

G.K. Auto Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-17-2002

Reported in : (2002)(80)ECC233

Judge : K Usha, N T C.N.B.

Appellant : G.K. Auto Ltd.

Respondent : Cce

Judgement :

1. This is an appeal at the instance of the assessee challenging the order in appeal No. 641-42 (KDT) CE/JPR-I(348-49)2001 dt. 24.8.2001 passed by the Commissioner (Appeals). Even though the Commissioner (Appeals) has made an observation that the appellant was not contesting the basic issue, namely, the amount received towards designing/development are not to be included in the assessable value, the learned Counsel submits that such observation is not correct.

Referring to the memorandum of appeal, the Counsel points out that this basic issue was also under challenge before the Commissioner (Appeals).

We also find that this aspect has specifically referred by the appellant in its memorandum of appeal before this Tribunal also.

2. The appellant has received an amount of Rs. 10,00,000 during the period from January 1996 to January 1997 from M/s. Clutch Auto Ltd. in relation to developing

and designing of finished goods supplied to M/s.

Clutch Auto Ltd., namely pressure plates. A debit note was made on 8.4.96 by the appellant debiting an amount of Rs. 10,00,000 being the development charges for various. Pressure Plates applicable to different models of clutches as mutually agreed upon. A show cause notice dated 21.6.99 was issued to the appellant by the Joint Commissioner directing it to show cause why Central Excise duty amounting to Rs. 1,50,000 should not be demanded in respect of the amount of Rs. 10,00,000. A receipt from Clutch Auto Ltd. on account of development charges for various plates was furnished. In the show cause notice it is stated that Designing, Engg. And Development charges should form part of the assessable value of the goods to be produced in terms of Section 4(1) of the Central Excise Act, 1944 and chargeable to duty. Instead of including the same in assessable value of the goods the assessee had charged from his buyer separately by issuing debit note. It was on this basis the demand as mentioned above was made.

3. The original authority confirmed the demand without referring to the actual quantum of production of the assessable goods supplied to M/s.

Clutch Auto Ltd., towards the value of which the amount of Rs. 10,00,000 has to be taken into consideration. We find merit in the contention of the appellant that the above procedure followed by the original authority is not in accordance with law. The learned Counsel placed reliance on a decision of this Tribunal in the case of Commissioner of Central Excise, Madras v. Electron India where the Tribunal confirmed the order of remand passed by the Commissioner (Appeals) under similar circumstances. The Commissioner (Appeals) in the above case had observed as follows: I find that it is by now a well settled legal position that design and development charges relating to manufacturing activity of excisable goods are includible in their assessable value. However, they must have a nexus to the excisable goods manufactured and cleared inasmuch as the excise duty liability is on production or manufacture of goods. In this case, it is not very clear from the records as to how many machines were manufactured and cleared by virtue of employing these designs and how many more machines are capable of being manufactured and whether at all the activity of manufacturing micro processor

based dose making machine. Since the Assistant Collector has loaded the entire cost of Rs. 1.5 lacs without indicating the nexus between these designs and the number of machines manufacture utilizing such designs, the same cannot be sustained since the amount will have to be amortized with reference to the maximum possible number of machines that can be manufactured.

Accordingly, I set aside the order of the lower authority and remand the matter to him for reconsideration of the issue in the light of the above observations.

The above finding of the Commissioner (Appeals) was approved by this Tribunal. We are in agreement with the above view. In the present case also, we find that what is required is to re-determine the assessable value of the excisable goods (pressure plates in the present case) after adding the cost of development charges on amortisation basis and to work out the differential duty payable by the appellants. We, therefore, set aside the order impugned and remand the matter to the original authority for examining the quantum of the excisable goods manufactured and cleared by the appellant during the relevant period.

The loading of value towards development charges shall be done by applying amortization principle.

4. It is submitted that the appellant has already deposited entire amount of duty as well as penalty and the same is lying with the department. Since we are directing the original authority to reconsider the case, there will be direction to refund the amounts deposited by the appellant except the amount covering the duty. The duty portion will be retained with the department till the matter is finalized.

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