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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-18-2005

Judge : A Wadhwa, A M Moheb

Appellant : Psl Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The application has been filed under the provisions of Section 35 F of the Central Excise Act, 1944 with the prayer to dispense with the condition of pre-deposit of duty amount of Rs. 2,20,78,225.50 and penalty of identical amount.

2. Shri. V. Sridharan, Ld. Advocate appearing for the appellants submits that they are engaged in the activity of bending of pipes received from their customers, on job work basis. Process undertaken by them for bending of Iron & Steel pipes are as under:- "*The pre-inspected steel pipes having positive thickness is kept on the pipe carriage and clamped hydraulically on the rear carriage and clamped in the front.

* The radius of bend is fixed at defined radius by adjusting the radius by adjusting the radius area and front clamp. The pipe is marked for bend length and initial thickness/hardness measurement.

* The pipe is then heated so that the process of bending pipes shall be started slowly by pushing forward and carried out at a controlled speed. The bending

operation is stopped at the specified angle of bends and pre-determined bend length. The bend is removed from the machine and is kept on inspection platform for inspection.

* On completion of bending and testing (as per client's specification), the bend is prepared for delivery. Each bend end is protected with bevel protector.

* The percentage of waste is NIL since there is no waste generated during process." He submits that the said process of bending pipes does not amount to manufacture as there is no difference between straight and bended pipes. Pipes are required to be laid down under the ground, and wherever there is some hilly area or other obstacle, the pipes are to be bended. He has taken us to the finding of the commissioner and submits that there is nothing whatsoever, on record to show that such bended pipes are available in the market. He submits that such bended pipes are tailor made and varies from pipe to pipe. Merely because the value of the bended pipe is higher, is not sufficient to hold that manufacturing process has taken place, in as much as no new product having different name, character and use comes into existence. He also assails the commissioner order on the point of limitation and submits that only part of the demand approximately amounting to Rs. 60 Lakhs would be within limitation. He, however, does not plead any financial hardship.

3. Countering the arguments, Shri. Vimlesh Kumar, Ld. SDR reiterated the reasoning of adjudicating authority and submits that bended pipes cannot be equated with the bare pipes and by appreciating the process undertaken by the appellant for bending the pipes in question, it is inevitable that the entire process amounts to manufacture resulting in emergence of a new and different product. As such he requests that the entire duty be directed to be deposited.

4. After considering the submissions made by both sides, we are of the view that the issue is contentious and no final view can be taken at this stage. Accordingly, after taking into consideration that an amount of Rs. 60 lakhs would be out of the limitation period, we direct the appellants to deposit an amount of Rs. 20 Lakhs within a period of 4 weeks from today as condition of hearing of their appeal and report compliance on 24^th June 2005. At this stage, Ld. Advocate prays for fixing

the appeal itself for final decision as the issue is of recurring nature.

5. In view of the above, and also noting the fact that the revenue involved is on the higher side, we fix up the appeal itself on 24^th June 2005.