

The Executive Engineer Vs. the Commissioner of Central

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-11-2004

Judge : K Kumar, M T K.D.

Appellant : The Executive Engineer

Respondent : The Commissioner of Central

Judgement :

1. The appeal of the appellant is directed against the order passed by the Commissioner of Central Excise, whereby Central Excise duty of Rs. 68,68,868/- has been confirmed against them, with imposition of penalty of equivalent amount.
2. The appellants are engaged in the manufacture of M.S. Pipes of required size for captive consumption i.e. for laying the same at sites for completion of irrigation scheme. The pipes are being manufactured by independent contractors out of - steel plates supplied by the appellants. On the basis of cost audit conducted by a cost auditor appointed by the Commissioner under Section 14A of the Act, (Central Excise Act 1944) it was revealed that the value of the said pies has been under declared. Consequently the value was enhanced resulting into confirmation of differential duty demand as mentioned above.
3. The Commissioner had considered the fact that the appellant is a state government undertaking. Though the pipes are manufactured through the contractors, the appellants stepped into the shoes of manufacturers, took Central Excise registration, and discharged the Central Excise duty due on the pipes

cleared from the premises of the respective contractors. The Commissioner had observed that in terms of the findings of the case audit reports, testing charges, conversion charges, administrative expenses incurred by the appellants were required to be added to determine the assessable value. The Commissioner also added a notional profit. The appellants have pleaded that M/s MKVDC (Maharashtra Krishna Valley Development Corporation) is a state government body and is consistently incurring losses. Hence there is no case for adding the profit margin. This was examined in the impugned order and it is noted that, the appellant is not the MKVDC, but a different entity namely Ex-engineer, Mhaisai Pump House, Division-I, SANGLI.5. We note that payment of duty by the appellants on the M.S. Pipes which they got fabricated from the various job workers, out of the free of cost steel plates supplied by the appellants to the job workers, is not in dispute. We also note that, but for the detailed scrutiny of records by the cost auditor, the non-inclusion of the various charges as enumerated in the cost audit report would not have come to surface.

There being no sale and only captive consumption, it was incumbent on the appellants to declare all the details of expenses incurred in relation to the activity of manufacture. Failure to do so does amount to misstatement/suppression etc. If a similar act was to be noticed in the case of an assessee who is not a government agency, the same set of circumstances would lead to the conclusion of evasion. Therefore, on account of the fact of the appellants being a state government unit, should not lead to a different conclusion.

6. Accordingly, we hold that, the Commission was correct in holding this case to be covered by the larger period of limitation for duty demand. We also note that on merits the demand is sustainable as there is no worthwhile counter to challenge the inclusion of the various charges in the assessable value. However, taking into consideration the fact that the appellant is involved in rendering public service, we set aside the penalty. The appeal is otherwise rejected.