Commissioner of Central Excise Vs. Ravi Cable Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-19-2002

Reported in : (2002)(145)ELT694TriDel

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

Appellant : Commissioner of Central Excise

Respondent : Ravi Cable Industries

Judgement :
1. The appeal is at the instance of the Revenue challenging the order passed by the Commissioner (Appeals) vide Order-in-Appeal Nos.

685-686-CE/DLH/2001, dated 8-8-2001.

2. In the appeal the Revenue has taken a contention that the Commissioner (Appeals) has committed an error in not following the decisions of this Tribunal in Escorts JCB Ltd. v. CCE - 2000 (118) E.L.T. 650 (Tribunal) = 1999 (35) RLT 9 (CEGAT) and CCE, Meerut-II v.Prabhat Zarda Factory Ltd. - 2000 (119) E.L.T. 191 (Tribunal) = 2000 (38) RLT 637 (CEGAT). On the other hand, in the cross-appeal the assessee would contend that for the demand covering the year 1997-98 the Commissioner (Appeals) has wrongly taken the view that the sale takes place at the destination only for the reason that the assessee has taken insurance to cover the goods in transit.

3. The assessees are manufacturers of wires and cables falling under Heading 8544 of Central Excise Tariff Act, 1985. The wires and cables are assessable at ad valorem rate of duty. The assessees have been supplying wires and cables to the Government Departments as per DGS&D rate contract and to State Electricity Boards. As per the terms of the Agreement the prices are for FOR Delhi and not for FOR destination. The transit insurance is taken as per the terms of the contract. The buyer is shown as the consignee in the transport documents. It is contended that once the goods are identified and appropriated by the buyer's representative and delivered to a transporter, it is as good as giving possession of goods to the buyer in view of the provisions contained under Section 23 of the Sale of Goods Act, 1930 and therefore, the sale takes place at Delhi and not at the buyer's premises. The learned Counsel for the cross-appellant placed reliance on the decision of this Tribunal in Final Order No. 67/2001-A, dated 13-2-2002, 2002 (141) E.L.T. 672 (Tribunal) [CCE, Delhi-I v. Purisons Engineers Pvt. Ltd.] and also in Final Order Nos. 96 to 100/2002-A, dated 13-3-2002, 2002 (143) E.L.T. 131 (Tribunal) [Associated Strips Ltd. & Mauria Udyog Ltd. v. CCE, New Delhi]. In support of its contention that even after the sale taking effect the seller could have insurable interest in the goods concerned. Therefore, the mere fact that the goods were insured by the seller while in transit would not show that the seller continued to be the owner of the goods.

4. After hearing both sides, we find that going by the terms of the contract between the cross appellant and its buyers it has to be held that the decisions relied upon by the learned Counsel for the cross appellant would cover the contentions raised both in the appeal as well as in the cross appeal. That being so, we find no merit in the appeal filed by the Revenue. The cross appellant is fully justified in contending that the Commissioner (Appeals) should not have taken the view that the seller continued to be the owner of the goods only for the reason that the seller had insured the goods in transit as per the terms of the contract. We are, therefore, inclined to allow the cross appeal.

5. The impugned order is set aside to the extent it is under challenge in the cross appeal. The appeal stands dismissed and cross appeal is allowed.