

Nitul Data Systems Pvt. Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-28-2000

Reported in : (2000)(72)ECC335

Judge : K Sreedharan, N T C.N.B.

Appellant : Nitul Data Systems Pvt. Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. When the stay petition came up for orders, we heard learned Counsel representing the appellant and the learned D.R. in extensio. On hearing them, we feel that a quietus in this appeal cannot be given in the absence of evidence establishing the factual position. So, we consider it proper to remit the matter to the jurisdictional authority to pass fresh order adjudicating the show cause notice.

2. The short facts necessary for understanding the issue raised in this appeal are as follows.

3. Appellants manufacture display monitor and computer parts. Bulk quantity of the goods manufactured by them is purchased by Wipro. While they were paying duty on the value of the goods realised from Wipro, demand-cum-show cause notice dated 29.4.1993 happened to be issued demanding a duty of Rs. 7,20,012.00 towards basic excise duty and Rs. 57,060.00 towards special excise duty, invoking the provisions contained in Section 11A of the Central Excise Act, 1944 and why

penalty under Rule 173Q of the Central Excise Rules, 1944 should not also be imposed. The manufacturer, appellant before us, disputed the claim made in the show cause notice. Adjudicating authority by Order-in-Original No. 163/97 dated 21.10.1997 confirmed the demand made in the show cause notice and also imposed penalty of Rs. 1,00,000.00 under Rule 173Q of the Rules. The manufacturer challenged that Order-in-Appeal before the Commissioner (Appeals). Appellate authority by Order-in-Appeal No. 1175-CE/DLH/99 dated 12.11.1999 partly allowed the appeal and confirmed the demand regarding the duty liability on the amount realised by the appellant by way of technical service charges.

Correctness of this order is the issue before us.

4. In the show cause notice dated 29.4.1993, it was alleged that technical service charges, charged from the buyers should form part of the assessable value under Section 4(1)(a) of the Central Excise Act.

1944. In reply to this averment in the show cause notice, what the manufacturer stated was: Since Wipro being the only buyer have been rejecting the goods quite often and delayed payments were being made, Management have to cover the risk of removing the goods after full payment of duty by showing such sales as technical service charges and making entries in books of accounts of that year by debiting to sales.

Technical service charges are includible in the assessable value under Section 4(1)(a) of the Act if the charges are realised prior to manufacture of the goods and those services relate to the actual manufacture of the goods. Any charge realised by the manufacturer after the manufacture cannot fall within the definition of the assessable value under Section 4(1)(a) of the Act, because it will be post-manufacture expense. It is settled proposition that post-manufacture expenses cannot be included in the assessable value for finding out the duty payable by the manufacturer under Section 4(1)(a) of the Act. Since there is no finding by any of the authorities below that the technical service charges stated to have been recovered by the appellant from the buyer were in relation to the services rendered prior to the manufacture, we are not in a position to deal with the issue in a proper

manner. To find out whether it is includible in the assessable value or not, there must be a factual finding regarding the stage at which these service charges were recovered and to that they related. The reply given by the manufacturer to the show cause notice does not make any sense in this regard either. In such a situation, the only course that is now open is to remit the matter regarding the includability of the technical service charges in the assessable value of the goods for specific finding by the adjudicating authority. The adjudicating authority should render a clear finding regarding the nature of the receipt of technical service charges after affording reasonable opportunity of being heard to the manufacturer.

The order passed by the appellate authority in this regard alone is varied and the matter is remitted to the adjudicating authority.

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