Commissioner of Central Excise and Vs. Kinetic Engineering Limited

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-13-2001

Reported in : (2001)(138)ELT344Tri(Mum.)bai

Appellant : Commissioner of Central Excise and

Respondent : Kinetic Engineering Limited

Judgement :

1. Kinetic Engineering Ltd., the respondent to this appeal, sells its goods both at the factory gate and from the depots. The question for consideration in this appeal field by the department is whether charges collected by it from its buyers at the depots towards depot operating charges are includable in the assessable value. In the order impugned in the appeal, the Commissioner (Appeals) has applied the ratio of the judgement of the Supreme Court in Indian Oxygen Ltd Vs. CCE 1998 (36) ELT 723 to conclude that since factory gate sale price was available, it is that price should apply to both the sales at the factory gate and the goods sold the depots for sale there from.

2. The challenge to this conclusion is on the ground that the purchasers of the goods form the depots of the respondents are a different class of buyer. Apart from the fact that the notice to show cause does not allege this ground, we don not see how this claim is relevant. By the judgement of the Supreme Court in Indian Oxygen Ltd. Vs. CCE, the ratio which has been reaffirmed in paragraphs 18 and 21 of the its judgement in GOI Vs. MRF 1995 ELT 433, where there are sales both form the factory gate and form the depot, it is the factory gate price that should be

applied to determine the value both of goods sold at the factory gate, and of goods transferred to the depot for sale there. That, as we have noted, is what the Commissioner (Appeals) has done. We therefore see no reason to interfere.