Alpine Industry Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-18-2002

Reported in : (2006)(203)ELT563TriDel

Judge : S Kang, a T V.K.

Appellant : Alpine Industry Ltd.

Respondent : Cce

Judgement :

1. Appellant filed this appeal against the adjudication order passed by the Commissioner of Central Excise whereby the Central Excise duty of Rs. 43,71,452/- was confirmed and penalty of Rs 4,50,000/- was imposed on the ground that appellants had carried out fabrication and assembling work of eight identifiable items namely seed cleaner, cracker, flaker toaster, extruder, elevators water treatment Plant and tanks.

3. The contention of the appellant is that they are engaged in the manufacture of Soyabean oil through process of Solvent Extraction. The appellants in order to enhance production capacity of their plants entered into a contract with M/s. Oilex Engineers (India) Ltd. for supply, erection and commissioning of the Solvant Plant in their factory. The appellants produced the copy of the contract entered with M/s. Oilex Engineers (India) Pvt. Ltd. to show that the goods in question has assembled and commissioned by M/s. Oilex Engineers (India) Ltd. The contention of the appellants is that the goods were manufactured by M/s. Oilex Engineers (India)

Pvt. Ltd. Therefore, no duty can be demanded from the appellants. For this, appellant relied upon the following decisions of the Tribunal: 1. J.S.T. Engineering Services Vs. Commissioner of Central Excise, Jamshedpur, reported in 2001 (133) E.L.T. 350 (Tri.Del.) 2. Dempo Engg. Services Vs. Collector of Central Excise & Customs, Goa, reported in 2001(44)RLT 105(CEGAT-Mum.) 3. SRF Limited Vs.Collector of Central Excise, Madras, reported in 2001 (46) RLT 153 (CEGAT-Del.).

4. The contention of the appellant is that in above decisions the Tribunal held that where the goods were manufactured through contractor or job worker, in that case the contractor and job worker is the manufacturer and liable to pay the duty.

5. On merit, the contention of the appellant is that the goods in question are tailor-made goods and are not marketable as such the appellant relied upon the decision of the Hon'ble Supreme Court in the case of Triveni Engineering and Industries Limited Vs. Commissioner of Central Excise, reported in 2000 (120) ELT 273.

6. The contention of the Revenue is that in respect of the marketability, the Revenue produced the evidence that goods are marketable as M/s. Ambika Solvex Limited sold Solvent Extraction Plant to M/s. Sagar Solvex Nimbatheda. In respect of the issue regarding who is the manufacturer, the contention of the Revenue is that the appellants arranged the labour and other utility like electricity etc.

for carrying out fabrication assembly at their sight. Therefore, the appellants are manufacturer of the goods in question.

7. We find that in this case that appellants took a specific stand before adjudicating authority that M/s. Oilex Engineers (I) Pvt. Ltd. is the manufacturer of the goods. We had perused the terms and conditions of the contract entered between the appellants and M/s.

Oilex Engineers (I) Pvt. Ltd. As per contract, the assembly and commissioning is to be done by M/s. Oilex Engineers (I) Pvt. Ltd. The Plant is to be supplied by M/s.

Oilex Engineers (I) Pvt. Ltd. duly erected and ready for commissioning in all respect. Further, we find that even in the show cause notice allegation is that appellants have got manufactured the plant/machinery. We find that the Tribunal in the case of J.S.T. Engineering Services Vs. Commissioner of Central Excise, Jamshedpur (Supra) held that when the contract indicates that the actual work of fabrication is carried out, then the job worker is the manufacturer even if the raw material is supplied by the assessee. The Tribunal in the case of Dempo Engg. Services Vs. Collector of Central Excise & Customs, Goa, (Supra) taken the same view. The Tribunal held that in case the goods were fabricated by a Sub-contractor, the sub-contractor is a manufacturer and liable to pay duty. The similar view was taken in the case of SRF Limited Vs. Collector of Central Excise, Madras (Supra).

8. In the present case, we find that it is admitted by the Revenue that the Plant is fabricated and installed by M/s. Oilex Engineers (I) Pvt.

ltd. hance Oilex Engineers (I) Ltd. is the manufacturer of the goods in question. In these circumstances, without going into the issue of marketability, the demand of duty is set aside against the appellants.

Consequently, the penalty is also set aside.