C.C.E. Vs. Bhaskar Ispat Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-22-2004

Reported in : (2004)(94)ECC207

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

Appellant : C.C.E.

Respondent : Bhaskar Ispat Pvt. Ltd.

Judgement :

2. The issue referred to the Larger Bench is whether the chargers for additional testing conducted at the request of customer and the cost of such testing charges being born by the customer, are includible in the assessable value of the goods. The Referring Bench noticed the conflicting view taken by the Tribunal in the case Hindustan Gas & Industries Ltd. Vs. Commissioner of Central Excise & Customs, Baroda, reported in 2001 (133) E.L.T. 481 (Tri.-Mumbai) and in the case of Bhaskar Industrial Development Ltd. Vs. C.C.E., Kolkata-III-Final Order No.A-393-394/Kol/2003 dated 10.6.2003.

3. We have perused the decision of the Tribunal in the case of Hindustan Gas & Industries Ltd. Vs. Commissioner of Central Excise & Customs, Baroda (Supra). In that case the Tribunal had taken into consideration the facts that the inspection charges were not in respect of the optional or secondary testing, hence are includible in the assessable value of the goods. While deciding so, it was also held that it is settled law that charges paid for inspection or testing by third party at the

option of the buyer cannot form part of the assessable value. As in the case of Hindustan Gas & Industries Ltd. Vs.

Commissioner of Central Excise & Customs, Baroda (Supra) that inspection charges were not for the additional or optional testing, therefore, taking into consideration facts and circumstances of case, it was held that these are includible in the assessable value.

4. The issue before us is to decide whether the additional testing charges at the request of customer and born by the customer, are includible in the assessable value of the goods for the purpose of Central Excise duty. We find that the Tribunal in the case of Shree Pipes Ltd. Vs. Collector of Central Excise, reported in 2002-TAXINDIAONLINE-111-CESTAT-DEL-SB held that such additional testing charges born by the customer and which are optional, are not includible in the assessable value of the goods. Revenue filed appeal against this decision and the Hon'ble supreme Court dismissed the appeal, reported in 1992 (61) E.L.T. A63 (S.C.)- C.C.E. Vs. Shree Pipes Ltd. This decision was followed by the Tribunal in the case of CIMMCO ltd. Vs.

Collector of Central Excise, Jaipur, reported in 2002-TAXINDIAONLINE-112-CESTAT-DEL-SB, 1994 (74) E.L.T. 687 (Tribunal).

The appeal filed by the Revenue against this decision was dismissed by the Hon'ble Supreme Court, reported in 1996 (84) E.L.T. A167 (S.C.) - C.C.E. Vs. CIMMCO Ltd. The Tribunal further followed the decision in the case of Shree Pipes Ltd. (Supra) and in the case of Hindustan Development Corporation Ltd. Vs. C.C.E., Calcutta, reported in (2002-TAXINDIAONLINE-110-CESTAT-DEL-SB) 1996 (85) E.L.T. 58 (Tribunal) and the appeal filed by the Revenue was dismissed by Hon'ble Supreme Court reported in 1996 (86) E.L.T. A162 (S.C.) - C.C.E., Vs. Hindustan Development Corporation Ltd. 5. In view of the above settled position, we hold that cost of additional testing conducted at the request of the customer and the cost of such testing being born by the customer, are not includible in the assessable value of the goods. The issue referred to the Larger Bench is answered in the above terms.

6. No other issue is involved in the present appeal. Therefore, we take up the appeal for disposal. The Revenue filed this appeal on the ground that the cost of additional and secondary inspection carried out at the request of the buyer and for which buyer has to pay, is includible in the assessable value of the goods. As discussed above, as we held that such charges are not includible in the assessable value of the goods.

Therefore, we find no merit in this appeal and the same is dismissed.