

Engineers Combine Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-16-1998

Reported in : (1999)(107)ELT148TriDel

Appellant : Engineers Combine

Respondent : Commissioner of Central Excise

Judgement :

1. In the course of the hearing of stay applications filed under Section 35F of the Central Excise Act, 1944, both sides have adverted to all the aspects arising for consideration in the appeals. Both sides also suggested that the best way of dealing with the main controversy arising in the appeals is to remand the case to the jurisdictional Adjudicating Authority for re-determination of the correct amount of differential duty due in the present cases. Being satisfied that the course suggested is the appropriate course to be followed, we waive the requirement of pre-deposit and take up the appeals for consideration.

2. The period in dispute is from April, 1992 to January, 1994. During this period, appellant was manufacturing Arm Assembly Rear Trailing (ART) and Rod Assembly Rear Control (RRC) and supplying the same to M/s. Maruti Udyog Limited (MUL). Appellant has been procuring raw materials or parts, as the case may be. MUL was supplying bushes free of cost for being fitted to above products. Appellant was manufacturing the above products and was selling the same to MUL at prices agreed upon mutually and was paying central excise duty on assessable value determined on the basis of such prices but without inclusion of

the cost of bushes supplied free of cost by MUL. Accordingly, two separate show cause notices were issued for different parts of the aforesaid period referring to above facts and alleging suppression of material facts with intent to evade duty and proposing demand of differential duty after inclusion of the cost of bushes supplied in the cost of assessable value. The notices also proposed imposition of penalty.

Though appellant resisted the notices on merits, quantification and limitation, the Commissioner, over-ruling these contentions, confirmed the demand and imposed penalty of Rs. 3.5 lakhs. The amount of duty confirmed is Rs. 1,13,36,8187-. The impugned order indicates that after the show cause notices and before the order, appellant had paid 52,65,904/-. According to appellant, the amount so paid was Rs. 59,93,9217-.

3. The main contention of the appellant is that the calculation of duty made was without any basis and no particulars have been given in the show cause notices and Annexure to the show cause notice merely indicated the assessable value of bushes without indicating the manner in which assessable value was arrived at. On 13-5-1998, we requested Shri K. Srivastava, SDR to obtain from the Commissioner, Delhi information as to the source and the manner of arriving at the assessable value of bushes, whether the value was taken from any document and if so, what document and if the value was arrived at on calculation of all the elements, the method of calculation. Shri K. Srivastava, SDR has placed before us a copy of the reply dated 10-6-1998 received from the Assistant Commissioner. The reply shows that MUL had imported bushes at FOB prices in Japanese Yen specified in the reply that the FOB prices were converted in Indian Rupees at the exchange rate of Rs. 100 = JY 310, such prices were converted into CIF prices by adding freight and insurance at 20% and 0.278% respectively, customs duty on bushes was 87.5% of the CIF value, landing cost of bushes was arrived at as indicated in the reply.

4. Learned Counsel for the appellant contended that the uniform exchange rate adopted by the Commissioner was not sustainable as a number of imports were made over a period of time and the exchange rate was not uniform on the various

occasions of import and the exchange rate ranged between JY 332 to JY 470 for Rs. 100/- during the period and for this reason, the assessable value of bushes determined by the Commissioner cannot be regarded as correct. He also contended that the addition of freight at 20% and insurance charges at 0.278% was not justified since the actual freight and insurance paid by MUL was only around 5% of the import price and for this reason also, the assessable value of bushes determined by the Commissioner cannot be accepted as correct. He also pointed out that MUL enjoyed the benefit of exemption from payment of customs duty in respect of two varieties of bushes out of the three varieties supplied by MUL. According to him, there was exemption from payment of countervailing duty till June, 1993. In respect of subsequent period, he contended that since MUL was availing Modvat credit of the element of countervailing duty, this element cannot be included in the assessable value in the light of decision of the Tribunal in *Dai Ichi Karkaria Ltd. v. Collector of Central Excise, Pune 5*. None of the above contentions could be urged by the appellant before the Commissioner since appellant was not at that stage informed about the basis of determination of assessable value, as indicated in the reply dated 10-6-1998 and referred to above. It was in this light that both sides requested us to remand the case for re-determination of assessable value. In this view, learned Counsel for the appellant contended that for the purpose of these appeals, he is not arguing the other two contentions namely, that bushes cannot be regarded as part of the excisable goods manufactured by the appellant and the ground of limitation.

6. In the light of what we have indicated above, we set aside the impugned order and remand the case to the jurisdictional Adjudicating Authority for re-determination of the assessable value of bushes and of central excise duty payable, taking into consideration all the contentions of appellant recorded in this order and such other contentions as the appellant may urge before the Authority after remand and after proper verification of the correctness of the various elements proposed to be taken into consideration for arriving at the assessable value. The Commissioner shall also verify the correctness of the amount of duty stated in the impugned order paid by the appellant after issue of the show cause notices. The Authority shall further decide whether this is a fit case for imposing penalty and the quantum of penalty. If the Authority does not propose to proceed

on the basis of the data recited in the reply dated 10-6-1998 and referred to above, he shall supply a copy of the revised data to the appellant prior to personal hearing. Appeals are accordingly allowed.

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