Executive Engineer, Fabrication Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-06-2004

Reported in : (2004)(116)LC676Tri(Delhi)

Judge : A T V.K., P Bajaj

Appellant : Executive Engineer, Fabrication

Respondent : Cce

Judgement :

1. This appeal has been directed against the impugned order-in-appeal by the appellants vide which the Commissioner (Appeals) has upheld the order-in-original of the adjudicating authority, who confirmed the duty demand with penalty as detailed therein.

2. The issue involved in this appeal is as to whether the activity of the appellants of producing transformed structure from the MS rods, MS channels, etc. amounts to manufacture. The adjudicating authority held this issue against the appellants and confirmed the duty demand for the disputed period ranging July 1996 to May 1997 through order-in-original which has been affirmed by the Commissioner (Appeals).

3. The earned Counsel has contended that the above referred issue already stands covered in favour of the appellants by the Tribunal's Final Order No. E/204 & 205/91-D dated 8.4.1991 in the case of CCE, Madurai v. Tamil Nadu Electricity Board. Therefore, the impugned order deserves to be set aside. On the other

hand, learned JDR has reiterated the correctness of the impugned order.

4. We have heard both the sides. The perusal of the record shows that the appellants are engaged in the manufacture of transformed structural materials. These products are manufactured by them out of duty paid material by cutting, punching, etc., of angles, bars and similar fabrication angles/rods, etc. In an identical case, CCE, Madurai v.Tamil Nadu Electricity Board (supra) referred by the Counsel, the Tribunal has taken the view that such an activity did not amount to manufacture. In that case also, structural materials were prepared from the MS rods, MS channels, and mild steel flats. The case of the appellants squarely stands covered by the ratio of law down in that case and as such, no duty demand could be confirmed against them. That order of the Tribunal has already attained finality. Even the Apex Court has upheld that order by dismissing the appeal of the Revenue as reported in 1996 (82) ELT Court Room Highlights A158.

5. Consequently, the impugned order cannot be sustained and the same is set aside. The appeal of the appellants is allowed.