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SooperKanoon Citation : sooperkanoon.com/26376

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-24-2001

Appellant : Petron Engineering Construction

Respondent : Commissioner of Central Excise

Judgement :

1. These two applications relate to two appeals filed by the same appellant. These are therefore disposed of vide this single order.

Price List No. 122/93 dt. 5.7.93 declaring value of Rs. 69,250/- per coil was approved by the Assistant Collector. On 17.8.1993 another price list was filed showing the value of Rs. 4,46,250/-. The Assistant Collector did not proceed to finalise this price list in terms of Rule 173C of the Central Excise Rules. Instead, on 3.9.93 the Range Superintendent merely returned the fresh price list directing clearance of the goods in terms of the earlier price list. The assessees had in the meanwhile cleared some goods on payment of duty as calculated on the later price list. The demand of differential duty of Rs. 6,15,000.00 was confirmed by the Dy. Commissioner and the penalty of Rs. 1 lakh was imposed. The Commissioner (Appeals) having upheld this order, the present appeal and application have been filed.

We find force in the submission of the Counsel that unless the Assistant Collector had rejected the second price list declaring the lower price the demand for differential duty could not be raised. We therefore grant unconditional waiver of predeposit of the duty confirmed and the penalty imposed.

The assessees entered into a contract with M/s. IPCL on turnkey basis for total value of Rs. 13,63,696/- A component thereof was fabrication listing etc. for a convection coil the unit cost of which was shown as Rs. 4,55,000/-. Price list was filed showing value of the coil at Rs. 6,54,240/-. The proper office approved the price list adopting value of the total contract. Show cause notice was issued for charging of differential duty. The Dy. Commissioner confirmed the differential duty of Rs. 70,937/- and also imposed a penalty of Rs. 10,000/-. The Commissioner (Appeals) having upheld the order, the appeal and the application have been filed.

2. The summary made by us above shows that the very act of approval of the price list at the higher level was wrong and prima facie the demand would not sustain. We therefore grant unconditional waiver of the duty confirmed and the penalty imposed.