M/S. Chinttpurni Engineering Vs. Cce, Lucknow

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-25-2001

Reported in : (2001)(76)ECC608

Appellant : M/S. Chinttpurni Engineering

Respondent : Cce, Lucknow

Judgement :

1. Order-in-Original No.46/Commr/LKO/2000 dated 31.10.2000 passed by the Commissioner of Central Excise, Lucknow is under challenge. As per that order, steps initiated pursuant to show cause notice dated 14.9.99 was adjudicated. Assessee was directed to pay an amount of Rs.1,56,20,946/- by way of duty on account of clearances of Fan Shaped Switches, Switch Expansion Joints, Check Rail (sic) Fittings and Fasteners for the period from 1994 to 2000. An equal amount has been directed to be paid by way of penalty imposing provisions contained in Section 11AC read with Rule 173Q of the Central Excise Rules. Interest on the duty "at appropriate rate" as contemplated by Section 11AB has also been levied. This order is under challenge in this appeal.

2. Along with the appeal application has been moved for waiving pre-deposit and to stay all further steps for recovery of the amount covered by the impugned order. Appellant is engaged in the fabrication of Fan Shaped Switches, tongue rails, stock rails and check rails from the rail supplied to them by Railways on free of cost basis. Duty was being paid on these Fan Shaped Switches and not on tongue rail, stock rail or check rail. Department wants to levy duty on all these items taking

into consideration the value of the rails supplied free by the Railways. On two occasions, question whether Switch Expansion Joints and Checks Rail are assessable to duty came up for consideration before this Tribunal. In the decision in J.Sons Corporation Ltd. vs. CCE, Meerut 2000 (125) ELT 1068 this Tribunal took the view that fabrication of check rail will not amount to manufacture of a new product and so is not exigible to duty. Following that decision in Cemcon Tracks Industries Vs. CCE, New Delhi 2001 (127) ELT 56, switch expansion joints have also been held to be not products coming into existence as a result of any manufacturing process. Thus the claim of duty put forth by the Commissioner in the impugned order in relation to switch expansion joints and check rail, according to the Learned Counsel, are unsupportable.

3. Show cause notice deals with the process by which fan shaped switches are brought to existence. The process narrated therein is as follows : "First of all, ultrasonic tests are conducted on the rails with the help of ultrasonic tests equipment and after conducting ultrasonic tests and the other visual inspection, rails are cut to size as per relevant drawing of tongue and stock. The rails are given a required bend as per drawing. After bending of rails each rails is subjected to MPI test. Tongue rails with square ends are marked for head as well as for foot machining. Marking of position and center of hole is done. Holes in rails are drilled with the help of jigs and fixtures." According to the Learned Counsel representing the appellant the said process cannot amount to a manufacturing process. In support of this contention he relies on the observation made by this Tribunal in 2000 (125) ELT 1068. We feel that Learned Counsel is well-founded in advancing this argument. So, prima facie, we hold that fan shaped switches, switch expansion joints and check rail are not the outcome of any manufacturing process. In other words, claim to duty on these goods appears to be unsustainable. According to the Learned Counsel representing the appellant even though fittings and fasteners are not specifically found liable to duty under Central Excise Act, he fairly conceded that fittings and fasteners may be subjected to duty because they are the outcome of manufacturing process. The duty liability on these goods, according to the Learned Counsel, comes to Rs.1,01,228.

Even though this item has not been specifically mentioned as a dutiable item by the Commissioner, we direct the appellant to deposit a sum of Rs.1 Lakh being duty payable on these fittings and fasteners. This deposit should be made within a period of one month from today. We direct the respondent not to make any step for realisation of the amount covered by the impugned order until further orders.