Commissioner of Central Excise Vs. Sigma Transformers and

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-19-2004

Reported in : (2004)(170)ELT377Tri(Mum.)bai

Judge : S T S.S., T Anjaneyulu

Appellant : Commissioner of Central Excise

Respondent : Sigma Transformers and

Judgement :

1. These appeals by Revenue, on similar issue are being disposed off by this common order.

a) Goods was sold by Tender contract prices based on Ex works price to Maharashtra State Electricity Board. The inclusion of equalized freight from factory gate to buyers premises were as allowed by CCE(Appeals) even on clearance made after 1.7.2000. Hence these appeals by Revenue on the grounds:- i) The place of removal as per the definition given in Section 4(3) (e) not considered especially the restoration of the place of removal as defined prior to 1.7.2000 by amendment made in Finance Bill 2003 (Clause 128) ii) Board's order No. 59/1/2003 -CX dated 3.3.2003 stipulates, the determination of place of removal only after reading the terms of the contract especially para 1-0,2,9 & 16 to 18 23 & 27 which casts liabilities on the seller (assessessees in this easel) & assessments should be under Section 4(1)(b) not under Section 4(1)(a) as arrived at by the CCE(Appeals) iii) The ratio of the decision in the case of Majestic Auto Ltd

(2003(57) RLT & filament India & other (2003(57) RLT 750 & H.M. Conductor Engineers Pvt Ltd Vide order No 240-260/03 NB(A) dated 3.6.2003 is not called for as in these cases it was addition of equivalent freight on Factory Gate Sale completed whereas as in this case the sale is not completed as it was agreed as per Terms of contract.

b) It is well settled that freight & transit insurance is not to be included is in assessable value when transfer of the title of the goods took place at factory gate. In this case, the Tender contract prescribes & approves a factory (works) gate price. The other condition of the Tender are, only safety clauses entered for incorrect defective supplies and not correct goods. Therefore the approval of the value under Section 4(1) (a) cannot be assailed as they would be the normal sale transaction value.

c) The reliance of the Ld DR on the case of Shesun Chemicals & Drugs Ltd 2003 (158) ELT 528, stipulating the actual freight could be deducted & not equalised is well founded. Yet that case can't have any application in the present matters, since, in this, case vide Clause 24 of the Tender document it is apparent that "Central Excise shall be only an Ex-works price & be reimbursed on actual" the other charges would therefore not be reckoned. When such a price is available & is not assailed. The tendor document is not a simplicitor 'sales contract' but appears to be a work contract for supplier to provide for and include packing, furnishing, freight transit, insurance charges, Excise duty & sale Tax, also some of the activities not being (SIC) a seller d) No material exists to alter the earlier views held in the CESTAT's decision relied upon by the CCE(Appeals) 3) In this view of the matter, the Revenue appeals do not induce us to upset the order of the Ld CCE(Appeals) arrived at based on CESTAT's decision. The appeals are therefore dismissed.