

**Electronics Services Vs. Commissioner of Central Excise**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** May-01-2000

**Reported in :** (2000)(70)ECC471

**Appellant :** Electronics Services

**Respondent :** Commissioner of Central Excise

**Judgement :**

1. The issue involved in this appeal filed by M/s. Electronics Services is whether they are manufacturing Fire Alarm System falling under heading No. 85.31 of the Schedule to the Central Excise Tariff Act, so as to include the cost of bought out item supplied directly to site and installation and commissioning charges.

2.1 Shri V.S. Sejpal, learned Chartered Accountant, submitted that the appellants manufacture fire alarm panels, repeater panels, hooters, pill boxes, response indicators, etc.; that as their clearances were well within the exemption limit as provided under Notification No.175/86, they were filing the declarations with the Department; that the Appellants were entering into 4 types of contract - (i) Contract for supply of material only for fire alarm system or burglar alarm system; (ii) Contract for supply of material and testing/commissioning of fire/burglar alarm system; (iii) Contract for supply of materials along with installations and erection of the system and testing/commissioning; (iv) Contract for testing/commissioning and repair of fire/burglar alarm system.

2.2 He further submitted that they do not manufacture all the component parts but a major portion of them such as detectors/sensors movement defectors, manual push button switches, are purchased from open market and supplied directly to the customers; that the customers have an option to buy any or all the items from them or they can procure them from the open market; that the other installation materials such as wires and cables, junction box, pipes, etc., are purchased from market; that such purchase and supply constitute their trading activity; that fire/burglar alarm system is not a distinct product but it comes into existence where it is made operative with proper connection and fittings all over the premises; that such installation and commissioning takes a period of 1 to 3 years depending on the site work and the full system to be installed; that fire alarm system as a whole after being affixed to the premises cannot be considered as a separate entity of goods under the Central Excise Act; that installation commissioning and testing have nothing to do with the manufacturing activity being carried out by them at their factory. The learned Chartered Accountant emphasised that the fire alarm system comprises of two parts namely the 'detecting parts' and 'Signalling parts' which are installed along with the Control panels; that the value of bought out items/imported component parts cannot be included in the value of the manufactured component parts of fire alarm system. He relied upon the decision in the case of CCE v. Radiant Electronics Ltd., 1996 (85) E.L.T. 102 (T) wherein it was held that installation and commissioning are not activities amounting to manufacture and value of bought out items supplied besides manufactured articles shall not be includible even if they are essential for the operation of manufactured goods provided they are not fitted or attached to the goods before clearance and no process is undertaken on the bought out items. He mentioned that fire alarm systems as such does not come into existence in the factory of the Appellants; that the finding of the Additional Collector that fire alarm system was made functional in their premises is not factually correct.

3. Finally he submitted that the entire demand is hit by time-limit as extended period of limitation is not invocable since they had not suppressed any fact from the Department; that under their letter dated 10-9-1985 addressed to the Range Superintendent, they had furnished the details of their total turnover for 1984-85 giving details of trading items, bought out items and manufactured items; that in

their subsequent letter dated 16-10-1985, they had clearly mentioned that the bought out items such as fire detectors and cables are sent directly to site for installation without any process; that they had also filed declaration on 2-12-1985 claiming the exemption under small scale Notification No. 77/85 and also enclosed the statement in which cost of all items including bought out items was separately shown; that for subsequent period also they had furnished information pertaining to the turnover activities and the job-work/repair charges, etc.; that at no stage they had suppressed any facts from the Department.

4. Countering the arguments, Shri Ashok Kumar, learned D.R. submitted that Fire Alarm System cannot be completed without bought out items and he referred to the Explanatory Notes of H.S.N. according to which Fire Alarm consists of two parts, a detecting part and a signalling part; that accordingly the value of bought out items has to be included in the assessable value. He further submitted that if the contention of the appellant is accepted, excise duty as air-conditioner cannot be levied on split air-conditioner as therein also they are connected with wires; that a new goods as Fire Alarm System comes into existence. He relied upon the decision in the case of Koran Business Systems Ltd. v. Union of India, 1992 (58) E.L.T. 48, wherein it was held that the value of timers and lense which is fitted into photocopier at site is to be included in the assessable value of the photocopier. Reliance was also placed on the decision in Sirpur Paper Mills Ltd. v. CCE, Hyderabad, 1998 (97) E.L.T. 3 (S.C.) wherein it was held that paper making machine assembled and erected at site mainly from bought out components is goods. He emphasised that as per the contract, the Appellants were to provide a complete fire alarm system and bought out items are essential for bringing into existence the fire alarm system; that execution of contract involves complete installation of machine in the customer's premises. The learned D.R. reiterated the findings of the Additional Collector as contained in the impugned order and highlighted that neither excise licence was taken nor any classification list/price list was filed.

5. We have considered the submissions of both the sides. It is not disputed by the Department that the Appellants were only manufacturing signalling items of fire/burglar alarm system. There is no material on record to show that a fire alarm

system as such was coming into existence at the factory of the Appellants. Fire Alarms, as per H.S.N.Explanatory Notes consists of two parts. The Appellants only manufacture alarm panel, repeaters, etc., and not the detecting part. A fire alarm system which is installed and made operative at the premises of a customer is not like a photocopier or paper making machines which were the subject matters of decisions, relied upon by the learned D.R.A fire alarm system as installed cannot be called a goods which can be marketed as such. The decisions relied upon by learned D.R. are not applicable to the facts of the present case as facts are different. The Appellants are, therefore, not required to take the value of bought out items into consideration for the purpose of computing the total value of clearance. We also find that the show cause notice was issued on 26-3-1991 for demanding duty for the period from 1986-87 to 1989-90. We agree with the learned Chartered Accountant that the extended period of limitation is not invocable in the present matter as the Appellants had disclosed their activities to the Department and also furnished Declaratioas. In their declaration filed on 2-12-1985 they had clearly mentioned that the value of goods would not exceed Rs. 20,00,000/- and they had given separately the cost of various items. It is well settled that if the Department was made aware of the facts, merely non-taking of excise licence or non-filing of classification/price list would not attract clause of suppression with an intent to evade payment of duty.

We are, thus, of the view that the demand is also hit by time-limit specified in Section 11A (1) of the Central Excise Act. The appeal is, accordingly, allowed both on merit and time-limit.

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