

Electropneumatics and Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-24-2004

Judge : S T S.S., T Anjaneyulu

Appellant : Electropneumatics and

Respondent : Commissioner of Central Excise

Judgement :

1. The issue involved in this case is valuation of goods manufactured for captive consumption three show cause notices for the different period/amounts were issued and (sic) duty of Rs. 4,32,246/- was confirmed along with penalty. The case of Revenue is that the overhead added to work out of the value of the goods sent for captive consumption in their other unit of "Chakan" were on the lower side and they should be raised from 25% as declared to 82% and 106% based on the report of Assistant Director Cost of Central Excise Department. On a prima facie finding it is found that certain expenses which have been taken as cost by the Assistant Director Cost to work out the percentage like heads of interest, selling and distribution expenses, foreign travel etc. were not required to be added. These issues were seriously contested before the Ld. Adjudicator and it was the case of the appellants that the Ld. Adjudicator has not considered the submissions of exclusion of the expenses and if such an exclusion was reckoned the duty demands would come down to Rs. 4,34,072/- which they have since dispatched. The quantum and nature of expenses, which could be added, would be the issues to be determined at the final hearing. At this stage prima facie, it is found that there

has been a mis-calculation of the total costs worked out. An amount of Rs. 4,34,072/- consequently to this mis-calculation, is the admitted liability which has been paid.

Keeping in mind the plea of bar of limitation and the fact that revenue neutrality plea raised needs to be considered. We would direct the appellants to a pre-deposit to meet the requirements of Section 35F of the Central Excise Act. On a pre-deposit of Rs. 15 lakhs (including the amount of Rs. 4.34,072/- already deposited /paid) and compliance thereof reported on 26.7.04 further pre-deposit requirements of duty and penalties would stands waived and recovery thereof stayed and the matter would be listed for final hearing in its own term. Failure to make the pre-deposit would call for dismissal of the appeal.

Application disposed off in above terms.

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