Bharat Forge Ltd. Vs. Commissioner of Central Excise,

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-13-2001

Reported in : (2001)(133)ELT638Tri(Mum.)bai

Appellant : Bharat Forge Ltd.

Respondent : Commissioner of Central Excise,

Judgement :
1. Adjournment is requested on the ground that the counsel for the appellant "will not be available." We do not consider such an assertion sufficient to grant adjournment. We have read the memorandum of appeal, and heard the departmental representative.

2. The appellant manufacturers steel forgings. Notice was signed to it proposing to add to the assessable value of these forgings the cost of inspection carried out by Lloyds Ltd., and inspection agency. The appellant resisted the proposal claiming that such inspection was in addition to the inspection of goods carried out by it, and, by application of the ratio of the Tribunal's decision in Shree Pipes Ltd vs. CCE 1992 (59) ELT 462, such charges were not includible. The Assistant Collector accepted this contention and dropped the proceedings.

3. The department appealed this order. The Commissioner (Appeals) took the view, in the absence of any evidence to the contrary produced before him, he was not in a position to say that the inspection by third party agency was in fact additional to the inspection was conducted at all stages of the process of

manufacture, from the raw material to the proof machining. He therefore distinguish the decision in Shree Pipe Ltd vs. CCE 1992 (59) ELT 462 and held that the cost would be includible.

4. The appeal reiterates the contention that the best carried out by Lloyds Ltd was an additional test and that the goods in any case became marketable prior to such test being done. It quotes paragraph 5 of the Tribunal's decision in GEC of India Ltd vs CCE 1993 (63) ELT 151.

5. If, in fact, the testing carried out by Lloyds Ltd was additional to the testing that the appellant itself carried on its goods, it could not be said that the cost of such tests would form pat of the assessable value. In this situation, the goods, having been tested by the appellant, have become marketable, and the additional testing has not rendered marketable goods which are otherwise not marketable. The ratio of the decision of the tribunal in Shree Pipes Ltd vs CCE would apply. The position however would be different it the appellant had done no testing at all, and if the entire testing that a manufacturer would conduct is done for it by another agency. In that, case, the ratio of this decision that the goods are already marketable may not apply. While it is contended in the appeal that the test by Lloyds Ltd was additional to the test by the appellant and therefore optional, there is not the slightest evidence cited to support it. We are therefore of the view that this whether the testing by Lloyds Ltd was in addition to the testing by the appellant, and, being at the instance of some of its customers, was optional, has to be examined.

6. Accordingly, we allow the appeal, set aside the impugned order and remand the matter to the Commissioner (Appeals). The appellant may, within three months form the receipt of this order, make it submission in this regard to the Commissioner (Appeals) who shall deal with them and pass orders in accordance with law.