Gail India Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-02-2004

Reported in : (2005)(180)ELT387TriDel

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

Appellant : Gail India Ltd.

Respondent : Cce

Judgement :

2. Appellants filed this appeal against the Adjudication order passed by the Commissioner of Central Excise whereby the duty was demanded in respect of the Horton Spheres and Petals.

3. The contention of the appellant is that these are huge storage tanks of 28.6 meters weighing 384.8 MT and these are constructed at site sep by step and these are used to store LPG or similar liquefied hydrocarbons. The appellants relied upon the decision of the Tribunal in the case of ICB (P) Ltd. Vs. Collector of Central Excise, Baroda, reported in 1997 (95) ELT 239 (Tribunal) 4. The contention of the Revenue is that earlier, against the Adjudication Order, the appellants filed appeal and the Tribunal vide Order dated 2.7.2001 remanded the matter to the Adjudication authority for quantification of the duty only. Now, the appellants cannot challenge the excise-ability of the goods in question.

5. We have perused the order passed by the Tribunal. In the earlier of excise-ability, directed the Assistant Commissioner for quantification of the amount of duty. The Tribunal at the Stay stage set aside the order and remanded the matter to the Adjudicating authority for passing afresh order. In the remand order. The Tribunal has not gone into the issue of excise-ability and, therefore, we find no merit in the arguments of the Revenue in this regard.

6. The issue of excise-ability of Horton Sphere is already decided against the Revenue. The Tribunal in the case of I.C.B. (P) Ltd. Vs.

Collector of Central Excise, Baroda held as under : "To recapitulate, M/s. ICB awarded a sub-contract of M/s. Indian Sugar. The sub-contract was is two parts; one part related to the design, fabrication and supply of pre-fabricated components for LPG Horton Spheres, and the second part related to the erection of the said LPG Horton Spheres on concrete foundations and on steel legs at the site in the State of Gujarat. On the supply portion excise duty liability was admitted. after the supply of the various items at site no process of manufacture had been undertaken. The supplies were just supplies. The present proceedings have been instituted for the processes undertaken subsequent to the supplies at the site.

Foundations had already been laid and high steel legs had been embedded to the earth with a shaped configuration on the top of the legs to receive spherical body. The items cleared from the factory of M/s. Indian Sugar at Yamuna Nagar (Haryana) on payment of Central Excise duty, were positioned, installed and erected piece by piece, and by the time Horton Spheres took heir shape, they had been welded to the legs configuration. At that time, it could not be said that any goods had come into existence. It could not be said that such Horton Spheres had been manufactured as a distinct identifiable product, the product as know and understood for the purpose of levy and collection of Central Excise duty." 7. In view of the above decision of the Tribunal, the impugned order is set aside and the appeal is allowed.