

Texmaco Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-21-1998

Reported in : (1999)LC462Tri(Delhi)

Appellant : Texmaco Ltd.

Respondent : Collector of Central Excise

Judgement :

1. Appellant, being aggrieved by the Order-in-Appeal No. 132/89, dated 17-7-1989 passed by the Collector (Appeals), Calcutta confirming the Order-in-Original 65/88, dated 22-12-1988 rejecting the refund claim filed by the appellant, has filed the present appeal.

2. M/s. Bharat Heavy Electricals Ltd. (for short, BHEL) required two numbers of special wagons for transporting heavy duty transformers.

They issued a purchase order and subsequently an amendment of purchase order with the appellant for supply and assembly of the wagons. The assembly was carried out by the appellant using a consignment of components imported by BHEL from Sweden, wheel sets imported by the appellant from abroad as also some items manufactured by the appellant.

Apparently, at the instance of the Central Excise Department, appellant paid central excise duty on the clearance of wagons allegedly manufactured by the appellant and subsequently filed refund claim on the ground that the appellant was

not manufacturer of wagons, that wagons in semi-knocked down condition had been imported by BHEL and the only work was done by the appellant was work of assembly, which did not amount to manufacture of a new excisable product. The Assistant Collector rejected the refund claim on the ground that the appellant had manufactured a new excisable product, namely, wagons. This order has been confirmed by the Collector (Appeals).

3. Learned counsel for the appellant reiterated before us the contention taken before the lower authorities that the work done by the appellant was only assembly of railway wagons procured in SKD condition and as a result of the assembly no new excisable product came into existence. Learned Counsel has referred to various documents copies of which have been placed before us. The original purchase order placed by BHEL with the appellant is seen at page 19 of the paper book.

Description and specification was described thus: "Supply of components and accessories 250 tons wagons, components being imported from M/s. Ageve Sweden for details see annexure attached." A copy of the annexure is seen at pages 20 to 22. The reference in the annexure is to be appellant's offer and subsequent discussion for the following :- "for manufacture and supply of 2 Nos. special 250 T wagons 20 axled, for transporting transformers." "M/s. Texmaco is to manufacture and supply the following components/sub-assemblies and other work for two wagons." 4 axled bogies complete with wheel sets, bearings, laminated bearing springs, etc.

3 axled bogies (inner) complete with wheel sets, bearings, laminated bearing springs, etc.

3 axled bogies (outer and suitable to accommodate side buffers, etc.) complete with wheel sets.

Supply 6 Nos. centre pivot top and 6 Nos. centre pivot bottom for bogies, etc.

Supply of side buffers, screw couplings, drawbar gear, etc. Supply of brake equipment.

G. assembly of components and sub-assembly supplied by M/s.

Ageve/BHEL as free issue to Texmaco.

Transportation cost, complete assembly of wagon, final painting, etc.

4. Contents of the original purchase order will clearly indicate that the appellant was to supply components and sub-assemblies referred to in the annexure and undertake the work of transportation, assembly of wagons, painting, testing etc. At page 19 is seen an amendment of the purchase order by which the appellant was to supply the following :- "Balance components and assembly of 2 Nos. 250 Ton special wagons.

The other main/major components/sub-assembly are to be supplied as free issue items by BHEL." The items are seen described in the annexure at page 24. There was yet another purchase order (page 26 of the paper book) for transformer of wagons.

5. A reference is also made to Bill of Entry at page 17 for the goods imported by BHEL. The goods are described as follows :- At page 13 is seen a copy of the import licence obtained by BHEL. The goods are described as "special wagons, etc. as per list attached." The list attached refers to special wagons in semi-knocked down condition, spares and accessories.

6. It is admitted that the appellant had imported wheel sets from abroad and manufactured various other components of railway wagons for use in the assembly of two railway wagons for BHEL.

7. The description in the import licence obtained by BHEL and the Bill of Entry is vague and not decisive. The licence was clearly for import of wagons in semi-knocked down condition. The Bill of Entry refers wagon parts as well as special wagons. The purchase order clearly indicated supply of components for the wagons and required the appellant to manufacture and supply the components and sub-assemblies indicated in the annexure, use the components and sub-assembly supplied by BHEL and assemble wagons. Whatever be the subject matter of the licence, it is clear that all the components and sub-assemblies of

railway wagons had not been imported by BHEL. The very fact that the appellant had to import wheel sets and manufacture certain components and sub-assemblies clearly indicates that whatever articles were imported by BHEL were not the complete components and sub-assemblies of railway wagons. Railway wagons could be completely assembled only if all the articles imported by the appellant and BHEL and all the articles manufactured by the appellant are used in assembly. It is thus clear that the articles imported by BHEL in semi-knocked down condition were not complete railway wagons; necessarily they were components, may be major part of the components of wagons. Wagons, as such, came into existence for the first time when the assembly work by the appellant was completed. There can be no dispute that wagons are excisable products. Therefore, appellant was liable to pay excise duty on the wagons which came into existence in this manner.

9. For the reasons indicated above, we find no ground to interfere and accordingly dismiss the appeal.

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