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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-14-2002

Reported in : (2002)(145)ELT383TriDel

Judge : S T G.R., P Bajaj

Appellant : Shivani Locks Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. This appeal has been filed by the appellants against the impugned order-in-appeal dated 16-10-2001 passed by the Commissioner (Appeals).

2. The appellants are engaged in the manufacture of door lock assembly of motor vehicles and are also availing Modvat credit facility. They received purchase orders from M/s. Mahindra & Mahindra for the supply of 2/00,000 pieces of door lock assembly and received an amount of Rs. 3,25,000/- towards tooling cost, advance. Likewise, they also received purchase orders from M/s. Tata Engg. and Locomotive Co. Ltd., Pune (TELCO) for the supply of 49,000 pcs. of door lock assembly and received tooling cost advance of Rs. 10,00,000/-. According to the terms and conditions settled with the purchasers, they had to absorb 25% of the tooling cost i.e. Rs. 2,50,000/- and amortise 25% of the tooling cost i.e. Rs. 12,50,000/- over 10,000 pcs. and the balance 50% i.e. Rs. 5,00,000/- was to be paid by M/s. TELCO. They were issued show cause notice by the Excise department requiring to pay duty amount of Rs. 1,63,989/- on the tooling cost

advances received by them from the above said purchasers. The extended period of limitation was also proposed to be invoked against them as they suppressed the receipt of these amounts from the Excise department. The Additional Commissioner who adjudicated the show cause notice, dropped the demand of Rs. 49,576/-in respect of the advances received from M/s. Mahindra & Mahindra, but confirmed demand of Rs. 1,14,407/- regarding advances received from M/s. TELCO and imposed equal amount of penalty on the appellants under Section 11AC, besides imposing penalty of Rs. 10,000/- under Rule 173. The Commissioner (Appeals) had affirmed this order of the Additional Commissioner except regarding imposition of penalty of Rs. 10,000/- under Rule 173Q of the Rules, which he had quashed.

4. The issue involved in the present appeal relates to the question as to whether additional consideration received from the purchasers in the form of tooling cost advances, was to be added to the value of the goods or not. The Commissioner (Appeals) has not independently recorded any reasons for upholding the validity of the order-in-original of the Additional Commissioner. He has simply observed that the adjudicating authority has very elaborately dealt with the issue and fairly enough, but how and in what manner, has not discussed by the Commissioner (Appeals) in the impugned order. The impugned order passed by him is non-speaking and deserves to be set aside on this ground alone.

5. The learned Counsel has also referred to the case law on the issue involved in the present appeal, referred to above. He has placed reliance on CCE, Pune v. Dai Ichi Karkaria Ltd. -1999 (112) E.L.T. 353 (S.C.), Commissioner of Central Excise, Coimbatore v. Servall Engineering Works Ltd.Moosa Haji Patrawala Pvt. Ltd. v. CCE, Mumbai/Aurangabad - 2001 (138) E.L.T. 290, wherein the provisions of Section 4 of the Central Excise Act which deal with the valuation, had been referred and discussed in details. The ratio of law laid down in these cases, has not been referred to, by the Commissioner (Appeals), before simply affirming the order-in-original of the Additional Commissioner. Even the Additional Commissioner has not in the order-in-original referred to these cases before ordering addition of the amounts received by the appellants from the buyers, towards the assessable value of the goods. Therefore, in our view, the matter

deserves to be re-examined at the hands of the adjudicating authority afresh in the light of the law laid down in the above referred cases.

6. Consequently, the impugned order of the Commissioner (Appeals) is set aside and the matter is remanded to the adjudicating authority for fresh decision in accordance with the law, in the light of the discussions made above, after hearing both the sides. The appeal of the appellants is allowed by way of remand.

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