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Commissioner of Central Excise Vs. Laxmi Engineering

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-15-2004

Reported in : (2005)(179)ELT342TriDel

Judge : A T V.K., P Bajaj

Appellant : Commissioner of Central Excise

Respondent : Laxmi Engineering

Judgement :

1. The issue involved in these 2 appeals filed by Revenue is whether the transport charges are to be included in the assessable value of the goods cleared by M/s. Laxmi Engineering.

2. When the matter was called no one was present on behalf of the Respondents, nor was there any request for adjournment of the hearing.

Further, Shri S.M. Tata, learned SDR, mentioned that the issue involved in the present appeals stands decided by the Supreme Court in the case of Escorts J.C.B. Ltd. v. CCE, Delhi-II, 2002 (146) E.L.T. 31 (SC). We, therefore, heard learned SDR and perused the records.

3. The Respondents manufacture electrical transformers. As per the contract with Electricity Board the Respondents were despatching the goods on freight paid basis to the Electricity Board. The Deputy Commissioner under Order-in-Original No. 48/2002, dated 7-1-2003 demanded the duty on the element of freight.

However, on appeal filed by the Respondents the Commissioner (Appeals) has set aside the Adjudication Order relying upon the decision of the Supreme Court in the case of Escorts J.C.B. (supra) and Tribunal's decision in the case of Associated Strips Ltd. v. CCE, 2002 (143) E.L.T. 131. It has been mentioned in the grounds of appeal that as per Rule 5 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2002 only actual cost on transportation is admissible from the price of the goods for arriving at the assessable value, if the same is shown separately in the invoice and that deduction of equalised freight is not admissible.

4. We have considered the submissions of the learned SDR and perused the records. As per the provisions of Section 4 of the Central Excise Act the value shall in a case where the goods are sold by the Assessee for delivery at the time and place of removal, be the transaction value. In view of the decision of the Supreme Court in the case of Escorts J.C.B. the place of removal is the factory of the Respondents.

In view of this the transport charges will not be includible in the assessable value. Further, Rule 5 of the Central Excise (Determination of Price of Excisable Goods) Rules, 2002 also provides that where any excisable goods are sold in the circumstances specified in Clause (a) of sub-section (1) of Section 4 of the Act the value of such excisable goods shall be deemed to be the transaction value, excluding the cost of transportation from the place of removal up to the place of delivery of such excisable goods. Explanation to Rule 5 defines cost of transportation, which is inclusive definition. As per the Explanation cost on transportation includes (i) the actual cost of transportation; and (ii) in case where freight is averaged, the cost of transportation calculated in accordance with generally accepted principles of costing.

It is thus apparent from the said Explanation that Rule 5 of Valuation Rules nowhere provides that deduction of freight is available only if it is charged on actual basis. We, therefore, find no merit in the appeals which arc rejected.

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