Bharat Calciners Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Calcutta

Decided On : Sep-16-2003

Reported in : (2004)(91)ECC681

Judge : A Wadhwa, A T V.K.

Appellant : Bharat Calciners Ltd.

Respondent : Cce

Advocate for Pet/Ap. : Shri. Bagaria

Judgement :

1. The Tribunal vide its Order No. A-758/KOL/2002 dt. 4.7.2002 allowed the appeal filed by the appellant M/s. Bharat Calciners Ltd. on the findings that the transportation activity was being undertaken by the appellant on behalf of their customers for which separate bills were being raised and the cost was being reimbursed by the buyers to the appellant. As such it was held that the freight charges are not required to be added in the assessable value of the appellants' final product.

2. Being aggrieved with the above order the Revenue filed an appeal before the Hon'ble Supreme Court. The said appeal was disposed of by the Supreme Court vide its order dt. 20.4.2003 and remanding the matter with certain directions. The Hon'ble Supreme Court's order is being reproduced below for better appreciation: Parties are agreed that the matter be referred back to the Tribunal to decide (a)

whether or not the respondent had in fact realised, towards transportation charges, more than what they actually spent and if so, what is the result of that and (b) the interpretation of Rule 5 of the Central Excise Valuation Rules, 2000.

Accordingly, the impugned order is set aside. The matter is remitted back to the Tribunal to decide the above questions on merits. It will be open to the parties to urge all contentions available to them in law.

The Tribunal is directed to dispose of the matter as expeditiously as possible.

3. Shri. S.K. Bagaria, Ld. adv. appearing for the appellant has placed on record written submission alongwith relevant case laws. However, we find that in terms of the Hon'ble Supreme Court's decision the fact whether the appellants have realized more towards transportation cost, than what they have actually spent is required to be decided. Since the above disputed issue relates to the factual position, this was put across to Shri Bagaria, appearing for the appellant and it was decided that the matter should be remanded to the original adjudicating authority for deciding the above disputed factual position. Accordingly we remand the matter to the Commissioner for fresh decision in terms of the directions as contained in the Hon'ble Supreme Court's decision.