

Greaves Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-08-1999

Reported in : (1999)LC467Tri(Mum.)bai

Appellant : Greaves Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The appellant was a manufacturer, inter alia, of electric generating sets. It sold part of its production of such generating sets to the defence forces. The goods sold to the defence forces were either the generating sets by themselves, or the sets mounted on trailers. In the latter case, the trailers were either purchased by the appellant, or supplied by the defence forces to whom they were returned after fitment of the generating set. The appellant included in the assessable value of the mounted generating sets the cost of the trailers which it purchased. It did not include the value of the trailers provided by the defence forces. In the orders impugned in the appeal, the Collector (Appeals) has confirmed the finding of the Assistant Collector (whose order was impugned before him) that the cost of such trailers also ought to be included.

2. Advocate for the appellant contends that the bulk of the generating sets in question were sold by it in the market at the factory gate without being mounted on trailers. The mounting on the trailers was at the option of the one buyer, the defence forces. Trailers were not essential for the operation of the generating set. They were therefore in the nature of accessory. The value of trailers were

therefore not includible in the value of the generating set. Reliance on the judgment of the Supreme Court in *Sriram Bearings Ltd v. C.C.E.* -1997 (91) E.L.T.255 (S.C).

3. The Departmental Representative contends that the trailers on which the generating sets are mounted constituted special purpose motor vehicles falling under Heading 87.05 and that the value of the trailers has rightly been included. He contends that the Supreme Court's judgment was on different facts and trailers in any case cannot be considered to be accessory of generating sets.

4. Electrical generating sets classifiable under Heading 85.02 of the tariff which is heading that has been applied by the Assistant Collector. It is not the department's case that the generating sets mounted on trailer constitute a special kind or category of generating sets, in that the arrangements for mounting is such that the generating set cannot function without being so mounted. It is in fact difficult to conceive of the trailers being accessories of the generating sets.

These trailers by themselves do not contribute to the more effective functioning of the generating sets, which is what accessories generally do; mounting was apparently for the purpose of easy transportation of the sets to the locations at which they are put to use. The departmental representative seeks to make out completely a new case.

Neither the Assistant Collector nor the Collector (Appeals) has questioned the classification of goods under Heading 85.02. This point therefore cannot be accepted. It is doubtful whether such trailers so mounted would be classifiable under Heading 87.05 since they lack means of propulsion. It is however not necessary or desirable for us to pursue this line of argument.

5. In the judgment cited by the appellant, the Supreme Court held that the value of snap rings, sleeve lock devices and other accessories of ball bearings would not be includible in the assessable value of such bearing. It is not correct to say that this judgment does not support the appellant's case. In *C.C.E. v. Kishor Pumps Pvt. Ltd.* -1997 (91) E.L.T. 91, the Tribunal, after considering a series of decisions on this aspect held that accessories fitted at the option of a buyer will not form part

of the items to which they were getting. There is no dispute that fitment on generating sets on trailers was at the request of the defence forces. The ratio of this will apply to the facts of this case.

6. Accordingly it has to be held that the cost of the trailers will not form part of the assessable value of the generation set.

7. Appeals allowed. Impugned order set aside. Consequential relief, if permitted by law.

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