

Saurabh Gases Vs. Cce

Saurabh Gases Vs. Cce

SooperKanoon Citation : sooperkanoon.com/37315

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-09-2004

Reported in : (2005)(99)ECC624

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

Appellant : Saurabh Gases

Respondent : Cce

Judgement :

2. The appellant filed this appeal against the Order-in-Appeal dated 27.2.2004 passed by the Commissioner (Appeals). In this case, the appellants are manufacturer of industrial gases. These gases are supplied and cleared by various customers for filling the empty cylinders which are returnable and durable and are Used again and again for supply of the gases. The [Commissioner (Appeals)]* confirmed the duty on the ground that the appellants were charging some amounts on account of loading and unloading, testing and repair charges in respect of cylinders from their customers and these charges are includible in the assessable value of the industrial gases.

3. The contention of the appellant is that the industrial gases filled in empty cylinders which were received back from their customers which were unloaded in the factory and thereafter, they were tested and repaired. Their contention is that certain amounts which were spent on maintenance of the empty cylinders and the same cannot form part of manufacturing activity and hence the same is not

includible in the assessable value of the industrial gases. The appellant relied upon the judgment of the Hon'ble Supreme Court in the case of Vijayawada Bottling Co. Ltd. v. C.C.E., Guntur, 4. The contention of the Revenue is that these expenses were incurred in the factory and therefore, includible in the assessable value of the industrial gases.

5. We find that in this case, the only claim of appellant is that unloading charges in respect of empty cylinders received from customers and testing and maintenance charges in respect of cylinders to keep them in good condition for safety are not part of the manufacturing process of industrial gases. The same position is the claim in respect of rental charge of cylinders also. We find that the Hon'ble Supreme Court in the case of Vijayaivada Bottling Co. Ltd. (supra) has held as under: "6. The process referred to above relates to preparing the bottles that were used earlier to be reused for the purpose of bottling of the aerated water produced by the appellant. Since the aerated water has to be supplied in packed bottles only, the activities for which the appellant was claiming service charges related to the process of packing after the manufacture of aerated water. We find it difficult to appreciate how these activities can be treated as a part of the manufacturing process of aerated water. Since there is no dispute that the bottles are durable and returnable containers, the activities referred to above undertaken by the appellant to ensure that the empty bottles which have been received back are available for reuse for bottling of aerated water, have to (be) treated as part of the process of packing and not as part of the manufacturing process of aerated water. The position is not very different from that in the case of Century Spg. & Mfg. Ltd. (supra) where the durable and returnable containers were used again for supply of gas and it was held that charges for maintenance and repairs of such containers were not includible in the assessable value of the gas.

We are, therefore, unable to uphold the view of the majority in the Tribunal that the service charges claimed by the appellant have to be included in the assessable value." In view of the above decision of the Hon'ble Supreme Court, we find merits in the contention of the appellant and hold that unloading, testing, repair and rental charges of the cylinders are not includible in the assessable value of the industrial gases. The appeal is disposed of as indicated above.

