

Commissioner of Central Excise Vs. Suvidha Engineering Co.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-14-2005

Reported in : (2005)(189)ELT218TriDel

Judge : P Bajaj, M T K.C.

Appellant : Commissioner of Central Excise

Respondent : Suvidha Engineering Co.

Judgement :

1. In this appeal the Revenue has challenged the correctness of the impugned Order-in-Appeal vide which the Commissioner (Appeals) has dropped the duty demand and penalty against the respondents.

2. None has appeared on behalf of the respondents. No request for adjournment has been received from them, therefore we proceed to decide the appeal after hearing Id. SDR.3. From the record it is evident that the respondents under an agreement with M/s. NBCC undertook, the manufacturing erection and commissioning of Heat ventilating and Air conditioning system at ATD at Delhi Airport on behalf of M/s. AAI Ltd. in terms of work order dated 1-2-94. The adjudicating authority confirmed the duty demand of Rs. 2,01,137/- on the respondents with equal amount of penalty under Section 11AC and another penalty of Rs. 2,000/-under Rule 226. Ld.

Commissioner (Appeals) has reversed that order by referring to Board's Circular No. 58/1/2002-CX., dated 15-1-2002, on the ground that the goods manufactured by the respondents had no marketability. But in our view the order of the Id. Commissioner (Appeals) cannot be sustained as he has failed to take note of the ratio of law laid down in the case of Voltas Ltd. v. CCE , Blue Star Ltd. v. CCE reported in 1999 (107) E.L.T. 609 wherein in similar circumstances, the activity of the manufacturer had been held to be excisable. Besides this, Id. Commissioner (Appeals) has also not referred to the terms of the Agreement, under which the respondents undertook the work, to ascertain the nature of the activity, and the goods produced by them and without examining these facts, the Id. Commissioner (Appeals) has jumped to the conclusion that the goods had no marketability. The goods had marketability even if these are being manufactured for a particular person. For marketability of goods it is not essential that it should be popularly tradable in the market. It is enough, even if the manufacturer of the goods had a single buyer, to hold that the goods have marketability.

4. The respondents have along with their cross-objections, as pointed out by Id. DR, referred to the earlier decision of the Tribunal in their own case.

We have gone through the copy of that order dated 5-3-2004. But the respondents were still required to show that the facts and circumstances and the terms of the agreement involved in the present case are the same, which were, in the earlier case decided by the Tribunal and the copies of both the contracts one entered by them with the earlier party and the second entered in the present case, had not been produced by them.

5. In our view, in the light of above discussions, the matter deserves to be re-examined by the Commissioner (Appeals). Therefore, the impugned order is set aside and the matter is sent back to him for de novo decision, after hearing both sides. The appeal of the Revenue accordingly stands allowed by way of remand.

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