Suvidha Engineers (India) Ltd. and Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-27-2002

Reported in : (2003)(85)ECC83

Judge : S T G.R., P Bajaj

Appellant : Suvidha Engineers (India) Ltd. and

Respondent : Cce

Judgement :

2. Prima facie, the appellants have got a strong case being covered by the Apex Court judgment in the case of Batliboi & Co. Ltd. v. CCE, Guntur, 2002 (140) ELT 100 (T). Therefore, the stay applications of the appellants are allowed unconditionally.

3. With the consent of both the parties, we proceed to hear the appeals on merits itself.

4. The above-captioned appeals have been preferred against the common order-in-original dated 5.4.2002 passed by the Commissioner vide which he has confirmed the duty and imposed penalties as detailed in the order itself.

5. The appellants No. 1, M/s. Suvidha Engineers (India) Ltd., are the independent contractors for the manufacture, installation and commissioning of Heating Ventilating and Air-Conditioning Systems. They had carried out Ducting/Air-conditioning work at Hotel Metropolitan Nikko, but they did not discharge the

Central Excise duty on such installation work. They were served with a show cause notice requiring them to pay the Central Excise Duty amounting to Rs. 44,79,583 and penalty was also proposed to be imposed on them and on their Manager, Shri N. Rajan, appellants No. 2. They, however, contested the correctness of the show cause notice and maintained that the work of Ducting/Air Conditioning had been carried out by them at the site and as such no excise duty in respect thereof could be legally claimed. The Commissioner, however, did not agree with their contention and confirmed the duty with equal amount of penalty and also imposed personal penalty on the Manager, Shri N. Rajan, under Rule 209-A of the Rules.

6. We have heard both sides and gone through the record. The core issue in the present appeal which requires determination is, as to whether the activity of the appellants of Ducting/Air-Conditioning at the site is excisable or not. The plea taken up by the appellants is that, the fabrication work of Ducting/Air Conditioning had been carried out by them at the site and as such is not excisable. On the other hand, the Revenue had taken the stand that the Ducts fabricated by the appellants from the steel sheets are movable and marketable goods and as such are excisable.

7. In our view, the issue deserves to be re-examined in the light of the Apex Court judgment in the case of CCE, Nagpur v. Wainganga Sahkari S. Karkhana Ltd., 2002 (82) ECC 457 (SC): 2002 (50) RLT 15 (SC). In that case, the excisability of trusses, columns and purlines fabricated at the site was involved and the Apex Court was pleased to uphold the order of the Tribunal holding that the work of fabrication was undertaken by the assessee at the site and as such the goods produced were not excisable, Even the Tribunal also in the case of Batliboi & Co. Ltd. v. CCE, Guntur, 2002 (140) ELT 100 (T), had already remanded the matter for re-examination of the excisability of the fabrication of air ducts out of steel plates/sheet by the assessee at the site, keeping in view the Apex Court judgment in the case of CCE, Jaipur v.Man Structural Ltd., 2001 (75) ECC 712 (SC) : 2001 (130) ELT 401 (SC).

The Commissioner while passing the impugned order has not taken Into account the ratio of the law laid down in all the above referred cases.

Therefore, the impugned order of the Commissioner is set aside and the matter is sent back to the Commissioner for fresh decision in the light of the ratio of the law laid down in the above referred cases after affording reasonable opportunity of hearing to both the sides.