indus Engineering Company Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-13-2004

Reported in : (2004)(175)ELT322Tri(Mum.)bai

Judge : J Balasundaram, A M Moheb

Appellant : indus Engineering Company

Respondent : Commissioner of Central Excise

Judgement :

1. After hearing both sides for some time on the application for waiver of pre-deposit of Rs. 3,34,138/- being the duty confirmed by including excess freight collected by the appellants herein during the period 1997-98 in the assessable value of goods manufactured and cleared by them, and penalty of Rs. 1 lakh imposed upon them, we found that it was possible to decide the appeal itself at this stage; hence after waiving pre-deposit, we proceed to hear and dispose of the appeal itself, with the consent of both sides.

2. We find that the issue stands settled in favour of the assessees by the Apex Court's decision in the case of Baroda Electric Meters Ltd. vs. CCE 1994 (94) ELT 13 (SC) in which the Apex Court has relied upon its earlier order in the case of Indian Oxygen Ltd. vs. CCE 1988 (36) ELT 723 (SC) holding that duty of excise is a tax on manufacturer and not upon the profits incurred by a dealer on transportation. Learned DR seeks to distinguish this decision on the ground that it relied to equalise freight; however we find that in other decisions of the Tribunal,

one of them being in the case of Anjaleem Enterprises Pvt.

Ltd. vs. CCE 2001 (137) ELT 1190, where it was not a case of equalised freight; the Tribunal has applied the ratio of the Supreme Court's decision in the case of Baroada Electric meters Ltd. and held that excess freight is not required to be included in the assessable value of goods manufactured.

3. Following the ratio of the above orders, we set aside the impugned order and allow the appeal.