Commissioner of Central Excise Vs. Ashpee Systems Pvt. Ltd.

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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 : Ashpee Systems Pvt. Ltd.

Judgement :

1. Present two appeals filed by the Revenue arise out of Order-in-original passed by the Commissioner, Central Excise Nagpur vide which he has held that the electronic weighbridge manufactured by M/s. Ashbee Systems (P) Ltd. under the order placed by M/s. H.P.C.L. is not excisable inasmuch as they come into existence step by step while being erected at site and as such cannot be considered as "goods" being immovable property. For the above conclusive Commissioner has relied upon the Supreme Court's decision in the case of M/s. Tata Robins Frasser Ltd. Vs. CCE reported in 1996 (84) ELT EA 108 and in the case of M/s. Quality Steel Tubes Ltd. Vs. CCE reported in 1995 (56) ECR 209 (SC). The above decision of the Commissioner has been challenged by the Revenue by relying upon the Supreme Court's decision in the case of M/s. Narne Tulaman Manufacturers pvt. ltd. Vs. CCE reported in 1988 (38) ELT 566.

2. After hearing both the sides duly represented by Shri Vimlesh Kumar, Ld. SDR for the Revenue and Shri Naveen Malik, Ld. Advocate for the respondents, we find that the Commissioner has taken into consideration the above decision of Supreme Court in the case of 'Narne Tulaman Manufacturers Pvt. Ltd. and has

observed that in the said decision the issue before the Hon'ble Supreme Court was regarding scope of the term 'manufacturer'. The issue, whether the goods are excisable goods or not on account of the same being immovable property, was not considered.

The said issue was subsequently considered by the Supreme Court in the decision referred supra and it was held that the goods which come into existence while being attached to earth cannot be considered as marketable and hence not excisable goods.

3. Ld. Advocate for the respondents has brought to our notice that the issue came up for consideration before the Delhi Bench as well as before the Bangalore Bench of the Tribunal in the respondent's own case. The Delhi Bench of the Tribunal in the case of Ash Bee System (P) Ltd. vs. CCE, Chandigarh reported in 2001 (134) E.L.T. 717 (TRI. - Del.) has held that electronic weighbridge coming into existence step by step at site, inter alia, after digging pit, laying concerted foundation, raising pillars, embedding and grouting load cell basis, placing load cells on load cell basis and fixing iron and steel platform thereon, not capable of being brought to market for being sold, are not excisable goods in terms of Section 2(d) of Central Excise Act, 1944. In the said decision the Tribunal also considered the Supreme Court's decision in the case of Name Tulaman Manufacturers Pvt.

Ltd. and has distinguished the same. Similarly the Bangalore Bench of the Tribunal vide its Order No. 446/2004 has rejected the appeal filed by the Revenue against the same respondents by holding that the electronic weigh bridge are not excisable goods. In the said decision also the Tribunal considered the Supreme Court's judgment in the case of Narne Tulaman.

4. The dispute in the present appeal arises from the same purchase order of M/s. H.P.C.L. which was before the Tribunal in the above referred matter. Inasmuch as the issue stands finally decided, we do not find any reason to take a different view.