

Solid and Correct Engineering Vs. Commissioner of Customs and

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-24-2001

Appellant : Solid and Correct Engineering

Respondent : Commissioner of Customs and

Judgement :

1. These seven applications relate to seven appeals arising out of a common order of the Commissioner. These Applications are therefore disposed of by this common order.
2. The Applicants' case was argued by Shri Vikram S. Nankani, Revenue was represented by Shri Shaikh.
3. M/s. Solid Steel Plant Manufacturers (SSPM), M/s. Solmec Earthmovers Equipments (SEE) and M/s. Solid & Correct Engineering (SCE) manufactured goods falling under Heading 8429.00 and 8474.10. These goods were essentially used for building construction or road construction. Their entire production was sold to M/s. Solidmec Equipments Ltd. (SEL). M/s. Solex Electronic Equipment (Solex) manufactured Control Panels, Boards, etc. and sold all their production to M/s. SEL. Shri Has Mukh Dodia was Director of M/s. SEL. Dhiraj Dodia was a Partner of M/s. SEE.) 4. Vide Show Cause Notice it was alleged that the goods cleared by SSPM, SEE and SCE were not complete machinery attracting duty @10% but they were parts attracting 15% rate of duty. It was further claimed that these goods bore the trademark or logos of SEL. It was claimed that the goods were purchased by the buyers in the belief that they were manufactured by SEL.

Citing the provisions of para 4 of Notification 1/93 it was alleged that the benefit of the said notification was not available to the manufacturers. It was further alleged that M/s. SEL were not merely traders purchasing the goods from the four manufacturers. It was claimed that SEL purchased the parts of machinery, etc. from the 4 manufacturers and also bought other components from the market, and constructed plant, machinery, etc. in the premises of their buyers. SEL were thus alleged to be manufacturers of the machinery on which the burden of further duty had not been discharged.

5. Before the Commissioner M/s. SEE claimed that their goods bore their own brand name and also bore the name of SEL as marketing person. It was claimed that label showing the name of the marketer could not be constructed as affixing a brand name and on this ground the benefit of the said notification could not be denied. The same arguments were made by the other manufacturers also. It was claimed that M/s. SEL could not be called to be the manufacturers in terms of Section 2(f) of the Central Excise Act 1944. They had merely supervised the assembly of the plant, etc. in their clients' factory. The subsidiary claim made was that if the duty demand was to be confirmed then allowable deductions had to be given for arriving at the assessable value. It was also claimed that if the SEL were to be held as manufacturers, then modvat credit was available of the duty paid by the four manufacturers. It was claimed that the goods cleared by the four manufacturers were machinery and not parts.

6. The Commissioner after hearing the assesseees passed Orders confirming duty and imposing Fines and penalties as below:- 7. The present applications seeking waiver of pre-deposit of duties and penalties and stay of recovery thereof of during the pendency of the appeal proceedings.

8. Shri Vikram Nankani reiterated the same claims as were made before the Commissioner. He however did not press the claim that the said 4 manufacturers had cleared complete machinery and not parts. He also cited relevant case law.

10. There is a considerable case law on the interpretation of para 4 of the Notification 1/93. The goods cleared by the 4 manufacturers bore their own trade marks and also the marks of the marketing agency. Shri V.S. Nankani claimed that

the label bearing manufacturers marks, etc.

much bigger than that showing the name of the trader. We have also seen considerable case law on this issue including some where the ratio is entirely different from what was placed on record by Shri Nankani. At the time of final hearing of the Appeals considerable examination would have to be done of the facts and as to the applicability of the relevant case law.

11. On the demand arising out of the claim that what was cleared was parts and not fully manufactured machinery no effective counter claim has been made.

12. Duty as quantified in the internal page 68 of the Commissioner's order from SEE and SCE has been in fact accepted.

13. Considerable arguments were made as to whether M/s. SEL could be capable of being termed as 'manufacturer'. Shri Vikram Nankani could not show us the contracts in pursuance of which the work was undertaken. But we have seen the statements of the Customers who have trusted the brand name of SEL. Prima facie the activity of assembling the parts at one site would amount to manufacture. The complicated question of jurisdiction will have to be examined at length at the time of final hearing.

14. The denial of the Commissioner of the availability of the modvat credit and also the deductibility of certain expenses is not well formed. In their respect the assesseees have made out a prima facie case.

15. Considering the facts of the case, we deem it appropriate to direct the applicants to pre-deposit the sums as indicated below:_____

Applicants	Pre-deposit
Steel Plant Manufacturers	Solid
Solmec Earthmovers Equipments	Rs. 2 lakhs
Solid & Correct Engineering	Rs. 2 lakhs
Solex Electronic Equipment	Rs. 20,000/-
Solidmec Equipments Ltd.	Rs. 5 lakhs

16. On

such deposit being made the requirement of depositing the remainder of duty as well as penalties imposed upon these Applicants shall be waived and their recovery is stayed. The deposits in each case shall be made within eight weeks from today. Compliance to be reported on 07/01/2002.

17. The pre-deposit of penalties imposed on Shri Hasmukh Dodia and Shri Dhiraj Dodia is waived.

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