Commissioner of Central Excise Vs. Hemitronics Equipments and

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-01-2004

Judge : A Wadhwa, A M Moheb

Appellant : Commissioner of Central Excise

Respondent : Hemitronics Equipments and

Judgement :

1. The present appeal is filed by the Revenue against the order of the Commissioner (Appeals) vide which he has set aside the Order-in-Original passed by the Asst. Commissioner along with subsequent corrigendum issued by him vide which he has confirmed the demand of Rs. 74,065.57 against the respondents by extending the benefit of Notification 175/86 dated 1.3.86. The revenue's grievances is that the Commissioner (Appeals) has not discussed the merits of the case but has set aside the order on the technical issue of addition of 10% notional profit in the assessable value of the final product, as also on the ground that in his order the Asst. Collector directed the Superintendent to re-quantify the demand and subsequently he has himself confirmed the demand by way of issuance of a corrigendum.

2. I have heard Shri Hitesh Shah, Ld. SDR appearing for the revenue.

The respondents have made a prayer for decision of the case on the basis of the cross objection filed by them. The respondent's contention is that there was no justification for inclusion of 10% notional profit to the raw material cost inasmuch as they were doing work on job work basis and the value is to be adopted by cost construction method. The job charge received by the respondents are inclusive of profit margin and as such there is no warrant for further addition of 10% notional profit. For the above proposition the appellants relied on the Hon'ble Supreme Court decision in the case Ujjagar Prints reported in 1989 (29) ELT 493 as also to the Boards 37B-Order No. 24/14/93 dated 31.12.93 laying down that whether the goods are being manufactured on job work basis, no further addition towards 10% notional profit is to be added.

3. The short point involved in the present appeal is to whether 10% notional profit is required to be added when the goods are being manufactured on job work basis. As per the Hon'ble Supreme Court decision and the Boards Circular referred supra, job charges received by the respondent from the principal manufacturer includes his own profits. As such there is no justification for addition of 10% to the notional profit. Accordingly, I held that the demand is required to be recalculated after extending the benefit of Notification 175/86 and after arriving at the assessable value without adding addition of 10% notional profit.