Multitech Engineers Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-07-2000

Reported in : (2000)(122)ELT187TriDel

Appellant : Multitech Engineers

Respondent : Commissioner of C. Ex.

Judgement :

1. The appellant filed this appeal against the order in original passed by the Commissioner of Central Excise. In the impugned order a duty of Rs. 3,17,890/- is confirmed on the appellant and penalty of Rs. 31,000/- was also imposed.

2. The brief facts of the case are that M/s. Bhopal Sugar Industries placed an order for supply of one Cane Juice Clarifier to the appellant. A show cause notice was issued to the appellant on the ground that Cane Juice Clarifier was manufactured by the appellant and erection and commission was done by the appellant. Vide impugned order the duty was demanded on Cane Juice Clarifier.

3. Learned Counsel appearing on behalf of the appellant submits that Cane Juice Clarifier was erected on cement concrete foundation assembled piece by piece and attached to earth on its pre-constructed foundation, therefore, Cane Juice Clarifier is embedded to earth and did not constitute goods, so as to attract excise duty. He relies upon the decision of Hon'ble Supreme Court in the case of Mittal Engg. Works v. Collector of Central Excise, reported in 1996 (88) E.L.T. 622 (S.C.) and submits that the Hon'ble Supreme Court held that as the goods are embedded

to earth and not marketable as such these are not excisable goods. He, therefore, prays that the appeal be allowed.

4. Learned SDR appearing on behalf of the Revenue submits that the appellants were not denying the facts that they supplied Cane Juice Clarifier. He submits that as the goods were marketable as such, as per the product literature of appellant, which clearly shows that they are supplying Cane Juice Clarifier of different dia. He, therefore, prays that the appeal be dismissed.

6. Undisputed facts of the case are that the appellant manufactured a Cane Juice Clarifier. The contention of the appellant is that the Cane Juice Clarifier is embedded to earth and is not marketable as such. We have seen the product literature of the Cane Juice Clarifier manufactured by appellant and this product literature shows that they are marketing the Cane Juice Clarifier as such. The product literature reads as under : "We Offer a cane juice clarifier with several outstanding features.

The improved design settles juice at a faster rate, and has sufficient volume to handle refractory juices. Achieves maximum juice clarity and optimum density of underflow.

CANE JUICE CLARIFIER has been developed after years of research and experience and with due consideration to historical data and performance of all clarifiers used by the Sugar Industry till now.

CANE JUICE CLARIFIER consists of four chambers super-imposed over one another and each working as an independent clarifier. Each chamber has its own feed entry. Juice take off and mud withdrawal.

Juice clarification takes place in each chamber and no turbulence is transmitted from one chamber to another." This literature further shows that the appellants are manufacturing 11 types of Cane Juice Clarifier of different sizes. In view of these facts, we find that the case law relied upon by the appellant is not applicable on the facts of the present case as the Hon'ble Supreme Court held that when the goods were permanently embedded to earth and are not marketable as such are not liable for excise duty. In the present case the product literature produced by the appellant shows that the Cane Juice Clarifiers are marketable as such. Therefore, we find no merit in the appeal. The same is rejected.