

Advance Structural Pvt. Ltd. and Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-30-1999

Reported in : (1999)(83)LC242Tri(Delhi)

Judge : G B Deva, N T C.N.B.

Appellant : Advance Structural Pvt. Ltd. and

Respondent : Cce

Judgement :

1. All these appeals raise a common issue-excisability of EOT and certain other Cranes and irrigation gates manufactured by the appellants. The goods are manufactured against specific contracts of mostly Government departments. The appellants are small scale manufacturers.

2. The appellants have submitted that in respect of cranes they manufacture some of the parts like bridge girders, trolleys, end carriage, gear box, etc., while the other parts such as motors, wire ropes, switch gear, control gear, gantry girders, downshop leads, etc.

are purchased from other manufacturers or from the open market and are assembled by them. They have submitted that in respect of irrigation gates, the activity carried is one of fabrication.

3. The main contention of the appellants against excisability of these goods is that they emerge as identifiable goods only on assembly and erection at site and that

at that point they ceased to be goods, inasmuch as they are fixed to earth as immovable property. The appellants have submitted that even if duty is held to be leviable, it should be only on the parts manufactured by them and not on the entire value of the goods as reflected by the sale bills.

4. The appellants have also submitted that the levy of duty on these items is contrary to the law laid down by the Supreme Court and High Courts. With regard to the levy of duty on irrigation gates, they have relied on the decision of the Karnataka High Court in *Thungbhadra Steel Products Ltd. v. Union of India* 1997 (70) ECR, 496, *Thungbhadra Steel Products Ltd. v. Union of India and SLP (Civil)* 4743 *Union of India v. Thungbhadra Steel Products Ltd.* .

They have also relied on the decision of the Supreme Court in *Mittal Engineering Works Pvt. Ltd. v. Collector of Central Excise* 1997 (68) ECR 13 (SC). With regard to levy of duty on cranes, they have relied on the decision of the Supreme Court in *Mittal Engineering Works Pvt.*

Ltd., 1997 (68) ECR 13 wherein the Apex Court held that parts fabricated and cleared and thereafter attached to the earth at site would not be marketable goods attracting duty of Central Excise. They have also relied on the decision of the Supreme Court in the case of *M/s. Ram Singh and Sons Engineering Works v. The Commissioner of Sales Tax, UP* .

5. As against this, the Revenue has contended that the dutiability of cranes remains settled in favour of the Revenue by the decision of the Patna High Court in the case of *Tata Iron and Steel Co. Ltd. v. Union of India and Ors.* . The Revenue has also submitted that the Hon'ble High Court had taken into account the decision of the Supreme Court in *M/s. Ram Singh and Sons Engineering Works* and had distinguished this decision while holding that the cranes manufactured by *Tata Iron and Steel Co. Ltd.* are goods and are liable to Central Excise Duty.

6. We have perused the records of the case and have considered the rival submissions. With regard to the case law relied upon by both sides, we find that the Apex Court's order dismissed the SLP filed by the Revenue against the

judgment of Karnataka High Court in the case of Thungbhadra Steel Products Ltd. The judgment of the Patna High Court is with regard specifically to the dutiability of cranes removed in CKD condition. The judgment of the Karnataka High Court is with regard to the dutiability of parts fabricated for assembly at site. Both these judgments were rendered with specific regard to the facts of the two cases. In the TISCO case, the Patna High Court noted that the order was for design, manufacture and supply of complete crane and complete crane was assembled by TISCO. The goods were not mere assemblies or components for crane. Complete crane was fabricated and assembled at TISCO and then removed in CKD condition. Upon those facts, the court held that cranes had been manufactured by TISCO and they were liable to duty. In the Thungbhadra case, the High Court observed that only certain parts had been fabricated by them and these parts were not marketable goods. Upon those facts judgment was rendered that dutiable event (manufacture of excisable goods) had not taken place. Thus, both the judgments were given based on different facts with regard to the manufacture of cranes. Therefore, these judgments cover different situations in respect of cranes. The Karnataka High Court's judgment covers excisability of irrigation gates also and the court has held that these are not excisable for the same reason as parts of cranes.

7. In the instant case also, the impugned order has specifically recorded a finding that the cranes in question were assembled by the manufacturers from parts made by them as well as purchased from the market and that the cranes had been cleared from the factory in SKD condition to facilitate transportation. Shri R.C. Agarwal, Director of the appellant had also stated that "after manufacture, crane is tested at works before despatch. The crane is dismantled into parts to facilitate transportation." In these facts the judgment of the Patna High Court directly covers the present appeals and duty is leviable on the cranes in question. However, no duty was leviable on the gantry and downshop leads installed at the premises where the cranes are to work, in the light of the same judgment of Patna High Court. The case of irrigation gates is directly covered by the decision of the Karnataka High Court in favour of the appellants and the gates were not liable to duty of excise. Accordingly, duty liabilities are required to be re-determined on the above lines. The appeals are, therefore, disposed of by way of remand for a fresh

decision after giving the appellants opportunity to present their case.

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