

Himalayan Pipe Industries Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-09-2002

Reported in : (2003)(151)ELT574TriDel

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

Appellant : Himalayan Pipe Industries

Respondent : Commissioner of C. Ex.

Judgement :

1. When these appeals came up for hearing we find that there is an application for adjournment at the instance of the Counsel appearing on behalf of the appellant. After going through the papers and after hearing learned DR we felt that it was not necessary to adjourn the case as the issue raised herein is covered in favour of the appellant by certain decisions of this Tribunal. We, therefore, proceed to dispose of the appeals on merits.

2. The appellants are engaged in the manufacture of HDPE pipes and tubes and sprinkler systems falling under Chapters 39 and 84 of the Central Excise Tariff Act, 1985. The appellants are selling the above goods to various Government departments as per rates and conditions finalised by the Director General of Supplies and Disposals, New Delhi.

The rates were inclusive of all taxes and were FOR destination at consignee's premises/rail head. The appellants supplied the goods, as per different supply

orders to various places. They claimed deductions on account of freight incurred by them from the factory premises to the consignee's end from the contracted prices in addition to the taxes.

The adjudicating authority took the view that in all these cases the sales took place at the consignee's end and therefore, the appellants are not entitled to claim abatement in respect of the freight. The appeals filed by them were dismissed by the Commissioner (Appeals) for non-compliance with the direction to make pre-deposit.

3. A common issue arising in these appeals before us is whether sale by the appellant to different Government departments took place at the factory gate of the appellant or at the buyer's place. The tests that are to be applied to examine where sale and purchase as defined in Section 2(h) of the Central Excise Act have taken place, have been elaborately discussed in our order in *Associated Strips Ltd. v. CCE New Delhi* [2002 (143) E.L.T. 131 (T) = 2002 (49) RLT 506]. The ratio in the above decision was later followed by us in a subsequent order in *Frexton India v. CCE* [2002 (142) E.L.T. 694 (T) = 2002 (49) RLT 501].

The appeal filed by the Revenue from this decision was dismissed by the Supreme Court on 6-9-2002 reported in 2002 (146) E.L.T. A102 (S.C.) = 2002 (52) RLT F5.

4. We will, therefore, proceed to examine the present appeals in the light of the above mentioned decisions of this Tribunal. Going by the terms of the contract it is seen that the sale takes place at the factory of the appellants. There is a provision for inspection of the goods manufactured, by the representative of the buyer and the place of inspection is the factory premises of the appellant. Copies of the inspection note made available to us would show that after inspection the inspecting authority puts the stamp on the goods. How it is stamped is mentioned in the inspection report. Thereafter it is handed over to the transporter. If the possession is transferred from the seller to the buyer at this stage, it has to be accepted that sale takes place at the factory of the seller. Section 23 of the Sale of Goods Act provides that where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent

of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer.

Such assent may be expressed or implied and may be given either before or after the appropriation is made. Sub-section (2) of Section 23 further provides that where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purposes of transmission to the buyer and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract. By applying the above provisions of law, we took the view in Associated Strips Ltd., that when the goods manufactured are inspected by the representative of the buyer (Electricity Board), the poles are then marked with the name of the buyer before they are handed over to the carrier, it has to be taken that the goods are unconditionally appropriated to the contract and the property of the goods was passed on to the buyer. The facts in the present case are identical. We, therefore, hold that the sales by the appellant had taken place at their factory gate and not at the end of the buyer.

5. The invoices would show that the buyer is described as the consignee and the appellants' as the consignor. Freight is separately shown. The goods are not insured by the appellants.

6. In the light of the above, we hold that the appellant is entitled to deduct freight for arriving at the assessable value of the goods sold by them to different departments. We, therefore, set aside the order impugned and allow the appeal.

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