

Commissioner of Central Excise, Vs. M/S. Servall Engg. Works (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Jun-06-2001

Appellant : Commissioner of Central Excise,

Respondent : M/S. Servall Engg. Works (P) Ltd.

Judgement :

1. All these Revenue appeals pertain to a common issue and hence they are taken up together for disposal as per law. The said impugned orders already came up for hearing and the Tribunal took up the appeals and disposed of by final order No. 737 to 761/2001 dated 24.5.01 and final order No. 806 to 840/2001 dated 1/6/2001.

2. The common ground taken is that appellants have not included the national interest accrued on the advances received from their customers and that the differential duty on this account was payable.

3. The short issue that arises for consideration in these appeals is whether the national interest on advances would form part of the assessable value or not. The Commissioner (Appeals) in similar matters vide his Order-in-Appeal No. 555 to 559/96 (CBE) dated 18.7.96, Order-in-Appeal No. 682/96 (CBE) dated 13.11.96, and OIA No. 718/96 to 739/96 (CBE) dated 27.11.96 has disposed of the similar appeals against the Revenue. He has, therefore, set aside the impugned order of the AC in absence of any evidence brought out on record to show that the advance taken by the appellants had in fact depressed the price or that the appellants had derived benefit by receipt of said advance particularly in the

absence of quantification thereof. As the issue is covered, all the appeals are taken up together for disposal as per law.

5. Heard Ld.Dr. Perused the records and the impugned order. We notice that similar matters have already been disposed of by final order No.737 to 761/2001 dated 24.5.01 in the case of CCE Coimbatore Vs UNIVERSAL HEAT EXCHANGERS LTD & OTHERS; final order No. 806 to 840/01 dated 1.6.2001 in the case of CCE Coimbatore Vs GEC Alsthom & Others; final order No. 849 to 859/2001 dated 4.6.2001 in the case of CCE Coimbatore Vs K.S.B. Pumps. The findings recorded in the latest Tribunal decision in the case of CCE Coimbatore Vs K.S.B. Pumps is reproduced as follows:- 3. Ld.Counsel at the outset submits that the issue is covered in assessee's favour and the Commissioner has given a detailed finding holding that there is no evidence on record to show that the deposit which they have received from various persons have influenced the price. It is contended by him that deposits are independent of the price in all the matters and they are all connected with the appeals which can be disposed of.

4. Ld.SDR Shri G.S. Menon, appeared for the Revenue in these batch of appeals and submitted that all these may be remanded back for examining whether the value has depressed because of accepting the deposits on which there would have been notional interest.

5. Ld.Counsel invited our attention to para-3 & 4 of the Order-in-Appeal which are extracted herein below:- "3. In the grounds of appeals filed by the appellants which are more or less similar, it has been claimed that the raw materials required for the manufacturing activities are being purchased generally and stored before purchase orders are received except for a few items of specific nature and that it is from this bulk stock that the appellants draw the materials for the manufacturing activity and that the purchases have not been made exclusively out of the advances received from the customers. Most of the appellants have categorically stated that they do not receive advance deposit from all the customers and that the quantum of advance is very low compared to the turn over of the company and that the price is uniform and does not vary for a particular item whether the customer pays advance or not and that once the prices are agreed to as per the

contract the appellants are obliged to supply the goods at the same price even if the costs of raw materials vary. It has also been argued that the earnest deposit received was purely to ensure the contractual binding as per the Trade practice since the goods are tailor made and are not of the type which are mass-produced and delivered of the shelf and the amount of advance received is not taken into account while arriving at the contract price; therefore the question of the interest free advance influencing the price did not arise; Further such a concept had not been in their minds or the customers.

4. In the light of the above, I have no reason to change my views taken in the earlier orders in appeal referred supra. I therefore hold that the Assistant Commissioner's orders here cannot be sustained in law in the absence of any evidence brought on record to show that the advances taken by the appellants had in fact depressed the price or that the appellants had derived benefit by receipt of such advance, particularly in the absence of quantification thereof.

The impugned orders do not survive in law in the light of the judicial pronouncements as above and the demands confirmed have to be set aside." 6. Ld.Counsel has also relied on this Tribunal judgement in the matter of FORT WILLIAM INDUSTRIES LTD Vs CCE Calcutta-IV as reported in 2000 (122) ELT 174 (T); CCE New Delhi Vs SCHENCK AVERY LTD reported in 2000 (119) ELT 582 (T); ACC MACHINERY COMPANY LTD Vs CCE, MUMBAI VI as reported in 2000 (117) ELT 231 (T) and CCE Coimbatore Vs FESTO ELGI PVT. LTD reported in 1998 (100) ELT 175 (T) and this Tribunal final order No. 737 to 761/2001 dated 24.5.01 arising from the same impugned order which was considered by the Tribunal and the Revenue appeals were rejected therein.

7. Ld.Counsel has stated that whether they have taken advance or not, they have charged the same price from each customer and the advance has not depressed the price to any extent and therefore same is not includible in the assessable value in terms of Section (4) of the Central Act, 1944.

8. We have carefully considered the submissions made by Ld.SDR & DRs who appeared for the Revenue and the Ld.Counsel Shri J. Narayanswamy who appeared for the respondent, namely M/s. Sree Andal & Co. The learned

Commissioner (Appeals) has thoroughly examined this matter and has given detailed findings in paras-3 & 4 on his order which have been extracted supra and therefore respectfully following the various Tribunal's judgement, cited by the learned Counsel for the respondents, we do not find any merit in the appeals filed by the Revenue and therefore the order of the Commissioner (Appeals) is confirmed and appeals filed by the department are dismissed. We also note that by Final Order No. 737 to 761/01 dated 24.5.01 in the case of CCE Vs UNIVERSAL HEAT EXCHANGES LTD & OTHERS; final order No. 806 to 840/01 dt 1/6/01, the impugned order has already been set aside by following the ratio of the above cases, Thus, the Revenue appeals are accordingly dismissed." 6. The above findings apply to the facts of these cases also.

Therefore, respectfully applying the ratio of the earlier orders, there is no merit in these appeals. Revenue appeals are therefore dismissed

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