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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-10-2005

Judge : A Wadhwa, S T S.S.

Appellant : Kitchen Grace

Respondent : Commissioner of Central Excise

Judgement :

1. Duty of Rs. 1,74,827/-was confirmed against the appellants and penalty of equivalent amount was imposed on the ground that during the period 1-4-96 to 4-12-97, the appellants have manufactured and cleared complete kitchen cabinet falling under heading 9403.00 without payment of duty and without observing other Central Excise formalities.

2. The appellants, in their defence have contended that kitchen cabinets were manufactured and cleared by M/s. Omkar Furnitures in ready to assemble condition. Mere assembly of the same at the appellant's end did not amount to manufacture. The cabinets were received in the form of edge banded pre drilled cut to size components of pre laminated particle board with necessary hardware fittings in loose condition and they were merely assembled at their end. Referring to various decisions, it has been contended before us that mere assembly of such parts did not amount to manufacture.

3. After hearing both sides, we find force in the appellant's contention. In the case of Indian Xerographic System Ltd. v. Collector of Customs. Bombay , it has been

held that assembly of photocopier machine imported in unassembled condition will not amount to manufacture. Similarly, in the case of Bhilwara Spinners Ltd. v. Commissioner of Central Excise, Jaipur , the assembly of aluminium card cans from the parts was held as not amounting to manufacture. In the instant case, we have seen the bills raised by the Omkar Furnitures and find that a complete kitchen cabinet was cleared by them in knocked down condition. As such, it cannot be said that the kitchen cabinet has emerged at the appellant's end. As per Rule 2(A) of Rules for the interpretation of the Central Excise Tariff Act, 1985, where the goods have assumed the essential character of the complete or finished goods, the same shall be classifiable as complete or finished goods even if removed as disassembled or unassembled stage. It is for the convenience of the transportation that the cabinets were cleared in knocked down condition. The Hon'ble Madras High Court in the case of T.I. Cycles of India v. UOI has held that taking into account the exigencies of manufacture, package, transport and the common understanding of the trade and commercial community, a cycle dispatched under CKD condition is a 'cycle' only. By following the ratio of the above discussed decisions, we hold that assembly of the kitchen cabinets manufactured by other manufacturer will not amount to manufacture at the appellant's end and hence, not liable to duty again.

Accordingly, we set aside the impugned order and allow the appeal with consequential relief to the appellants.