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Suessen Asia Ltd. Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-05-2000

Reported in : (2000)(92)LC262Tri(Mum.)bai

Judge : G Srinivasan, S T S.S.

Appellant : Suessen Asia Ltd.

Respondent : Cc

Judgement :

1. These are four appeals filed by the assessee against the decisions Commissioner of Customs, Mumbai made on 30.9.1990 the order passed by the Assistant Commissioner. While doing so the Commissioner (Appeals) has sought to follow the Judgments of the Supreme Court in the case of Essar Gujarat .

2. The assessee an Indian Company the 60% of the shares is held by German company and 40% is held by Indian company. In the joint venture agreement for by Indian company aggrieved to pay a lumpsum fees DM 0.50 million for licence rights, royalty at 5% of ex-works value and royalty at 8% of the ex-works value in case of export goods to their collaborators, M/s. Spindel Fabrik Suessen, Schurr, Stahlecker, Germany (Suessen). The question involved was whether this is considered as a part of the transaction value of the imported goods or not in all the four appeals. The various Assistant Commissioner as adjudicating authority have held that been provisional assessment may be finalised accordingly for all imposed as indicated in the various orders-in-original. Against these order the

department went appeals to the Commissioner (Appeals). The appellate authority by the impugned order has held that the Judgment of the Supreme Court in the case of Essar Gujarat Ltd. would be applicable and held that the impugned order-in-original was not legal and correct. We set aside the impugned orders-in-original and refer the cases back to the Assistant Commissioner for deciding it afresh in accordance with law.

Hence the present four appeals.

3. We have heard Shri S.N. Kantawala Advocate appeared for the appellants and Shri Deepak Kumar appeared for the department.

4. Shri S.N. Kantawala explained to us the joint venture agreement had also told us the issue for our consideration in the course of argument.

It was found that all the four orders of Assistant Commissioners had observed in orders-in-original as follows: Pending provisional assessment cases may be finalised accordingly for all imports The Bench asked a query to DR as to whether cases have been finalised in terms of the said order, and the DR replied that no finalised orders of assessments were passed by the Assistant Commissioner. When this is a situation we find that the appellate order could not have been passed by the Commissioner (Appeals). When the matters is pending finalisation and is appealable only when the finalisation of the assessment of duties by the authority concerned are determined in consequence of the finalisation, then only any person can be said to be accordingly aggrieved against such a finalised order. In the orders-in-original as stated above, it will be clear that no finalisation have taken place.

We therefore, set aside the orders passed by the Commissioner (Appeals). In this case the matter has to be remanded back to the Assistant Commissioners of Customs to consider the entire matter afresh. The Assistant Commissioner should look into the matter afresh and finalise the provisional assessment in accordance with law after following the principles of natural justice. The appeal are disposed of accordingly.

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