

**L and T Vs. Cce**

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**SooperKanoon Citation :** [sooperkanoon.com/12874](http://sooperkanoon.com/12874)

**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Feb-13-1998

**Reported in :** (1998)(76)LC463Tri(Mum.)bai

**Judge :** U Bhat, S T K.

**Appellant :** L and T

**Respondent :** Cce

**Judgement :**

1. This appeal is directed against the order in appeal No.R-735-737/B-II, dated 3.1.1991 passed by the Collector of Central Excise (Appeals), Bombay confirming three orders-in-original dated 19.3.1990, 16.4.1990 and 7.8.1990 respectively passed by the Assistant Collector of Central Excise, Bombay.

2. The dispute arises on four refund claims filed by the appellant and rejected by the Assistant Collector. According to the law as explained by the Tribunal appellant was required to file three appeals but instead filed one appeal. We are, therefore, treating the present appeal as one filed against the order dismissing one of the three appeals by the Collector (Appeals). Appellant's representative suggests that this appeal may be treated as an appeal against order dismissing appeal No. 545/90 filed against the rejection of the refund claim for Rs. 1,41,489.64.

3. The dispute arises in regard to charges met by the buyer for inspection of the excisable goods. The lower authorities held that the inspection charges would be part of the assessable value and duty was legitimately payable and therefore, refund of the duty on the element of inspection charges cannot be made.

4. It is pointed out that the appellant as Quality Assurance Department where the excisable products are subjected to inspection at the cost of the appellant and the cost is taken into consideration in fixing the price for the excisable goods. The inspection charges forming subject matter of the appeal was carried out at the option of the buyer and through an agency chosen by the buyer and this inspection was in addition to the normal inspection conducted by the appellant. The contract states as follows: Testing shall be carried out by you at your works as required and to submit test report along with your invoice. Inspection shall be done at your works by M/s. Project Development India Ltd. Inspection charges to PDIL shall be paid directly by RITES Ltd. Please contact PDIL, Bombay for inspection." It is clear that the subject inspection was carried out at the instance of the buyer in addition to the normal inspection carried out by the appellant. Charges for such inspection cannot be included in the assessable value. See Shree Pipes Ltd. which has been followed by the Tribunal in subsequent decisions.

5. For the reasons indicated above, we set aside the impugned order and allow the appeal. Refund will be subject to Section 11B(2) of the Central Excises Act, 1944.

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