Foundry Agri. and Mining Equip. Vs. Commr. of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-10-1997

Reported in : (1999)(112)ELT947Tri(Mum.)bai

Appellant : Foundry Agri. and Mining Equip.

Respondent : Commr. of C. Ex.

Judgement :

1. The appellants manufacture machinery falling under Chapter 84 of Central Excise Tariff Act, 1985. The department found that the appellants were charging commissioning and erection charges for the machines installed by them at their customer's premises through issue of separate bills/invoices. It was further found that the appellants did not include these charges in the assessable value of the machines for which they filed price list. Proceedings were, therefore, initiated for including these charges in the assessable value and duty demand for Rs. 22,500/- was issued for the period between January and Feb., 1985.

After hearing the appellants and considering their reply, the Addl.

Commissioner of Central Excise & Customs, Vadodara held that the installation and commissioning charges charged by the assessee from his customers will form a part of the assessable value in terms of the Supreme Court judgment in the case of Union of India v. Bombay Tyre International reported in 1983 (14) E.L.T. 1896 because such activities enhance the value and marketability of the products and therefore expenses on such activities should form a part of the assessable value.

Hence he confirmed the demand.

2. Shri S.C. Bhide, the ld. Counsel for the appellants submitted that erection and commissioning charges were incurred after the removal of the machines on payment of duty from the factory. This charge is not compulsory but optional. He cited the decision of the 36th Meeting of the Central Advisory Council held on 10-1-1997, wherein on a question of includibility of erection and commissioning charges, the Council had decided that erection charges are not includible in the value of machinery assembled at site, as an immovable product. Reliance was also placed on the Tribunal's decision in the case of C.C.E. v. Sunray Computers (P) Ltd., 1988 (33) E.L.T. 787 (Tribunal), wherein it has been held that expenses on account of installation and commissioning are clearly post-removal expenses and this activity has no nexus with manufacturing and marketability of the machines, which was in their case, computer. The ld. Counsel also referred to the Tribunal decision in the case of Collector of Central Excise, Patna v. Jenson and Nicholson (India) Ltd., where also the Tribunal held that erection and commissioning charges collected from the customers are not includible in the assessable value, especially, in a case where these charges were optional.

3. Shri S.V. Singh, the ld. D.R. contended that there are no details available to indicate that the machinery at erection site becomes immovable property.

4. We have carefully considered the submissions. The appellants have claimed before the adjudicating authority that the machinery after fully manufactured are removed on payment of duty to their customers site for installation and that the installation and commissioning charges are optional at the preference of the customers. This claim of the appellants has not been rebutted in the finding. In such a situation, the Tribunal decision in the case of Jenson and Nicholson (India) Ltd. supra will come into play, wherein the Tribunal has held that where such erection and commissioning charges are optional then such charges cannot be included in the assessable value and in the other Tribunal decision relied upon by the appellants it has been clearly held that these are in the nature of post removal expenses and have no nexus with the manufacturing and marketability of the product.

Following the ratio of the above decisions, we set aside the impugned order and allow the appeal.