

Spectrum Power Generation Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-26-2004

Reported in : (2004)(116)LC719Tri(Delhi)

Judge : S Kang, N T C.N.B.

Appellant : Spectrum Power Generation Ltd.

Respondent : Cce

Judgement :

1. The first appellant M/s Spectrum Power Generation set up 208 MW power plant with imported equipment near Kakinada in Andhra Pradesh. It awarded an "erection contract" to the second appellant M/s Rolls Royce Industrial Power (India) Ltd. in December 1994. Pursuant to this contract, the second appellant got the power plant erected and installed through two subcontractor vis-a-vis M/s UB Engineering Ltd. and M/s Crompton Greaves Ltd. 2. In March 2002, Commissioner, Central Excise, Visakhapatnam issued a Show-cause Notice alleging that the setting up of the aforesaid power plant involved manufacture of goods and that central excise duty of about over Rs. 87 crore was payable by the second appellant (as the manufacturer) and that the first appellant was liable to a penalty.

Both the appellants resisted the demands. The primary contention was that setting up of a power plant involved construction of immovable property and immovable property was not liable to central excise, as that tax was on goods. In adjudication,

the Commissioner accepted the contention that power plant was not liable to duty since the same was immovable property. However, he turned the demand in another direction and held that even through the power plant itself was not goods, 3 main elements of the power plant namely - (1) Electric Turbo Generating Set (2) Heat Recovery Steam generator (Waste Heat Recovery Boilers) and (3) DCS Control and Instrumentation would be goods and liable to duty.

Based on this finding, duty demand raised in the Show-cause Notice was confirmed at a lower amount of about Rs. 78.5 crores. A penalty of equal amount was also imposed. While these two levies were on the second appellant M/s Rolls Royce Industrial Power (India) Ltd., the Commissioner also imposed a penalty of Rs. 50 lakhs on the first appellant M/s Spectrum Power Generation Ltd. under Rule 26 of the Central Excise 2002. The present appeals challenge those orders.

3. The present appeals are a reiteration of the grounds taken in the adjudication. The primary objection against the levy of central excise duty is that the three items picked up by the Commissioner from the power plant for levy are also immovable property and that Commissioner should have desisted from levying duty on these items also, for the same reason for which he held the power plant to be not excisable. It is being pointed out that one look at the items in question or their lay out pictures would have convinced the Commissioner that these items are also not movable and are immovable property. With regard to the electric turbo generating set, it is being pointed out that it consists of gas/steam turbine and electric generator, which when coupled together, constitute electric turbine generating sets. It is being pointed out that a turbine weights around 136 MT and is erected on a concrete foundation which is 29 meters deep. The foundation is made of 2000 tons of concrete. The turbine is grouted/affixed to the foundation. Similarly, the generators are also heavy equipments erected and grouted to the earth. The generators and turbines are coupled after they are individually installed and embedded to the earth. Thus before and after coupling the turbine generators have become immovable property. The appellants have submitted that electric turbo generating set as aforesaid cannot be moved as such, without dismantling. The substance of the contention is that the chattel like this which is not movable as such, are not goods for attracting central excise duty.

During the hearing of the case, learned Counsel for the appellants has pointed out that the non-excisability of turbo generator remains specifically settled by the decision of the Apex Court in the case of Triveni Engineering Industries Ltd. v. CCE 4. With regard to the heat recovery steam generator, the appellants have pointed out that it consisted of huge stacks which are about 35 meters high and having a diameter of about 4 meters. These stacks are embedded and grouted to the foundation of 29 meters deep. Apart from this, there is a steel structure consisting of 8 columns which are about 35 mtrs. High and having a base of about 2ft. x 2 ft. which again is affixed to a concrete pile head of about 3 ft. x 3 ft. The pile itself is 29 meters deep. The total weight of the structure is about 1000 MTs. And the entire structure is set up in an area of about 385 sq. meters. Reproduced below is a picture of the item under dispute: During the hearing of the case, learned Counsel for the appellants has submitted that the light of the decision of the Apex Court in the case of TTG Industries Ltd. v. CCE, Raipur 2004 (167) ELT 501 (SC) : 2004 (114) ECR 385 (SC), there can be no dispute that heat recovery steam generator in question is a movable property (goods) which can be rendered excisable. With regard to DCS Control and instrumentation also the submission is the same, as major parts of this item are also embedded and grouted to the earth. It is also being pointed out, as in the case of the other two items, these are also imported items and cannot be subjected to any manufacturing levy as the mere erection of equipment does not constitute manufacture.

5. We have perused the records and considered the submissions made by learned SDR also. All the items which have been held to be dutiable in the present case are clearly immovable property. It is well settled that chattle that is not movable to another place as such, for use at the new place cannot be treated as goods, for it is an attribute of goods that they are movable. In the present case, since the items in question are incapable of being moved as such, they cannot be called goods. In view of this factual position, the duty demand made has to be held as not sustainable. Moreover, these items have been imported after payment of customs duty as applicable and the mere erection of imported goods would not amount to manufacture. For that reason also, the duty demand is not attracted. It is equally well settled that penalties cannot survive once duty demand raised is found to be unsustainable.

6. In view of what has been stated above, the impugned order is set aside and the appeals are allowed with consequential relief, if any, to the appellants.

(Operative part of the order was pronounced in the open Court at the end of hearing on 18.8.2004)

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