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Commissioner of Central Excise Vs. Hafa Hoists and Cranes

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-01-2004

Reported in : (2005)(180)ELT510Tri(Mum.)bai

Judge : S T S.S., K Kumar

Appellant : Commissioner of Central Excise

Respondent : Hafa Hoists and Cranes

Judgement :

1. Shri A.K. Saxena, ld. JDR appeared for the appellant. None appeared for the respondent. The ld. JDR submitted that the issue relates to inclusion of interest accrued on advances. He submitted that in view of the Board Circular No. 215/49/96-C.X., dated 27-5-96 and Circular No.404/37/98-C.X., dated 22-6-98, the element of interest accrued was liable to be included in the assessable value. He also contended that the assessee has failed to show that the interest amount on the advances has been adjusted against the price at the time of delivery.

Thus there is a nexus between the advance received and the price charged.

2. After hearing the ld. JDR and perusal of the records, we allow the appeal filed by the revenue following the Supreme Court decision in the case of Metal Box India v. CCE, Madras.

3. I have gone through the order of ld. Member (J) in this appeal and agree that the appeal filed by Revenue should be allowed. The Commissioner (Appeals) has

found that the adjudicating authority in his order has confirmed that the appellants were manufacturing tailor made this as per specifications if customers and hence price of each item were different from another.

4. The Commissioner (Appeals) was not correct thereafter to conclude that the onus was on the department to prove nexus between the lowering of the price & advances. The Supreme Court in the case of Commissioner of Central Excise, Mumbai-III v. I.S.P.L. Industries Ltd., 2003 (154) E.L.T. 3 (S.C.) have held that where there are two prices, one for those who had advanced money and the others not having done so then it should require no further proof that the lower price having been influenced by the interest free advances made, by the buyer. Otherwise burden to prove interest free advance lowered the price is on the revenue. In the present case the prices are admitted to be different from one another. The grounds of their being tailor made. Therefore there is merit in the contention made by revenue that it was for the appeal is filed by revenue to have proved that the advances had no nexus with the price being charged to the buyers.

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