

Trupati Structural's Ltd. Vs. Cce

Trupati Structural's Ltd. Vs. Cce

SooperKanoon Citation : sooperkanoon.com/41244

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-22-2005

Judge : R Abichandani, M T K.C.

Appellant : Trupati Structural's Ltd.

Respondent : Cce

Judgement :

2. The applicants are manufacturing and clearing PVC pipes. They have entered into a contract with U.P. Jal Nigam for supply of the goods manufactured by them as per ISI Specifications 4985/1998. In the Contract, there is a condition that the PVC pipes shall be despatched only after proper inspection, testing, certification and marking by inspection officer of RITES, Northern. Region, C-I, Commercial Centre, Sufdarjung Dev Area, New Delhi-110 016/DGS&D., 14/116 D, Civil Lines, Kanpur/Any other agency which may be nominated from time to time. For carrying out such inspection, the charges of third party inspection agency shall be borne by them firm @ 0.5% of ordered ex-factory cost of pipes i.e. cost including excise duty only. The supplier is required to pay in advance the above referred fee to the inspection agency whose name is mentioned in the allocation orders. It was pleaded that they had already manufactured the PVC pipes and the cost of inspection cannot be added in the transaction value as their goods are already ready for market.

3. On behalf of the Revenue, it was argued that the Commissioner (Appeals) has given a clear finding that it is evident that the inspection of the goods has made

them marketable and saleable and the appellants have received the money from their buyer/customer on producing the inspection certificate of the goods of the inspecting agency. Therefore, as per the definition of transaction value, even if the money is received at the time of sale or any other time, but is charged in connection with its sale, it should form a part of "Transaction Value".

4. We have considered the submissions made by both the sides. We find that the finding of the Commissioner are based on law and prima facie, the value of the inspection charges has to be added for assessment purposes. The applicants pleaded that they have filed a refund claim of Rs. 2,08,979/- with the Department which was appropriated by the adjudicating authority but allowed in favour of the applicants by the Commissioner (Appeals). and that they will not claim the refund, if this amount is adjusted with the pre-deposit, if any. The Revenue has opposed this on the ground that the applicant has to file a refund claim as per the adjudication order and the department has to pass the order of refund. Therefore, this amount is with reference to separate issue and it should not be linked with the pre-deposit. We find that this argument of the Revenue is correct as this amount cannot be linked with the pre-deposit. In these circumstances, we direct the applicants to pre-deposit the amount of Rs. 1,33,504/- (Rupees One Lakh Thirty Three Thousand Five Hundred Four only) within period of 4 weeks and report compliance on 1.2.2006, failing which the appeal shall stand dismissed. On such pre-deposit, the deposit of penalty is waived for hearing the appeal. The stay application stands disposed of accordingly.

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