The Associated Cement Co. Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-10-2004

Reported in : (2004)(173)ELT335Tri(Mum.)bai

Judge : J Balasundaram, A M Moheb

Appellant : The Associated Cement Co. Ltd.

Respondent : Cce

Judgement :

1. The issue for determination in this appeal is, the excisability of Electro-Static Precipitators fabricated and erected by the appellants herein (who are manufacturers of cement) in 1983-84. According to the appellants, ESPs are not goods on which excise duly is leviable as they are immovable property, wrote according to the Revenue, ESPs are goods falling for classification under Tariff Item 68 of the erstwhile Central Excise Tariff and are chargeable to duty.

2. We have heard both sides. The ESP is a plant widely used in the process industries and power stations to effectively remove the suspended fine dust from the exhaust gases in order to prevent atmospheric pollution. It essentially consists of a very large sized box of steel, inside which are installed several rows of electrodes.

These electrodes are hung from suspension hangers placed at the roof of the casing and when the dust-laden exhaust gases pass through the electric field between rows of electrodes, the dust particles are negatively charged and are attracted towards the collecting electrodes and are deposited thereon; a mechanical rapping system operates, intermittently loosening the dust deposit which then falls into the hopper at the bottom of the casing; the clean gas flows out of the ESP casing through the outlet port and is discharged into the atmosphere.

The ESPs are embedded on concrete foundation as seen from the photographs produced before the authorities below and the fact of civil work is also accepted by the adjudicating authority who, however, has held that in the absence of any evidence that ESPs cannot function without being attached to earth and since ESP is an equipments, different from its components and the same are 'Goods' for the purpose of charging duty of excise. In this context, the learned counsel placed reliance on the decisions of the Apex Court in the case of Triveni Engg. & Indus. v. CCE, 2000 (120) ELT 273 (SC), wherein it was held that installation or erection of turbo alternator on the platform constructed on the land would be immovable property; and in the case of T.T.G. Indus. Ltd, v. CCE, Raipur. 2004 (167) ELT 501 (SC), wherein it was held that mudguns and drilling machines do not answer the description of 'Goods', having regard to the fact that they are machines erected and installed upon concrete structures, are directly applicable to the facts of the present case. We also note that reliance placed by the appellants on the CBEC Circular No. 58/1/2002-CX dated 15.1.2002 in which it has been held that if items assembled or erected at site and attached by foundation to earth cannot be dismantled without substantial damage to its components and thus cannot be reassembled, then the items could not be considered as moveable and will, therefore, not be excisable goods, is correct in view of the unrebutted stand of the appellants that ESPs cannot be dismantled and moved without substantial damage to its components. This Circular clarifies that turn key projects involving supply of large number of components, machinery, equipments etc. for their assembly/installation etc. on foundation/civil structure etc. at site, will not be considered as excisable goods for the levy of Central Excise Duty, although the components thereof would be dutiable. This Circular is based upon a consideration of several judgments of the Supreme Court including Sirpur Paper Mills Ltd. v. CCE. Hyderabad, 1998 (97) ELT 3 (SC) [relied upon by the Commissioner (Appeals) against the appellants herein] and Triveni Engg. & Indus.

Ltd. v. CCE, 3. Following the ratio of the Supreme Court's decisions in the case of Triveni Engg. & Indus. Ltd., supra, and T.T.G. Inds. Ltd., supra, and in the light of the CBEC's Circular, supra, we hold that the ESPs fabricated and erected by the appellants herein are not 'Goods' liable to excise duty, set aside the impugned order by which duty demand of Rs. 8,25,820/- has been upheld and allow the appeal.

(Operative part of this order was pronounced in the open court on 10.8.04)