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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-19-2004

Reported in : (2004)(96)ECC578

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

Appellant : Commissioner of Central Excise

Respondent : Jyoti Structures Ltd.

Judgement :

1. This is an appeal at the instance of the Revenue challenging the orders passed by the Commissioner of Central Excise, Raipur dated 6-2-2002. The issue that has come up for consideration is whether testing charges incurred in respect of prototype transmission towers are to be added to the assessable value of the goods cleared by the assessee. Respondents are engaged in the manufacture of 'Parts of Towers' and 'Structures' falling under sub-heading Nos. 7308.20 and 7308.90 respectively of the Schedule to the Central Excise Tariff Act, 1985. At the time of removal of the goods manufactured they were paying excise duty on the value of the goods. While so, a show cause notice dated 28-9-2001 was issued demanding an amount of Rs. 25,93,133/- on the allegation that the respondent by not including the testing charges recovered from their customers in the assessable value of the impugned goods had deliberately undervalued the goods. The assessee contended that the testing which is conducted after prototype tower is erected is not a testing required for the completion of the product manufactured by it. Since it is a special testing done at the instance of the customers the charges

incurred is not includible in the assessable value of the product cleared by the assessee. The allegation of suppression of fact was also denied.

2. The adjudicating authority accepted the contention raised by the assessee. Reliance was placed on the ratio of the decision of this Tribunal in KEC International Ltd. v. C.C.E., Jaipur 675. In the above case the Tribunal has taken the view that testing charges carried out was optional. Destruction test carried out at the instance of the particular customers in addition to regular quality control test cannot be included in the assessable value. It is contended on behalf of the Revenue before us that the Commissioner has erred in not following the ratio of the decision of this Tribunal in Richardson & Cruddas (1972) Ltd. v. CCE, 1992 (57) E.L.T. 336. In the above case the Tribunal has taken the view that testing charges are to be added to the assessable value. Relevant portion of the decision reads as follows : "The tests of the prototype towers are undeniably carried out in relation to the transmission line towers that are manufactured for actual execution of the contract entered into between the appellants and their customers and the charges incurred for conducting such tests are paid by the customers in terms of the contract. We are, therefore, of the view that all charges recovered by the appellants from their customers on account of the testing of the prototype towers which in terms of the contract precedes the manufacturing of the transmission towers to be actually delivered would form a part of the assessable value of such towers." 3. It is to be noted that in the above decision transmission towers erected on grounds were treated as excisable goods. This view is no longer good law in the light of the decision in Thungabhadra Steel Products Ltd. v. Union of India, 1998 (98) E.L.T. 334 (Kar.) Here the argument put forward on behalf of the Revenue is not that testing charges are to be added to the assessable value of the transmission towers. The contention is that testing charges are to be added to the parts manufactured and cleared by the assessee. Rejection of similar demand was upheld by this Tribunal in C.C.E., Mumbai v. KEC International Ltd., 1998 (102) E.L.T. 621. In the above case the adjudicating authority as well as the appellate authority took the view that the goods were subjected to testing after they were cleared on payment of duty and that since the testing was destructive testing, the goods subjected to the testing ceased to exist after such testing.

Secondly, it was held that the transmission towers on erection becomes immovable property and hence cannot be goods within the meaning under the Central Excise Act. The above view was upheld by this Tribunal. In Neelkamal Plastics Ltd. v. C.C.E., Noida, 2004 (164) E.L.T. 197 also the Tribunal took the view that no duty is payable in respect of goods which were destroyed during testing.

4. In the present case, the respondent entered into contract with different State Electricity Boards and NTPC Ltd. for erection of transmission towers. Parts of these transmission towers are cleared on payment of duty. Prototype towers are erected and they undergo test from different angles for bearing various quantities of loads/stress.

These tests called 'destruction testing' result in eventual destruction of the prototype tower. We are not inclined to accept the contention raised by the Revenue that these testing are conducted in relation to the goods manufactured by the assessee, namely, parts of transmission towers. Parts are cleared from the factory after undergoing required quality test. The charges for the destruction test which is conducted on the prototype towers cannot therefore be added to the assessable value of the goods manufactured by the Respondent.

5. In the light of the above we affirm the order impugned and dismiss the appeal.

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