

Kamarajar Electricity System Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-05-1997

Reported in : (1997)(92)ELT100TriDel

Appellant : Kamarajar Electricity System

Respondent : C.C.E.

Judgement :

1. The common Order-in-Appeal Nos. 127 to 129/87 (Md), dated 30-9-1987 passed by the Collector (Appeals) Central Excise, Madras, is being challenged in these three appeals. The order passed by the Collector (Appeals) refers to three appeals against orders dated 22-1-1987, 3-2-1987 and 18-3-1987 passed by the Assistant Collector of Central Excise, Virudhunagar. However, it is seen that copies of only two of the orders have been produced by the appellant. We are satisfied that the order passed by the Collector (Appeals) confirming the three orders-in-original passed by the Assistant Collector are being challenged before us.

2. The common appellant is Superintending Engineer, Kamarajar Electricity Distn. Circle, Virudhunagar. The Electricity Board manufactures R.C.C. Poles (Heading 68.07) and captively consumes the R.C.C. Poles in the setting up of electricity distribution system and the like. The Board was filing Price Lists under Rule 6(b)(ii) of the Central Excise Valuation Rules, 1975 declaring cost of raw materials and the manufacturing cost and without declaring notional margin of profit. Assistant Collector issued notices to the Board stating that notional manufacturing profit of

10% has to be added to the assessable value. Notices were resisted by the Board. However, the Assistant Collector passed orders confirming the proposal. These orders have been confirmed by the Collector (Appeals).

3. Appellant is absent in spite of notice of hearing. We have heard Shri T.R. Malik, SDR and perused the papers.

4. It is stated in the memoranda of appeal that since R.C.C. Poles were for the exclusive use of the Virudhunagar Division to meet the statutory obligation of transmission and distribution of electricity, and once the poles are erected they become part and parcel of the overhead lines, the levy of excise duty is unreasonable. The adjudicating authority is not concerned with the reasonableness or unreasonableness of levy of excise duty. Adjudicating authority is required to discharge whether R.C.C. Poles are excisable goods and if so impose excise duty. R.C.C. Poles are commercially known marketable products and as such are excisable.

5. It is also stated in the memoranda of appeal that since the Board is not effecting sale of R.C.C. Poles but is captively consuming the same, no profit is earned on the manufacture of R.C.C. Poles and therefore notional profit should not be added to the assessable value.

6. Valuation of excisable goods captively consumed is governed by 6(b) of the Valuation Rules. The appellant has no contention that the assessable value should have been determined under Sub-clause (i) of Rule 6(b) of the Rules. Assistant Collector has determined the value under Clause (ii) of Rule 6(b) of the Rules. Under this clause, value should be based on the cost of production including profits, if any, which the assessee would have normally earned on the sale of such goods. What the adjudicating authority should see is that if R.C.C.Poles are sold whether there will be margin of profit and if so what would be the margin of profit. We have come across other appeals where Electricity Boards supplied raw materials to job workers who manufactured R.C.C. Poles and returned to the Board. Therefore, R.C.C.Poles are marketable and common course of events indicate that job workers must be earning some margin of profit in such activity. What we are concerned with is whether there would be a margin of profit if R.C.C.

Poles are sold and if so what would be the margin of profit.

There can be no doubt that there will be some margin of profit on sale of R.C.C. Poles. The lower authorities have determined the margin of profit at 10%. There are no materials before us to show that this estimate is unreasonable or excessive.

7. For the reasons indicated above, we decline to interfere and dismiss the appeals.

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