Alstom Ltd. Vs. Commissioner of Central Excise

Alstom Ltd. Vs. Commissioner of Central Excise

SooperKanoon Citation : sooperkanoon.com/34264

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-23-2004

Reported in : (2004)(167)ELT338TriDel

Judge : K Usha, N T C.N.B.

Appellant : Alstom Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. In this appeal at the instance of the assessee challenge is against a portion of the order passed by the Commissioner (Appeals) dated 21-8-2003 which has gone against the case put forward by the assessee.

The assessees are engaged in the manufacture of transformers and switchgears. Since the size of the transformers is very large they are dismantled prior to clearance from the factory for convenience of transport. At the site customers undertake the assembly, erection and commissioning under the supervision of the appellants who charge the customers supervision charges. Additionally, the appellants also undertake repair of old equipment (manufactured by them and by others) installed and functioning at the customer's premises. The amounts charged for this are referred to as service charges.

2. Different show cause notices were issued to the appellant for the period from March 1998 to March 2001 alleging that supervision charges and service charges

collected by the appellants are to be added in the assessable value of the goods removed. The adjudicating authority confirmed the notices for the period March 1998 to January 2000. For the period February 2000 to June 2000 and July 2000 to March 2001 the demands were dropped. Appeals were filed by the assessee as well as the Revenue. Commissioner (Appeals) allowed the appeals filed by the assessee in respect of two show cause-cum-demand notices for the period from March 1998 to January 2000. Appeal filed by the Revenue in respect of demand for the period February 2000 to June 2000 was dismissed. But the appeals in respect of demand for the period July 2000 to March 2001 was allowed holding that supervision charges and service charges collected during the period are liable to be included in the transaction value under the new Section 4(3)(d) of the Central Excise Act, 1944.

3. It is contended on behalf of the appellant that the concept of transaction value would not be applicable to the present case as the transformers had been cleared prior to coming into force of the new section on 1-7-2000. On merits also it is contended that these charges cannot be included in the transaction value.

4. It is not disputed before us that the goods had been cleared prior to 1-7-2000. Since amended provision was made applicable by the Commissioner for the reason that the customers made the payment to the assessee after 1-7-2000, he took the view that assessment has to be made with reference to the amended section.

5. We find that the Commissioner has erred in the above view. Excise duty is charged at the time of removal of the goods. The date of payment made by the buyer or customer is not relevant. As mentioned earlier at the time of clearance the unamended provision of Section 4 was in force. Under these circumstances there is no justification for applying the amended provision for assessment of the goods on the basis of the show cause notice dated 2-8-2001. Therefore the appeal has only to be allowed. Since we are allowing the appeal for the reason mentioned above, it is not necessary for us to go into the other contentions raised by the appellant. The order passed by the Commissioner dated 21-8-2003 is set aside to the extent impugned in this appeal. The appeal stands allowed.