

Ashok Conductors Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-27-1999

Reported in : (2000)(68)ECC72

Judge : S Kang, a T V.K.

Appellant : Ashok Conductors

Respondent : Commissioner of Central Excise

Judgement :

1. The issue involved in this appeal filed by M/s. Ashok Conductors is the computation of assessable value after crossing the exemption limit of Rs. 75 lakhs.
2. When the matter was called no one was present on behalf of the appellants in spite of notice. We, therefore, heard Shri Ashok Kumar, learned Departmental Representative, and perused the records. The appellants availed of the benefit of Notification No. 175/86 and supply ACSR and AAC conductors to Gujarat Electricity Board. They had cleared the goods to the Gujarat Electricity Board on payment of duty at 30% though they were liable to pay duty at the rate of 20% as per Notification No. 175/86. Subsequently, while filing RT-12 Returns they requested, the credit of the duty paid in excess in their PLA. The Collector (Appeals) has disallowed them the refund, holding that as per their contract entered into with Gujarat Electricity Board, duty only to the extent of 21% was realisable from Gujarat Electricity Board and duty in excess of 20% was to be suffered by the appellants. The Collector (Appeals) held that inasmuch as the

appellants have required to pay higher duty after crossing the value limit under Notification No. 175/86, they ought to have taken up the issue with the Gujarat Electricity Board. The appellants have contended that as per the provisions of Section 4(4)(d)(ii) of Central Excise Act, 1944, amount of duty payable on the excisable goods is not required to be included in the assessable value and as the assessable value included the amount of excise duty, the deduction should have been given to them. The learned Departmental Representative has reiterated the findings of the Collector (Appeals).

3. We have considered the submissions of the Revenue and perused the records. We find that the issue stands settled by the decision of the Tribunal in the case of Collector of Central Excise, Allahabad v. Agrawal Cables, reported in 1998 (27) RLT 750 (CEGAT) wherein it was held that while determining the assessable value whatever duty was actually payable has to be deducted and since the actual duty payable for the clearances beyond value of Rs. 75 lakhs was 30%, such duty has to be deducted in arriving at the assessable value. The same view was held by the Tribunal in the case of Anand Cables & Conductors Ltd. v. Collector of Central Excise, Allahabad, reported in 1998 (27) RLT 322 (CEGAT). The ratio of these decisions is squarely applicable to the facts of the present matter. Following these decisions, we allow the appeal filed by the appellants.

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