

Collector of Central Excise Vs. Recondo Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-12-1998

Reported in : (1998)LC312Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Recondo Ltd.

Judgement :

1. Respondent is absent in spite of notice. We have heard Shri M. Ali, JDR for the appellant-Collector and perused the papers.
2. This appeal is directed against Order-in-Appeal dated 31-8-1990 passed by the Collector (Appeals), Central Excise, Bombay allowing two appeals filed by the assessee against two Orders passed by the Assistant Collector, Bombay, one approving four price lists and the other confirming demand for a particular period on the basis of the approval Order.
3. Respondent entered into contracts with buyers for supply of FRP Fan Blades used in cooling towers and Hub-Assembly for the same purpose and to fit these items in the cooling tower at the premises of the buyers.

The four price lists declared the price of the Blades and Hub-Assemblies without including the testing and erection charges covered by the contracts. Show cause notice was issued proposing to include these charges also in the assessable value of the excisable product. In respect of the period during which the product was

cleared without paying duty on the element of testing and erection charges, demand was proposed by another show cause notice. Though both the nonces were resisted by the assessee, the Assistant Collector confirmed the proposals and these Orders were set aside by the Collector (Appeals).

4. There is no dispute that cooling tower is attached to earth and, therefore, has to be regarded as immovable property. Assessee had undertaken to supply FRP Fan Blades and Hub-Assembly, the two items which are to be fitted in the cooling tower. Respondent manufactured Fan Blades and purchased Hub-Assembly and paid duty on the price of Fan Blades. The Department has no case that duty has to be paid on the price of Hub-Assemblies evidently because they were bought out items and there was no manufacture by the respondent of cooling tower, of which Hub-Assembly could be said to be a part. By erection charges is meant the charges collected by the respondent for fitting Fan Blades and Hub-Assemblies inside the cooling tower. Since the respondent did not manufacture cooling tower or Hub-Assemblies and the cooling tower as such is immovable property, the question of paying duty on the element of fitment charges or erection charges does not arise.

5. Collector of Central Excise, Bombay has not produced the copy of the show cause notice or of the contract. The Order passed by the Assistant Collector shows that the testing charges related to testing of the supplied items in the premises of the buyers to explain to them the usefulness of the Blades designed by R&D wing of the respondent. The Order also refers to the submission made by the respondent that this was done in the premises of the buyer to satisfy the buyer regarding saving of electricity cost by use of the Blades designed by the R&D wing of the respondent. Assistant Collector did not demur to this plea but nevertheless passed an Order against the assessee. Order passed by the Collector (Appeals) also does not indicate anything to the contrary. In the absence of the copy of the show cause notice and the contract and in the face of the contents of the Order passed by the Assistant Collector referred to above, the mere assertion in the Memo, of Appeal that the Collector of Central Excise felt that the testing charges were for performance testing carried out before the removal as well as after removal cannot be accepted. These testing charges were carried out at the

premises of the buyer to satisfy the buyer about the particular aspect referred to. Since Fan Blades were developed and designed by the R&D wing of the respondent, we have no doubt that the testing would have been done earlier by the R&D wing in the premises of the respondent. The testing which has led to the present dispute must have been carried out at the option of the buyer. In these circumstances, testing charges could not be included in the value of Fan Blades.

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