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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Jan-19-2005

Judge : S Peeran, J T T.K.

Appellant : Kerala State Electronics Devt.

Respondent : Cce

Judgement :

1. This appeal arise from OIA No. 520/2002 dated 18.11.2002 by which the Commissioner (Appeals) has confirmed the demands on the allegation that the appellants have not included the value of the bought out items in the manufacture of Traffic Controllers.

2. The learned Counsel submits that an identical issue pertaining to the same assessee had been decided by the Tribunal by Final Order Nos.

965 to 968/2004 dated 26.5.2004 and the Tribunal has held that the value of the bought out items had already been added. He furnished us a copy of the order.

4. We have carefully considered the submissions and have perused the Final Order cited before us. The Tribunal, in para 5, has held that bought out items were independently supplied to the site and that they are in the form of Junction Boxes, Signal Heads and Cables and that they are not part of the Traffic Controllers. It had also been recorded that all these items go to form Tarific Singla System, which, according to the assessee, is an immovable property. The Tribunal had

allowed the appeal following the ratio to the judgments relied by the assessee as in the case of Triveni Engineering and Industries Ltd. v. CCE 2000 (120) ELT 279 (SC) : 2005 (118) ECR 1 (SC); BHEL v. CCE ; and Mihir Engineers (P) Ltd. v. CCE . The findings recorded in para 5 of the said Final order is reproduced herein below: 5. On a careful consideration and perusal of the impugned orders, we notice that the bought out items were independently supplied to the site and they are in the form of junction boxes, signal heads and cables. They are not part of the traffic controller. All these items go to form traffic signal system, which according to the appellant is an immovable property. The authorities below have held that the value of the bought out items is to be added to the assessable value of traffic controller. On a perusal of the judgments cited by the Counsel, we find that the value of the bought out items is not required to be added to the duty paid goods cleared by the assessee from their factory. These judgments clearly apply to the facts of the case while the citations relied by the SDR pertains to a situation where bought out items are essential parts of the items supplied by the assessee and hence its value was required to be added. The situation is not the same in the present case as all the bought out items are sent to the site for erection of traffic signal system. Hence, they become part of the immovable property and cannot be considered as part of the traffic controller unit cleared by the appellant. Therefore, respectfully following the ratio of the judgments cited by the Counsel, the impugned order is set aside and appeals allowed.

Respectfully following the ratio of the above noted Final Order, the impugned order is set aside and the appeal is allowed with consequential relief, if any.

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