Dcm Engineering Products Vs. Commissioner of C. Ex.,

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-12-2002

Reported in : (2002)(142)ELT105TriDel

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

Appellant : Dcm Engineering Products

Respondent : Commissioner of C. Ex.,

Judgement :

1. The issue that has come up for consideration is whether the finding of the Commissioner (Appeals) confirming the levy of duty in respect of cost of pattern tooling carried out by the appellant for M/s. Mahindra & Mahindra is to be sustained. It is the case of the appellant that the apportioned cost of pattern tooling for M/s. Mahindra & Mahindra will be added towards assessable value of casting when regular supply of castings commences. The appellant would contend that the demand of duty is premature as during the relevant period there was no production on the pattern tooling designed for M/s. Mahindra & Mahindra Ltd. This contention was not accepted by the Commissioner (Appeals) for the reason that the appellant did not submit any evidence at the personal hearing on 18-7-2001 that supply has been made to M/s. Mahindra & Mahindra Ltd. and cost apportioned.

2. It is contented by the appellant that even though M/s. Mahindra & Mahindra had written in their letter dated 9-12-98 that they would lift 2000-3000 castings during

the period up to the end of 2000, they did not lift any quantity of Case Transmission Castings for which the pattern was developed by the appellants in their factory. Therefore, no duty liability can be cast on the appellant. We find merit in the contention raised by the appellant. There is no material available before the Commissioner (Appeals) to show that during the relevant period supply of castings had been made to M/s. Mahindra & Mahindra Ltd. That being so, the demand of duty has to be held as pre-mature.

The learned Counsel for the appellant brought to our notice certain invoices relating to the supply made to M/s. Mahindra & Mahindra after the relevant period. We, therefore, make it clear that it will be open to the Revenue to make the demand in respect of such supply as and when it is completed. With the above observation, we set aside the order impugned and allow the appeal.