

Collector of Central Excise Vs. A.B.C. Products Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-05-1997

Reported in : (1997)(92)ELT111TriDel

Appellant : Collector of Central Excise

Respondent : A.B.C. Products Ltd.

Judgement :

1. The department has come up in appeal against the order passed by Collector (Appeals) reversing the order passed by the Assistant Collector rejecting the refund claim of the respondent and in turn allowing the refund claim.
2. Respondent, engaged in the manufacture of industrial valves, was clearing the goods on payment of duty having opted for invoice price procedure under Notification 120/75. Subsequently respondent filed refund claim for Rs. 1,635.53 stating that by an error the charges for second testing conducted at the option of the purchasers in the premises of the respondent's factory had been erroneously included in the assessable value for the purposes of payment of duty and that cost of such testing was not includible in the assessable value and duty was not payable on that account and therefore, excise duty paid has to be refunded. Assistant Collector rejected the claim but the same was allowed by the Collector (Appeals).
3. The material facts of the case are not in dispute. The goods were being subjected to test by the manufacturer at his own cost and no relief of refund has

been claimed in that regard. The refund claim arises on account of the cost of second testing conducted in the manufacturer's premises at the instance of the buyers and at their cost. According to Shri M. Ali, JDR appearing for the appellant, such cost is liable to be added to the assessable value. He relied upon two decisions of the Tribunal. The first is the one in *Madhavnagar Cotton Mills Ltd. v. Collector of Central Excise, Pune - 1986 (25) E.L.T. 443*.

This decision related to the cost of checking done at the instance of the buyer and the cost of which has not been made by the manufacturer initially and subsequently was recovered from the buyer. The Tribunal held that the cost of special checking was nothing but "labour charges for ensuring that flawless quality of the fabric as stipulated in the contract was delivered to the customer" and the charges would be part of the total cost of production incurred before delivery of the goods and hence includible in the assessable value. The Tribunal in *Richardson & Cruddas (1972) Ltd. v. Collector of Central Excise -1992 (57) E.L.T. 336*, a case relating to charges for test of prototype towers recovered by manufacturer from customers in terms of the contract and done before the manufacture of the transmission towers at the site. In both these cases, the check or the testing, as the case may be, was the only check or test conducted though at the instance of the buyer and not second check or testing conducted at the instance of the buyer after initial check or testing by the manufacturer.

4. The respondent has relied on a few other decisions of the Tribunal.

The earliest is the one in *Shree Pipes Ltd. v. Collector of Central Excise - 1992 (59) E.L.T. 462*. In that case the goods were sold after quality control by the manufacturer's own quality control department and after certifying by the ISI. Further testing was to be done by the DGS & D in the case of sale to PHED. Goods sold to other wholesaler dealers were not subjected to such additional testing. The additional testing was being done before the removal of the goods from the factory. It was held that since normal testing to the satisfaction of ISI was being carried out and the charges thereof were being included in the assessable value, the extra charges incurred for additional testing done at the instance of one of the buyers could not be included in the assessable value as the manufacturer

was not charging anything extra from the buyer for the additional testing. Our attention is invited to the circumstances that the department filed an appeal before the Supreme Court against this order and the appeal was dismissed as seen in 1993 (63) E.L.T. A 51. In General Engineering Works v. Collector of Central Excise, Jaipur - 1996 (81) E.L.T. 569, the Tribunal considered the decision of the Tribunal and the Supreme Court in Shree Pipes Ltd. case as also the decision in Madhavnagar Cotton Mills Ltd. case and held that charges for inspection held at the instance of the buyer in addition to regular inspection incurred by the manufacturer on his own cannot be included in the assessable value. In Hindustan Development Corporation Ltd. v. Collector of Central Excise - 1996 (85) E.L.T. 58, the Tribunal followed the view taken in Shree Pipes Ltd. case on similar facts. In Ashok Transformers Pvt. Ltd. v. Collector of Central Excise - 1996 (86) E.L.T. 652 also the Tribunal followed the earlier decision in Shree Pipes Ltd. We find a similar view taken in Final Order No. 3632/96-A, dated 14-11-1996 in A. No.E/1283/88-A, reported in 1996 (17) RLT 853 (Tribunal) in the case of W.S. Insulators of India Ltd. 5. Thus we find that in later decisions of the Tribunal, the proposition enunciated in Madhavnagar Cotton Mills Ltd. and Richardson & Cruddas Ltd. cases has been distinguished and held not to be applicable. It follows that those decisions are not applicable to a situation where besides the normal test conducted by the manufacturer on his own, where additional testing is done at the instance of buyer and the cost of such additional testing is not liable to be included in the assessable value. This being the correct position in law, it follows that the view taken by the Collector (Appeals) is correct.

Appeal is accordingly dismissed.

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