

Collector of Central Excise Vs. Premier Oxygen and Acetylene Co.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-10-1985

Reported in : (1986)(6)LC472Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Premier Oxygen and Acetylene Co.

Judgement :

1. The Collector of Central Excise, Indore has preferred this appeal arising out of Order-in-Appeal No. 615-CE/IND/84, dated 19-10-1984 passed by the Collector of Central Excise (Appeals), New Delhi.

2. The Respondents in this case, M/s. Premier Oxygen and Acetylene Co.

Pvt. LTD., Gwalior manufacture oxygen and acetylene gas falling under T.I. 14H of CET. The gas is supplied by them to their customers in durable cylinders. The Assistant Collector of Central Excise, Gwalior had demanded duty on the retention/holding charges of gas cylinders which was being collected by the Respondents from their customers. The total duty amount was Rs. 1,256.72 for the period 1-10-1980 to 31-3-1981. Aggrieved by this, the Respondents preferred an appeal before the Collector of Central Excise (Appeals) who in his order dated 19-10-1984 observed that the oxygen gas was supplied by the Respondents in durable and returnable containers and held that if the Respondents were charging only for the retention/holding of such cylinders beyond the free period, then their claim that such charges should not form part of assessable value was well-

founded and he also observed that it can be included in the assessable value only if it was shown that these charges were not genuine and were being used only as a cover to recover part of the assessable value.

3. Shri Vineet Ohri, the learned SDR appearing for the Appellant-Department had urged that the collection of retention charges of cylinders shows that the price is not the sole consideration as stipulated under Section 4(1)(a) of the Central Excises and Salt Act, 1944 (hereinafter, the Act), but that these charges are in the nature of an additional consideration flowing directly from the buyers to the assessee and hence should form part of the assessable value. It was also argued that the retention charges accrued to the Respondents as a profit on the sale of gas and that it was also sufficiently large to influence the price of the gas.

4. On behalf of the Respondents, Counsel Shri Barjor Singh has maintained that these charges are not collected as payment for the gas supplied by them and, therefore, has no connection with the assessable value. They were related to post-clearance activity as their object was to ensure prompt return of the cylinders because these cylinders are in short supply and paucity of cylinders would affect their production.

The material is also imported. Photocopy of contracts relating to holding charges was also produced. A perusal of the contract entered into with M/s. Cimmco Steel Foundary, Gwalior shows that the following charges are included :- (d) Rent of 0.50 P. per day per cylinder for the free period and Re.

1/- per day for subsequent period.

In the case of M/s. Cimmco Steel Foundary, the free period seems to be 10 days while in the case of M/s. Hind Lamps, Shikohabad, it is given as 15 days.

5. We have given careful consideration to the submissions made on behalf of the Appellant and the Respondents. The issue is whether the rental or holding charges collected in this case by the Respondents would be includible in the assessable value. The cylinders in which the oxygen is supplied are of durable nature and returnable and, therefore, would be covered by Section 4(4)(d) of the

Act. It will be useful, in this context, to refer to the charging Section in the Act. Section 3 of the Act lays down that central excise duty is to be levied in respect of all goods manufactured or produced in India. Assessable value on the excisable goods is to be arrived at under Section 4 of the Act which lays down that the assessable value should be the normal price at which the goods are ordinarily sold by the assessee in the course of wholesale trade. Section 4 of the Act provides the measure by reference to which the duty is to be levied while Section 3 of the Act provides for the levy of duty. The selling price is, the price at which goods change hands and the elements comprised in this price would be includible in the assessable value. On an examination of the retention and holding charges in this case, in the light of the above, it is seen that the gas produced by the Respondents is delivered in the cylinders and it has not been shown that the charges towards retention and holding of the cylinders is directly relatable to, or is influencing, the price at the point of delivery of the gas. This is because, admittedly, no such charges are collected if the cylinders are returned within the free period. As has been explained by the Respondents, the retention charges are mainly collected for ensuring prompt return of the cylinders and to minimise delay. Therefore, it is clear that the retention charges accrues to the manufacturer after the delivery of the goods. The Department has also not shown that these are directly relatable to the cost to manufacture and form an integral element of selling price. In the circumstances, there is a lot of force in the contentions of the Respondents which have to be accepted. In the circumstances, we see no reason to interfere with the orders passed by the Collector (Appeals), New Delhi. The appeal preferred by the Collector of Central Excise, Indore is, therefore, rejected.

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