

Dempo Engineering Services Vs. Commr. of C. Ex. and Cus.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-21-2000

Reported in : (2001)(133)ELT753Tri(Mum.)bai

Appellant : Dempo Engineering Services

Respondent : Commr. of C. Ex. and Cus.

Judgement :

1. The appellant in these two appeals was engaged in a contract by M/s.

National Auto Accessories Limited, Margoa for erection of its factory.

The appellant also entered into a contract with M/s. Diamond Boart India Pvt. Ltd., for erection of its factory at Kundaim, Goa. We are concerned in appeal E/4309/94 of the consequence of the first contract, and in appeal E/4310/94 with those of the second contract. In each of these cases, the appellant sub-contracted the fabrication of the roofing structures for the factories. The fabrication involved construction of beams, trusses and purlins, all of steel. These beams and trusses, etc., were fabricated by subjecting angles and channels of steel sheets to cutting, drilling, punching, etc. Such sections so processed thereafter assembled at the site of the factory. In the orders impugned before us, the Collector has held that these activities constitute manufacture.

2. The identical activities carried out by the appellant in pursuance of another contract with Goa Shipyard Limited was considered by the Tribunal in the appeal

filed by it. In its decision reported in 2000 (117) E.L.T. 328, the Tribunal has found that the ratio of the Bombay High Court's judgment in Tata Engineering & Locomotive Company Limited v. C.C.E., 1997 (89) E.L.T. 463 will apply. The High Court noted in that judgment that columns, beams, trusses and purlins are sections of or portions of a structure, and come into existence when affixed or fabricated into the structure, simultaneously on coming into existence become part of the structure and thus becoming immovable in character.

The departmental representative relies upon the Supreme Court's judgment in Mittal Engineering Works v. C.C.E., 1996 (88) E.L.T. 628.

The Supreme Court in that case found the monovetical crystallisers not liable to duty for the reason that they were not marketable since it was not capable of being sold as it is. That judgment has no relevance to the facts before us.

3. The appeals are accordingly allowed and the impugned orders set aside.

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