

Associated Switchgear (P) Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-25-2002

Reported in : (2003)(85)ECC588

Judge : N T C.N.B., P Chacko

Appellant : Associated Switchgear (P) Ltd.

Respondent : Cce

Judgement :

1. These two appeals relate to differential duty demand, confiscation and Imposition of penalties on the appellants. The facts are common and interconnected issues arise for decision. Accordingly, both the appeals were heard together and are disposed of under this common order.

2. The appellant is a small scale unit engaged in the manufacture of Electrical Distribution Control Panels. They undertook contracts for design, fabrication erection and commissioning of such control panels at the premises of certain parties. The present dispute relates to the alleged short levy of duty in respect of such contract supplies.

3. The facts of the case are that the appellants do not manufacture all the parts required for the manufacture of the electrical panels. Some of the parts were bought from the other manufacturers. The appellants issued two sets of invoices in respect of the contracts, one for the parts manufactured in their factory and the

other, purportedly, for the goods purchased from the market, including the cost incurred on installation, commissioning, testing etc. Excise duty document (GP-I) covered only the parts, purportedly manufactured in the appellant's factory. Duty was also paid only on the value of the goods covered by the GP-Is.

4. The Central Excise authorities examined a consignment when it was in transit from the appellant's factory on 5.2.88. This examination revealed that the appellant had actually manufactured entire control panel in the appellant's factory and removed the same from the factory, while GP-I was issued and duty paid only on a small part of the value of the goods on the basis that only the goods manufactured in the factory was liable to duty and the remaining were purchased from the market. This discovery led to further investigations which culminated in the issuance of the show cause notice alleging that the appellants had manufactured full LT Panels in the factory in regard to seven contracts and in all those cases the appellant evaded central excise duty by claiming that only a small part of the goods had actually been manufactured in the factory. The proceedings so initiated ended in the passing of the impugned orders. These orders have confirmed the allegations, demanded differential duty and have imposed fines and penalties on the appellant.

5. Appellants have raised the same contentions before us also. It has been pointed out that construction and erection of control panels at the premises of parties is not a dutiable activity and the appellant was liable to pay duty only in respect of the parts manufactured in their own factory and the duty payable on such manufacture remained discharged. The legal position canvassed by the assessee has not been disputed by the department either. However, the department has strongly contended that the evidence on record has clearly established that the appellant was misrepresenting facts and was perpetrating a fraud on the revenue.

6. We have perused the records and have carefully considered the detailed submissions made on behalf of both sides. As already stated, the impugned orders relate to goods examined and seized on 5.2.88 (while in transit) as well as appellant's manufacture in relation to certain specific contracts. The impugned

order of adjudication passed by Commissioner of Central Excise (Order in Original 19/Collector/94) has discussed the evidence in respect of each of the contracts in question. After considering the evidence in respect of each contract the learned Commissioner has held that the appellant's claim that only "Panel frame" was being manufactured in the appellant's factory and the remaining items were bought out and taken to premises for assembling control panels as utterly false. The Commissioner has held that evidence on record had established that the assessee had manufactured full control panels in their factory and they had removed them as such after testing, inspection etc. It has been also held in the order that the appellant was liable to pay duty on the entire value of control panels and the only deduction permissible from the contract price was the cost of erection in the premises of the purchaser. During the hearing of the case, learned SDR has pointed out that the appellant's submission that they were manufacturing only panel frame is a gross mis-representation of facts, he has pointed out that the Central Excise licence obtained by the appellant was for the manufacture of panel boards, sub-station and parts thereof and not for the manufacture of panel frame, which is nothing more than a metallic container for fixing various components of control panel. The Ld. SDR has pointed out that this position is also clear from the proforma credit applications filed by the appellant under Rule 56A. According to this application, the excisable goods manufactured by the appellant was LT panels, HT panels etc. and the material required to be received were also the parts, equipment and materials required for such manufacture. The learned SDR has pointed out that the appellant was manufacturing full LT panels, HT Panels etc. and this is also clear from the appellant's product literature which introduced the appellant as manufacturers of LT control panel, HT control panels and not panel frames.

7. With regard to the specific contracts, which are the subject matter of the impugned proceedings, learned SDR has taken us through the evidence in detail and have shown that the appellant had manufactured control panels and not merely frames. In the case of contract with the Escort Heart Institute, the learned SDR took us to letter No.A/T128/494 dated 13.5.87 of the appellant written to Escort Heart Institute. This letter specifically stated that "the LT panel andare already lying ready in our factory and the bus ducts are in advance stage. The

learned SDR pointed out that this letter made it very clear that the appellant had manufactured not panel frame but L.T.panel and; that the appellant was making a complete mis-representation and committing fraud by declaring the goods as panel frame in the GP-I and making payment of duty for the small value attributable to panel frame. Learned SDR drew our attention also to the contract of supply of 11 kV HT switch board to Northern Railway which is also subject matter of the adjudication proceedings. In this case, vide letter No.A/T/162/5815 dated 14.10.87 the appellant informed the Railway that switch boards are ready for inspection. The learned SDR pointed out that this letter shows that the HY switch boards had been fully manufactured in the factory of the appellant. Further, letter dated 16.9.91 from Sr. Electrical Engineer, Northern Railway to Central Excise authorities confirmed this factual position. Under this letter, the Senior Electrical Engineer informed the excise authorities that they had actually received panels but had not received GPI/GR for them.

8. The learned SDR has also emphasized that the aforesaid factual position (a full control panels were manufactured in the factory) brought out by the correspondence between the appellant and their buyers, remains admitted in the statements recorded during investigation. In respect of the goods seized on 5.2.98 the appellants Director Shri J. J. Jain admitted in his statement dated 9.2.88 that the assessable value for the goods should have been the full value of the goods cleared from the factory. The learned SDR has pointed out that this statement has not been retracted by the assessee.

9. A perusal of the record of the case, mainly, the correspondence between the appellant manufacturer and their buyers, Panchanama covering the seizure of the goods, leaves no doubt whatsoever in our minds that the appellant had actually been manufacturing full equipment in their factory and not merely panel frames declared in the duty paying documents. They were, therefore, liable to pay duty on the entire value of the goods so manufactured in their factory and not merely on the panel frames declared in the excise duty paying documents (GP-Is). The Issue of another invoice by the appellant purportedly towards value of goods procured from the market and supplied to the site, was only a cover up activity to transfer the value of the goods manufactured in the factory to other non-excisable

activities. The party has clearly suppressed actual state of affairs regarding what they manufactured in their factory and the real value of such equipment from the Central Excise authorities by preparing two sets of documents showing false values for the items covered by them. Originally duty was paid only in respect of value of "panel frames" which constituted only small portion of the value of the goods actually manufactured and cleared. Thus, deliberate fraud was committed on the Central Excise authorities.

10. In the above noted facts and circumstances, no fault could be found in the findings reached in the Impugned orders or the duty demand, confiscation and penalty. Duty demand has been made after allowing deduction at reasonable percentage towards post manufacturing activities, namely, erection of the goods at site. The penalties imposed are also very reasonable viewed against the legal provisions on the same and the gravity of the offence.

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