

**B.H.E.L. vs. Cce**

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

**Decided On :** Nov-20-2000

**Reported in :** (2001)(73)ECC636

**Judge :** G B Deva, N T C.N.B.

**Appellant :** B.H.E.L.

**Respondent :** Cce

**Judgement :**

1. These are 18 appeals. Appeals are filed by M/s. B.H.E.L., Ranipur, accompanied with 18 Stay Applications. The amount involved in these cases is of Rs. 18,10,06,141,79 and Rs. 8,96,76,410.84 respectively.

Shri Lakshmi Kumaran submitted, out of that disputed amount Rs. 5.60 Crores and Rs. 1.36 respectively has already been deposited when the matter was pending before the Commissioner (Appeals).

2. After hearing for sometime with reference to the stay petition filed by the party, we felt that the matter itself can be disposed of.

Accordingly these 18 appeals were taken for regular hearing with the consent of both the sides. In view of this, amount required to be deposited for the purpose of hearing the appeals is dispensed with.

3. Aruging for the assessee Shri V. Lakshmi Kumaran submitted that dispute is in respect of duty on bought out item, duty on interest on Advances and duty paid on various individual clearances.

4. The appellants are Public Sector Undertaking manufacturing various engineering items. The dispute relates to supply of Turbo Generator sets under 18 contracts to various customers. The period of dispute is from 1977 to November, 1996. He submitted that whether assembly of Turbo Generator sets at site amounts to manufacture or not is an issue to be considered. In other words whether they are excisable goods or not. He said that the Commissioner (Appeals) while holding that they are excisable goods relied upon the decision in the case of Triveni Engineering & Indus. Ltd. v. Commissioner of Central Excise Allahabad In generator sets not to be regarded as immovable property since turbine and alternator not permanently embedded to earth but fixed to platform embedded to earth. The view taken by the Tribunal has been reversed by the Apex Court has Accordingly, installation or erection of turbo alternator on the platform specially constructed on the land cannot be treated as a common base, therefore, such alternator would be immovable property as such it cannot be 'excisable goods' falling within the meaning of Heading 85.02 of Central Excise Tariff Act, 1985. In view of the ruling given by the Apex Court on this issue. Shri Jain appearing for the Revenue has nothing to argue further.

5. Both the sides conceded that value of bought out items cannot be added in determining the assessable value. Shri Jain, Departmental Representative pointed out that value with reference to the individual clearances made from factory to the site is required to be valued and since this has not been done, that requires to be done by the Adjudicating Authority. Shri Lakshmi Kumaran submitted that on this issue the matter has already been remanded by the Commissioner (Appeals) and the same is pending before the Assistant Commissioner. As regards duty on interest on advance, it was submitted by Shri Lakshmi Kumaran that this issue has also been settled by the Supreme Court in the case of VST Industries Ltd. v. Collector of Central Excise Hyderabad 6. On a careful consideration of the submissions made by both sides and in view of the decision of the Apex Court in the case of Triveni Engineering & Indus. Ltd., we hold that installation or erection

of turbo alternator is not excisable goods. As regards interest on advances, also we find that this issue is well covered by the decision of the Supreme Court in the case of VST Industries Ltd. (supra).

7. Since the matter has already been remanded by the Commissioner (Appeals) with reference to duty short paid on various individual clearances, that issue may be looked into afresh by the concerned Adjudicating Authority and to determine the value in accordance with on providing an opportunity to the assessee. Thus, all these appeals are disposed of in the above terms. Ordered accordingly.

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