

Coromandel Bathware Ltd. Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-27-2004

Reported in : (2005)(99)ECC365

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

Appellant : Coromandel Bathware Ltd.

Respondent : Cc

Judgement :

1. Heard both sides. Appellant filed this appeal against the order passed by the Commissioner (Appeals) Customs. The appellant made import of certain capital goods and filed a Bill of Entry. The customs authorities loaded the price declared by the appellant holding that the technical know-how and licence fee of Rs. 25 Lakhs, mentioned in the foreign collaboration agreement, shall be added to the transaction value as per Rule 9(1)(c) of Customs and Valuation Rules, 1988.

2. The contention of the appellant is that as per the agreement the amount of Rs. 25 Lakhs is consideration money to carry on the business in India and sale of the products in India. The agreement was entered into with Stylus Industries for the manufacture of Acrylic Bath Ware, and in the agreement there was no Clause that the capital goods shall be purchased from M/s. Stylus Industries. The appellant were at liberty to purchase the capital goods from any manufacturer. The agreement is regarding supply of technical documentation containing know-how and training of appellant's employees in their factory. Para 10 of the agreement

specifically mentioned that money consideration is in respect of technical know-how in respect of production of goods and training of the appellant's employee.

3. The appellant relied upon the three decisions of the Larger Bench reported in 2003 (88) ECC 236 (LB): 155 ELT 274 in the case of S.D.Technical Services, other is Polar Marmo Agglomerates Ltd., 2003 (88) ECC 493 (LB) : 2003 (155) ELT 283 and Panalfa Dongwon India Ltd., 2003 (88) ECC 824 (LB): 2003 (155) ELT 287 to submit that when the consideration amount is in respect of manufacture of goods and training, this consideration amount is not includible in the assessable value of the goods.

4. Learned SDR appearing on behalf of the Revenue submitted that this amount is includible in the assessable value of the goods.

5. We have gone through the agreement entered between appellant and M/s. Stylus dated 20th March 1996 and Clause 10 of the agreement provides that in consideration of the provision of Technical know-how by the Licensor to the Licensee and towards all the related services to be rendered by the Licensor under this Agreement, the Licensee shall pay to the Licensor, subject to the approval of the Government of India, a lump sum know-how fee of Indian rupees twenty-five Lakhs. The agreement is in respect to carry on the business of manufacture in India and the sale of the goods so produced in India. There is nothing in the agreement which shows that the consideration of Rs. 25 Lakhs is in respect of the capital goods imported by the appellant. In this situation, we find that the impugned order whereby the consideration of Rs. 25 Lakhs is added to the value of the capital goods is not sustainable. The impugned order is set aside and the appeal is allowed.

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