

Commissioner of Central Excise Vs. Aay Cee Engineering Works

Commissioner of Central Excise Vs. Aay Cee Engineering Works

SooperKanoon Citation : sooperkanoon.com/41187

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-19-2005

Reported in : (2006)(105)ECC329

Judge : R Abichandani, S T T.V.

Appellant : Commissioner of Central Excise

Respondent : Aay Cee Engineering Works

Judgement :

1. The revenue has filed this appeal being aggrieved of the order of the Commissioner (appeals) dated 29.7.05. The respondents in this case M/s. Aay Cee Engineering Works were issued a show cause notice on the basis of five invoices, against which the party had charged for conversion/remelting/modification/repair. The Assistant Commissioner, who adjudicated the matter made the following observations: In the instant case, the noticee have undertaken the process of machining, welding, teeth cutting, drilling etc. on the worn out machining parts of different designs supplied by the sugar mills.

These worn out machinery parts having no commercial use, were sent to the noticee for transforming into new items having of different designs, dimensions and having commercial use and value by undertaking the process of machining, welding, teeth cutting, drilling etc. Since by applying the said processes, the noticee have brought into existence a new item having commercial use as well as

commercial value, as such, as per the above authoritative decisions of Hon'ble Supreme Court and of the Tribunal, the series of processes undertaken by the noticee are covered within the ambit of Section 2(f) of the Act.

2. When the case went in appeal before the Commissioner (Appeals), the Commissioner (Appeals) agreed with the contention of the appellants and relying upon the Supreme Court judgment in the case of Union of India v. J.G. Glass Ltd. repairs/reconditioning of old and defective items of machinery does not amount to manufacture.

3. Being aggrieved with this order, the revenue has filed this appeal.

The learned Senior Departmental Representative pointed out that the impugned order is not acceptable, mainly because it gives an impression that the Commissioner is not sure of what was going in the premises of the respondents. He also has argued that the Commissioner has not applied his mind in passing the order and he has not dealt with the relevant issue raised by the lower authorities, which held that if there has been certain transformation of the new item having different physical dimensions and having different commercial use and value by undertaking various processes, such as machining etc. In the course of hearing, the learned Counsel for the respondents states that they are not disputing that the demand raised in respect of their invoice No.116 dated 1.1.22002, for which they charged the amount of Rs. 42,975/- and therefore, they requested us to let the matter be remanded for proper verification of the facts by the Commissioner (Appeals).

4. We have heard both the sides and examined the case records. It transpires from the order-in-appeal that the main error as noticed by the Asstt. Commissioner does not seem to have been examined and commented upon by the Commissioner (Appeals) while deciding the appeal.

The impugned order is, therefore, set aside.

5. The appeal is allowed by way of remand and the matter is remanded back to the Commissioner (Appeals) to re-examine the case afresh and pass necessary

orders on merits in accordance with law.

6. The application did not survive in view of the above order. The same is disposed of accordingly.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com