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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-27-2004

Reported in : (2004)(95)ECC97

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

Appellant : Engineering Innovative Ltd.

Respondent : Cce

Judgement :

1. The appellant is a manufacturer of Sheet Metal Components which are liable to Central Excise duty on advalorem basis. The tooling required for manufacture of components was either received free from the components buyers or the components buyers paid for them separately.

The appellant did not include the value attributable to the cost of tooling while determining the assessable value of the components.

Therefore, duty demand was raised in respect of the price attributable to the tools in the value of the components. The demand was made invoking the proviso to Section 11A of the Central Excise Act which allow issue of show cause notice during extended period. The lower authorities confirmed the demand. When the matter came up earlier before this Tribunal, the Tribunal remanded the case for consideration of the submission relating to limitation. On re-consideration of the case the lower authorities have held that the extended period was attracted

inasmuch as the fact of free supply of tools was not disclosed to the departmental authorities and for that reason, this was a case of suppression of facts, situation specifically mentioned in the proviso.

2. In the present appeal, the appellant contend that the tooling cost was not required to be included in the assessable value of sheet metal components, since the price charged for the metal components was the only consideration for the appellant. It is also pointed out that since the appellant would have been entitled to credit of the duty paid on the tooling, there could be no intention to evade duty. In support of this submission the appellants relied on the following decisions:SRF v. CCE, Madras It is also being submitted that the appellants were in the bonafide belief that the cost of tooling was not liable to be included. They have pointed out that only in 1996, vide CBEC Circular dated 23.1.1996, it was clarified that cost of pattern etc. is to be included in the assessable value on a proportionate basis. It is also pointed out that there was no suppression inasmuch as receipts towards cost of tooling were reflected in the books of accounts and balance sheet of the appellant.

3. As against this, contention of the revenue is that in terms of the remand order, only the issue of limitation was open to be considered in the proceeding before the lower authorities and that the lower authorities have correctly held that the extended period was rightly attracted in the facts of the present case. During the hearing of the case, learned SDR pointed out that the fact of recovery of additional amounts towards tooling charges was never disclosed to the departmental authorities, inasmuch as tooling was either received free or the charge for the tooling was recovered under separate invoices. The Central Excise invoices covering the removal of components did not make any mention of the fact of recovery of tooling charges separately.

4. We have perused the records and considered the submissions made by both sides. In the present case, the duty paying documents did not disclose the fact of separate recoveries towards tooling charges. The fact of free supply or separate recovery of charges for tooling was also not disclosed to Central Excise authorities through any other communication during the relevant period. In these facts and

circumstances, the lower authorities were justified in the holding that short recovery has taken place on account of suppression of facts/The appellants' contention that there was no suppression of intention to evade duty cannot find acceptance, since the appellants were making separate recovery for tooling charges. It is clear that those tooling charges included part of the cost of producing the metal components and in the absence of tooling the metal components could not have been produced. In these circumstances, the appellants' claim that there was no intention to evade duty cannot be considered. The issue of a clarification letter in 1996 about the method of allocation of tooling cost cannot be interpreted to mean that till that clarification, the legal position was that the cost of tooling was not required to form part of the value of components produced with those toolings.

5. In view of what is stated above, we find no merit in the appeal. The same is dismissed.

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