

**Collector of Central Excise Vs. Intercon Engineers (P) Ltd.**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Feb-10-1987

**Reported in :** (1987)(12)LC45Tri(Delhi)

**Appellant :** Collector of Central Excise

**Respondent :** intercon Engineers (P) Ltd.

**Judgement :**

1. These are two appeals filed by the department. They arise out of two separate Orders-in-Appeals as stated above. Although, the appellant Collector filed only one consolidated appeal, the said appeal has been given two appeal numbers for the sake of record and since no fees are required to be paid by the department. The two appeals seek restoration of the following two demands for differential central excise duty :- 1. Demand for Rs. 1,10,620.96. This demand has been set aside by the Collector (Appeals) on the ground of time bar ; (2) The demand for Rs. 49,431.41. This demand was included in the show cause notice. In his Order-in-Original, the Assistant Collector upheld the merits of this demand but inadvertently he omitted to confirm the demand specifically in the final Order portion. Though the department had filed a separate appeal before the Collector (Appeals) for restoration of this demand, Collector (Appeals) did not advert to it but set aside the department's appeal on the ground that he had already allowed the appeal of the respondents against the very same Order-in-original.

2. The respondents manufacture machinery like Veener driers, hydraulic presses etc. the demands relate to the period from 1979-80 to 1982-83.

During this period, the respondents were working under the system of valuation laid down in exemption notification No. 120/75-C.E. dated 30.4.1975. According to the terms of this notification, assessment was to be made on the basis of invoice value of the goods provided the invoice value was the sole consideration for the sale, the dealings were at arm's length and the invoice value represented the true and full value of the goods. The aforesaid two demands were raised by the department on the footing that costs on account of consultancy charges, erection charges and service charges, though recovered by the respondents from their customers through separate invoices, were not included in the assessable value of the machinery sold by them. The first demand mentioned in paragraph 1 above related to consultancy charges. Under the head "consultancy charges", the respondents recovered the costs for the following items :- (5) technical know-how for improving the efficiency of the existing machinery of the customer; and The second demand related to installation and service charges for the machinery at the customer's premises. It is the case of the department that the demands were not time barred since the respondents suppressed the fact of the two separate invoices raised by them for consultancy charges and erection and service charges and hence the extended time limit of five years was applicable. The respondents pleaded that they were guided by the interpretation of Section 4 generally adopted before the Supreme Court judgment in the case of Bombay Tyre International became available in May, 1983 1983 E.L.T. 1986 (SC) and hence there was no suppression on their part.

3. We have carefully considered the matter. The central excise duty is a tax on goods and not on services. However, we find that the consultancy contracts entered into by the respondents were in part a service contract and in part they included elements of cost of manufacture of their machinery. Costs towards drawing, designing and technical specifications of machinery were clearly elements of machinery costs. The respondents also accepted this position during the hearing before us but again pleaded that the demand was hit by time bar. We do not agree with them so far as the time bar plea is concerned. It is not possible, to manufacture a machine without doing drawing, designing and technical specification work for it in advance.

Drawing and designing is actually the first stage of manufacture itself. It is at this stage that the manufacturer plans as to what exactly he is going to manufacture. No interpretation of law is needed to bring home this point. Every manufacturer of machinery knows it well enough. If the respondents chose to lump drawing, designing, and technical specification costs under the service heading "consultancy charges", recovered them separately from the customers but did not disclose them to the department, it was a clear case of suppression on their part. The invoice value of the machines which they did disclose to the department was not the true and full value of those machines as it did not include the costs separately recovered from the customer for drawing, designing and technical specifications of those machines. The demand was raised within the extended time limit. The respondents are required to pay it in so far as the demand relates to drawing, designing and technical specification costs. Since the break-up of these costs is not available to us, the Assistant Collector shall quantify the amount of the demand in so far as it relates to drawing, designing and technical specification costs recovered by the respondents. It would be open to him to call upon the respondents to disclose the drawing, designing and technical specification costs actually recovered on an affidavit, supported by a certificate from a Chartered Accountant. Where, however, no duty was recovered for the machines because of such machines having been exported out of India, the demand on account of drawing, designing and technical specification would also not be payable.

4. So far as the other elements of costs mentioned at (2) to (5) in paragraph 2 above are concerned, we agree with the respondents that these elements are in the nature of services. The respondents stated before us that some of the consultancy contracts did not eventually materialise in sale of machinery. The service elements being separate from the cost of manufacture of the machinery, the service costs are not includible in the assessable value of the machinery.

5. The erection and service charges realised by the respondents for installation and maintenance of the machinery at the customer's premises are not includible in the assessable value of the machinery for two reasons :- (1) These are expenses incurred after the removal of the machinery from the factory gate, vide the ratio of the Supreme Court Judgment dated 20.12.1986 in the case of Madras Rubber

Factory (Civil Appeal No. 3195 of 1979 and others).

(2) After installation, the machinery was embedded in the ground; it became immovable property and ceased to be 'goods'.

The demand on account of erection and service charges is, therefore, not tenable on merits. For that reason, the respondents were under no obligation to disclose it to the department as an element of cost of manufacture of the machines and hence there was no suppression on their part on this count. The impugned order of the Collector (Appeals), in so far as it sets aside the demand on account of erection and service charges, is upheld.<sup>6</sup> In the result, we confirm the demand only in respect of the drawing, designing and technical specification charges in terms of paragraph 3 above. The two appeals are otherwise rejected.

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