

Damodar Ropeways and Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-11-1998

Reported in : (1999)(105)ELT211TriDel

Appellant : Damodar Ropeways and

Respondent : C.C.E.

Judgement :

1. In this case demand of Rs. 27,55,480/- has been confirmed as duty on Aerial Ropeway Systems erected by the applicants herein at Naina Devi, Himachal Pradesh, under GET subheading 8428.90 and a penalty of Rs. 28,00,000/- has been imposed upon them. The applicants contend that the Ropeway System is immovable property and not goods within the meaning of the Central Excise Act, 1944 and therefore no excise duty could be charged thereon. They also contend that the system before erection, consisting of parts of fabricated materials lying at the site of erection, also cannot be treated as ropeway system (teleferic) in an unassembled or knocked down condition by the application of Rule 2(a) of the Rules for Interpretation of the Schedule to the CETA, 1985, since this is not applicable in the present case where neither were all the parts lying assembled together at the erection site nor was it a case of simple assembly operation of all the parts so as to come within the ambit of Rule 2(a) of the Interpretative Rules, as held by the Tribunal in the case of Space Age Engg. Projects (P) Ltd. v. CCE - 1995 (78) E.L.T. 544 (Tribunal). The applicants further submits that collection of parts by itself does not amount to manufacture as held by the Tribunal in the case

of Tata Robins Fraser Ltd. reported 'in 1990 (46) E.L.T. 562 (Tribunal). They also relied upon Board's circular dated 21-4-1989 in support of the contention that mere bringing together parts and components at site is not to be regarded as manufacture. Lastly they submit that the demand is barred by limitation since the date of removal of parts to the erection site is not ascertainable. For these reasons they pray that requirement of pre-deposit of duty and penalty may be waived and recovery stayed during the pendency of the appeal.

3. On a consideration of the rival submissions and noting that Rule 2(a) of the Interpretative Rules is prima facie not attracted to hold that parts and fabricated materials constitute a complete ropeway system in an unassembled/knocked down condition so as to levy duty thereon, in view of the case law cited by the learned Counsel, we are of the view that a strong prima facie case for waiver has been made out and accordingly dispense with the requirement of pre-deposit of duty and penalty and stay recovery thereof during the pendency of the appeal.

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