

Target Marketing Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Sep-24-1999

Reported in : (2000)(90)LC688Tri(Chennai)

Judge : S Peeran, A T V.K.

Appellant : Target Marketing

Respondent : Cce

Judgement :

1. These are two stay applications filed by the same appellant in respect of dismissal of their appeals by Commissioner (Appeals) on the ground that they have not pre deposited the amounts as determined by him in the Interim order under Section 35F of the Act. E/S/623 & 624/99 arise from Order-in-Appeal No. 69 & 70/99 dated 13.4.1999 by which the duty amount directed to be pre deposited is Rs. 12,03,087/- with an equivalent amount of penalty under Section 11AC and further penalty of Rs. 6,00,000/- in one case and duty amount of Rs. 14,13,068/- with equivalent amount of penalty under Section 11AC and further penalty of Rs. 1500/- in the second appeal which was in respect of demands raised for two different period 1992-93 to 1996-97 on the ground that the appellants had manufactured and cleared UPS System from their factory premises and the battery for the said system purchased from battery dealers and integrated with the UPS at the customer's premises by them and at the time of clearance of the system, duty was paid only on the assessable value of UPS only and not on the value of battery which was held to be an integral part of the system by the original

authority.

2. The Commissioner (Appeals) did not accept the plea that the appellants have a strong prima facie case as the value of the bought out battery was not includible in the assessable value as the UPS was cleared without the battery and the battery was directly taken to the customer's place. He has held that the appellants have no prima facie case, hence the entire amount of duty and penalty under Section 11AC and under Rule 173Q was required to be deposited.

3. Arguing for the appellants, Ld. Advocate Shri P.V. Srinivasa Raghavan, submits that the issue pertains to non includibility of value of battery has been upheld by the Tribunal in the case of Supra Hi-Tech Electro Equipments (P) Ltd. v. CCE well as in the case of National Radio and Electronics Co. Ltd. v. CCE as . He points out that there is a contrary Judgment rendered in the case of Kerala State Electronics Development Corporation Ltd. v. CCE as which is clearly distinguishable as in that case it had been held that while assessing the UPS system, the party had included the value of the battery as an essential component. It is his submission that in their case they had not included the value at the time of clearance from their factory and the same was sent separately by purchasing it from battery manufacturer and the customer was putting it from his side.

Therefore, the Judgment rendered in the case of Kerala State Electronics Development Corporation v. CCE (supra) is applicable in so far as this case is concerned. He submits that the Judgment rendered in the case of Supra Hi-Tech Electro Equipments (P) Ltd. (supra) held that the value of the battery is includible only if the same is cleared along with UPS system. He submits that as stated by him, in their case it was not cleared along with battery, the UPS system, therefore they are not required to include the value of it in the assessable value of UPS. He submits therefore they have a strong prima facie case and hence waiver is required to be granted and matter remanded to Commissioner (Appeals) to decide the case on merits.

4. Shri S. Kannan, Ld. D.R. arguing for the Revenue submits that the appellants have absolutely no prima facie case. It is his submission that UPS System is nothing but a battery plus a charger and the function of UPS cannot get completed

unless battery is fitted as battery being an essential part of it. Therefore, he submits that from these judgements he submits that the ratio is very clear that even if battery is a bought out item, the value of it is required to be added as it is an essential component as noted in the Kerala State Electronics Development Corporation (supra). He submits that the said ratio has not been differed in Supra Hi-Tech Electro Equipments (P) Ltd. wherein also in para 11 of the order it has been held that whenever the appellants removed UPS without battery, value of battery is also to be included in the assessable value. He submits that in all cases, battery was not manufactured by the appellants, they were always bought out and hence the string of ratio in all these cases was that the value was to be added. He submits that in this present case there is no financial hardship, therefore the appellants are required to pre deposit the entire amounts.

5. Ld. Counsel in rejoinder disputes the points raised by Ld. D.R. and submits that in the case of Supra Hi-Tech Electro Equipments (P) Ltd. (supra) the bench had clearly indicated that value of battery is required to be included only if it is removed along with UPS system. He points out that as in their case it had not been removed along with UPS system, hence it is not includible. He also disputes the point raised by Ld. D.R. that battery is an essential component of UPS system. Ld.

Advocate further submits that it is well settled by larger number of Supreme Court judgements that value of bought out items is not required to be added in the assessable value as held by the 3-Member bench of the Tribunal in the case of Diamond Clock Manufacturing Co. Ltd. v. CCE as which has been approved by the Apex 6. On a careful consideration, we notice that the issue is an arguable one and the judgements cited by the Counsel have taken a varying stand.

In the case of National Radio and Electronics Co., the matter was remanded for de novo consideration with an observation that cost of bought out items is excludible if they were options and supplied at the special request of the customer. A direction was given to the authorities to enquire as to whether the supply of battery or UPS was a special request of customers or otherwise and thereafter to arrive at the correct decision. In this case, the Judgment of Kerala State Electronics Development Corporation Ltd. (supra) was also referred and noted. The bench

had taken a view that a battery was an essential part of UPS and its value was required to be added while in the case of Supra Hi-Tech Electro Equipments (P) Ltd. (supra) the bench held that the value of battery is required to be added only if it is supplied along with the UPS. In view of apparent uncertainty in this aspect, we deem it proper that appellants be directed to pre deposit partially the amounts in this case. The total duty in respect of both the orders works out to Rs. 26,16,155/-. In view of the nature of the case, we direct the appellants to pre deposit Rs. 10,00,000/- (Rupees ten lakhs only) within three months from today. On such deposit, the balance of duty, penalty/mandatory penalty under Section 11AC and Rule 173Q stand waived and recovery stayed.

7. As the Commissioner has not decided the matter on merits, therefore both the impugned orders are set aside and matter remanded to the Commissioner (Appeals) to decide the case on merits without insisting on further deposits both on duty and penalties, on appellants producing proof of pre-deposit after the expiry of 3 months from the date of receipt of this order. Thus the stay and appeals are disposed of in the above terms.

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