

C.C.E. Vs. Seil Financial Services Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-14-2005

Judge : A Wadhwa, N T C.N.B.

Appellant : C.C.E.

Respondent : Seil Financial Services Ltd.

Judgement :

1. Being aggrieved with the order passed by the Commissioner (Appeals), Revenue has filed the present appeal. We have heard Shri S.N. Prasad, learned Senior Departmental Representative and Shri Ashok Sagar, learned Advocate appearing for the respondents.

2. Commissioner (Appeals) has granted benefit to the respondents on the ground that the various types of oil storage tank and chimney on which duty was demanded by the original adjudicating authority cannot be held to be excisable goods inasmuch as the same came into existence while being embedded to the earth. As such by relying upon the Hon'ble Supreme Court decision in the case of Triveni Engineering and Industries Ltd. v. CCE goods to be non-excisable. Appellate authority also observed that in any case the assessee cannot be held to be the manufacturer inasmuch as the goods were actually fabricated by sub-contractor upon whom contracts were placed by the assessee. The demand has also been held to be time-barred on the ground that the entire facts and circumstance were in the knowledge of the Revenue. Appellate authority have also referred to and relied upon the Board Circular No. 58/1/2002-CX dated 15.01.2002

issued under Section 37-B of the Central Excise Act, 1944, in support of his finding that huge tank made of metal for storage petroleum products in oil refinery or installation, are not movable and cannot be considered as excisable goods.

3. As against the above finding of the Commissioner (Appeals) Revenue has contended in their appeal memorandum of appeal that tanks were first manufactured separately by the respondent and then taken to the site of the installation, in which case the same would be excisable. In this connection, we have seen the statement of the fabricator and the contractor detailing the process adopted by them. It clearly says that first, the cut steel sheet are fixed on the foundation with the help of nuts and bolts and then steel plates are erected on the same by the process of welding. This fact clearly shows that the tank came into existence being embedded to earth and has to be held as immovable and hence not marketable and consequently not excisable. As such we agree with the finding of the Commissioner (Appeals) on the said issue of tank and chimney being not excisable.

4. In any case, even the Revenue in their appeal memorandum has admitted that the respondents had placed two separate contracts to contractors for the erection of the said tank and chimney. However, it is their contention that since the raw material was supplied by the assessee and necessary guidance was imparted by them, they have to be considered as manufacturer. The law on the said issue is settled. The raw-material supplier or mere giving technical guidance cannot be factor for holding the raw-material supplier as manufacturer. As such the Revenue's appeal even lacks on this point.

5. The demand has been held to be barred by limitation by the Commissioner (Appeals), Revenue has not raised any ground for challenging the above finding, in which case the order on the said issue is upheld.

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