

Kailash Auto Builders Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Sep-20-2004

Reported in : (2004)(117)LC868Tri(Bang.)alore

Judge : S Peeran, J T T.K.

Appellant : Kailash Auto Builders Ltd.

Respondent : Cce

Judgement :

1. M/s Kailash Auto Builders Ltd., (herein after referred to as the appellants) are engaged in the activities of body building for motor vehicles and fabrication of fuel tanks and base plates. The brief facts of the case are as follows: 2. The appellants undertook on job work basis, fabrication of fuel tanks and base plates for dumper bodies for the principal manufacturers M/s Ashok Leyland Ltd., and M/s Tatra Udyog Ltd., respectively. They received raw materials from the principal manufacturers and also used certain raw material of their own in the fabrication. When they cleared the goods they paid excise duty only on the cost of their own raw materials utilized by them in carrying out the job work. The department issued a show cause notice dated 9th January 2001 alleging under-valuation in as much as they had not included the value of the raw materials received from the principal manufacturers. The adjudicating authority confirmed payment of duty of Rs. 5,28,219/- under Rules 9(1) of the Central Excise Rules 1944 read with proviso to Section 11 A of the Central Excise Act 1944. Equal penalty of Rs. 5,28,219/- under section 11AC read with Rule 173(Q) was also imposed.

Interest under Section 11AB was also demanded. The adjudicating authority held that in terms of Rule 7 of the Valuation Rules, the appellants should have included cost of the raw material supplied by the customers. He also held that the appellants were liable for penalty under section 11AC on account of suppression of facts. The Commissioner (Appeals) in his Order-in-Appeal No. 557/02, dated 24.9.2002, upheld the Order-in-Original passed by the lower authority. The appellants have challenged the OIA on the following grounds.

1) The learned Commissioner (Appeals) has erred in giving his finding that the appellants ought to have paid duty in accordance with Rule 7 of the Valuation Rules. The valuation rules came into effect from 1.7.2001 whereas the show cause notice was issued on 9.1.2001. Hence the valuation rules are not applicable to this case.

2) The appellants have done only job work within the meaning of Rule 57F(3) and 57F(4). It may be seen from any of the rules that the job worker could carry out such operations as are necessary for the manufacture of final product. The appellants need not have paid any duty on the materials added in the course of job work. The Hon'ble Tribunal in the case of Commissioner of Central Excise Jaipur v. Tirupati Fabrics and Industries Ltd. reported in 2001 (46) RLT (8) : 2001 (98) ECR 353 (T) relying on the larger bench decision has held that duty has to be charged on the principal manufacturer and not the job worker as otherwise Clause 2 of Rule 57F(4) becomes superfluous inasmuch as duty will be charged twice on the same goods once from the job worker and again from the principal manufacturer.

3. Heard Shri Section Raghu Advocate for the appellants and Shri L.

Narasimha Murthym, SDR for the Revenue.

4. The departmental representative submitted that the appellants had not followed the proper procedure under rule 57F(4). When they had chosen to pay duty, they should have paid duty on the entire value of the goods cleared by them. The law does not give them an option to pay duty on the value as per their choice.

5. We have examined the rival contentions. It is a fact that the appellants carried out job work after receiving the raw material from the principal manufactures. Under Rule 57F(4) the obligation to pay duty is only on the principal manufacturer. It is also held by the Tribunal in the case cited by the appellants that the duty liability is only on the principal manufacturer. If by mistake, the job worker had paid duty on the raw material used by him that should not be a reason for the department to demand duty from him on the entire value of the goods. Hence the demand of duty in this case cannot be sustained. There is no justification for imposing penalty under Section 11AC and demanding interest under Section 11AB. In view of the above, the appeal is allowed with consequential relief.

(Operative portion of the order already pronounced in open Court on conclusion of the hearing)

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