assembled/manufactured in the factory and cleared during the said period without payment of duty. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, they filed appeal before the learned Commissioner(Appeals) who in turn rejected their appeal. Hence, the present appeal.

3. At the outset, the learned advocate for the appellant has submitted that during the relevant period December 2004 to February 2005, the appellant was registered as a dealer and not as a manufacturer. He has submitted that the SMPS

manufactured by M/s. United Telecoms Ltd. (UTL, for short) and supplied the said goods to the appellant on payment of duty. In support, relevant purchase invoices were enclosed with the appeal paper book. In the said invoices, appropriate duty has been discharged on the SMPS received by the appellant. The duty demand was confirmed along with penalty and interest by the original authority without proper scrutiny of their records. He has further submitted that the learned Commissioner(Appeals) has not considered the documents submitted before him, but observed that no documents have been produced to prove that the SMPS were not manufactured by them even after the invoices issued by UTL were placed before him. He has further submitted that on the face of the clear documentary evidences indicating payment of duty by UTL, the demand has been confirmed wrongly. He has vehemently argued that there is no finding that mere addition/supply of additional redundant goods along with SMPS used in MCBs would result into manufacture attracting duty. Further, he has submitted that since no facts were suppressed nor misdeclared, hence imposition of penalty under Section 11AC of Central Excise Act, 1944 also is unsustainable.

4. Learned AR for the Revenue reiterated the findings of the learned Commissioner(Appeals).

5. Heard both sides and perused the records.

6. We find that the short issue involved in the present appeal is: whether the appellant failed to discharged duty on 39 numbers of SMPS alleged to have been cleared during the period December 2004 to February 2005 without following Central Excise procedure and discharging appropriate duty. It is not in dispute that the appellant was initially obtained a dealer's registration since they were trading on imported rectifiers. During the period in question i.e. December 2004 to February 2005, they cleared SMPS without payment of duty even though along with SMPS, certain addendums had been supplied to the customers. The appellant's claim is that the said SMPS have been procured from UTL during the said period, which suffered excise duty and since the appellants were trading on the items, cleared the same to their customers without payment of duty. It is their contention that mere supply of certain addendums along with the SMPS cannot be considered that a new product has been manufactured in their factory premises on the presumption that subsequently the appellant had undertaken activity of manufacturing of SMPS in their premises w.e.f. July 2005. We find that the objection has been raised by the audit during the course of scrutiny of their records subsequent to obtaining their registration as a manufacturer. The period in question is relating to time when they were engaged in trading of rectifiers of SMPS. The relevant invoices against which the SMPS were purchased by the appellant from UTL are enclosed with the paper book. The

Revenue could not produce any evidence that supply of additional items along with SMPS purchased from UTL resulted into emergence of a new manufactured product and the activity of assembly carried out by them amounts to manufacture. Neither investigation initiated nor statements have been recorded from the appellant about the activity of assembling, if any, of the additional items supplied with SMPS as observed in the impugned order. In these circumstances, we do not find merit in the impugned order. Consequently, the same is set aside and appeal is allowed with consequential relief to the appellant, if any, as per law.

(Order pronounced on 14.08.2024)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R BHAGYA DEVI)
MEMBER (TECHNICAL)

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