

**Larson and Toubro Ltd. Vs. Cce**

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

**Decided On :** Feb-22-1999

**Reported in :** (1999)(83)LC609Tri(Mum.)bai

**Judge :** G B Deva, R T Lajja

**Appellant :** Larson and Toubro Ltd.

**Respondent :** Cce

**Judgement :**

1. This appeal arises out of and is directed against the Order-in-Original passed by the Collector of Central Excise, Bombay dated 25.4.1991 issued on 16.5.1991.

2. Arguing for the appellants, Shri Prakash Shah, Advocate raised the jurisdiction point. He contended that the Collector, who has adjudicated the matter was not empowered to adjudicate. In other words, in view of the particular jurisdiction with reference to the manufacturing activities took place at Jamshedpur, he submitted that party has raised specific plea with reference to a jurisdiction point but the same has not been dealt with as can be seen from the Order. He referred to the internal page-9 of the impugned order-in-original which reads as under: The assessee were granted personal hearing on 8.3.1991 Shri D.B. Shroff, Advocate, P.D. Shah, Advocate, A.B. Khadikar, Manager, Central Excise and N.N. Wagh, Manager appeared for the hearing. Shri D.B. Shroff, contended that the Noticee supplied to TISCO at Jamshedpur, Dolomite Rotary Kiln with ancillaries which in very nature of things were required fitted on to the huge boiler and therefore, the

duty could not be demanded on the entire boiler as such, which they had neither made nor the Bombay office had jurisdiction for whatsoever, on erection and embedding at Jamshedpur. They had paid duty on installation and on the parts of the boilers, supplied as per the drawing explaining full details.

They had received payments for consultation in regard to the engineering aspect of the erection, maintenance, etc. Some of the case law referred to by them were already been taken on record. They submitted break up value at TISCO Dolomite Rotary Kiln and emphasised that to the extent the duty was chargeable, they had already paid. (Drawings of boilers together with material supplied by Larsen & Toubro Ltd., submitted were also taken on record).

3. In that appeal, it was specifically raised that the duty could not be demanded on the entire boiler as such which they had neither made nor the Bombay office had jurisdiction for whatsoever, on erection and embedding at Jamshedpur.

4. Shri Prabhat Kumar, SDR countering the arguments drew our attention to the relevant paras in page 11 and 12 of the impugned order, which reads as follows: On examining these contentions, I find on perusal of the contract that it was one for designing and engineering, erection and commissioning of 60 days to dolomite rotary kiln with ancillaries.

The assessee received payment as against the contract on various heads. The various equipments and components manufactured alongwith bought items were to be taken on the site of the plant i.e. at TISCO, Jamshedpur and had to be erected and commissioned by the assets.

In such a situation, I find the assessee's activities amounted to manufacture and clearance of the various components and equipments forming the plant itself as per the contract taken from their factory and erected at site. Such a situation leads to emergence of a new commodity at site. This view finds supports in the decision of the Hon'ble Supreme Court in the case of Narne Tuleman Manufac-turers Pvt. Ltd. v. Collector of Central Excise the Supreme Court held that the construction 5. According to Shri Prabhat Kumar, JDR the Collector has dealt with the issue of jurisdiction since he relied upon the decision of the Supreme Court in the case of

Narne Tuletnan Manufacturers Pvt. Ltd. v.CCE In that case also, the goods were re-moved from the factory and the manufacturing activities took place at site.

6. On the other hand, Shri Prakash Shah Advocate submitted that the jurisdiction is the basic issue and the Collector has not given a clear finding before assuming jurisdiction. In this context, he referred to para 9 of the order of the Tribunal in the case of Tata Robins Fraser Ltd. v. CCE 1990 (46) ELT (TRB) : 1990 (28) ECR 70 (T). The relevant para 9 is as under: 9. The third issue discussed by the Collector, namely the following need not be dealt with by us because this issue has been decided by the Collector in favour of the appellants. It is for this reason that the Collector has held the appellants liable to differential duty in respect of 12 contracts alone out of 52 contracts executed by them during the relevant period: Whether the proper officer to take action on the alleged evasion of duty on the goods said to have been manufactured at site located in other Collectorate is the officer in whose jurisdiction the assessee's work is located or the officer in whose jurisdiction the site of such manufacture is located.

7. We have carefully considered the submissions made by both the sides and perused the records. As can be seen from the records, it is clear that the party has taken a specific plea that the Collector had no jurisdiction to decide the issue. In view of this, it is bounden duty of the Collector to decide the jurisdiction point before going into other issue. There is no specific finding on the jurisdiction point as can be seen from order. In view of the lacuna, we are of the view that this matter will have to go back for re-consideration. Accordingly, the concerned Collector/Commissioner is directed to give a clear finding on jurisdiction point and on other issues. Thus, this appeal is allowed by way of remand.

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