Mcnally Bharat Engineering Vs. Commissioner of Central Excise,

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-20-2002

Reported in : (2002)LC70Tri(Delhi)

Judge : S Kang, a T V.K.

Appellant : Mcnally Bharat Engineering

Respondent : Commissioner of Central Excise,

Judgement :

1. The appellants filed this appeal against the adjudication order passed by the Commissioner whereby the central excise duty was confirmed on cross country conveyor system and penalty was also imposed.

3. The contention of the appellants is that cross country conveyor system has come into existence after piece by piece erection on the strong concrete foundations and structural columns fixed to the concrete foundation were attached to the machinery and equipment in such a way that they formed one integrated system. Their contention is that this cross country conveyor system is 1.3 kms. long and cannot be bought in the market as such. The appellants relied upon the decision of the Hon'ble Supreme Court in the case of Triveni Engineering & Indus. Ltd. v. C.C.E.4. The contention of the Revenue is that cross country conveyor system was attached to the prepared platform with the help of foundation bolt.

Thus, it was not in nature of permanent attachment and did not become immovable property. The cross country conveyor system is erected at site by using various parts and components and these parts and components are detachable from foundation and after dismantling from the foundation, they are marketable. The Revenue relied upon the decision of the Hon'ble Supreme Court in the case of Sirpur Paper Mills Ltd. v. C.C-E.5. "Cross country conveyor system is 1.3 kms. long and is permanently attached to the earth. The Hon'ble Supreme Court in the case of Triveni Engg. & Indus Ltd. (supra), after considering the earlier decision in the case of Sirpur Paper Mills (supra), relied upon by the Revenue, in respect of marketability of the goods, held that the goods should be in a position to be taken into market and sold as such. The Hon'ble Supreme Court held as under : "The marketability test requires that the goods as such should be in a position to be taken to the market and sold and from the above findings it follows that to take to the market the turbo alternator has to be separated into its components - rubine and the other alternator - but then it would not remain turbo alternator, therefore, the test is incorrectly applied. Though, there is no finding that without fixing to the platform such turbo alternator would not be functional, it is obvious that when without fixing, it does not come into being, it can hardly be functional." 6. In the present case, the contention of the Revenue is that after disassembling, the cross country conveyor system, it can be marketed.

The Revenue is demanding duty on the cross country conveyor system as a whole and not as parts of the conveyor system. The cross country conveyor system does not pass marketability test as laid down by the Hon'ble Supreme Court in the case of Triveni Engg. & Indus. Ltd. (supra), therefore, the impugned order is set aside and the appeal is allowed.