

Emtici Engineering Ltd. Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-27-2005

Judge : S Kang, Vice-, N T C.N.B.

Appellant : Emtici Engineering Ltd.

Respondent : Commissioner of C. Ex.

Judgement :

1. These appeals are being taken up in pursuance of the remand order passed by the Hon'ble Supreme Court. In the present case, the demand was confirmed and penalty was imposed in respect of the parts of structure manufactured by M/s. EMTICI Engineering Ltd. on the ground that these are classifiable under Heading 73.08 of the Central Excise Tariff. The issue in respect of excisability of parts of structure now decided by the Larger Bench of this Tribunal in the case of Mahindra & Mahindra Ltd. in favour of the Revenue.

2. Now the contention of the appellants is that they are not manufacturer of parts of structures. The Gujarat State Electricity Board gave a contract for setting up a Coal Handling Plant to M/s.

Elecon Engineering Co. Ltd. M/s. Ele-con Engineering Co. Ltd. further gave a contract to the appellant for fabrication of structures.

Appellant entered into a contract with Ms. Essar Engineering Ltd. and M/s. Dynamic Construction for fabrication of the parts of structures.

As per the terms and conditions of the Agreement with these sub-contractors, the subcontractors are to manufacture parts of structures as per the designs and drawings supplied by the appellants.

There was no control of the appellant on the two sub-contractors except in respect of the specifications and quality of the work. Appellant relied on the terms and conditions of the Agreement entered into between the appellants and the sub-contractors to show that sub-contractors are the manufacturers. Therefore, the demand from the appellant is not sustainable.

3. Appellants also pleaded that demand is time-barred as the demand is for the period February, 1988 to December, 1989 and show cause notice was issued on 31st July, 1991 whereas Revenue Department was asking for taking licence for manufacture of the parts of structures first time in March, 1989. In these circumstances, no suppression can be alleged against the appellants.

4. Appellants also contended that issue of excisability of parts of structures is now settled by the Larger Bench of this Tribunal, in the case of Mahindra & Mahindra. The Tribunal held that after 1st March, 1988 when the Tariff was amended the movable structures are excisable under Heading No. 73.08 of the Central Excise Tariff. Prior to amendment of the Tariff, there are numerous decisions of the Tribunal which were upheld by the Hon'ble Supreme Court where it was held that the goods in question are not excisable. The contention is that in this situation, it cannot be held that appellant suppressed the facts to evade payment of duty.

5. The contention of the Revenue is that as per the terms and conditions of the contract as noted down by the Collector, the appellants are manufacturer of the goods in question and the sub-contractors are only their hired labours. Revenue relied upon the fact that appellants applied for registration for manufacture of parts of structures at the asking of the revenue. The contention is that if the appellants are not manufacturer there is no need for applying for registration for manufacture of the goods in question.

6. In this case, the contention of the appellants is that they are not manufacturer of goods regarding which duty has been demanded and penalty has been imposed.

Appellants relied on the terms and conditions of the contract entrusted with Essar Engineering Ltd. and Dynamic Construction Ltd. for fabrication of parts of structures. As per the terms and conditions of the contract, all the consumable tools, machineries and other items required for carrying out fabrication work were to be obtained that is Essar Engineering Ltd. and Dynamic Construction Ltd. As per the terms of payment, 60% of the payment is to be made on completion of fabricated structures, 25% payment is to be made on assembling and after inspection the remaining payment is to be made on satisfactory completion of the entire work. The responsibility to fabricate the goods in question is on the sub-contractors and in case of rejection of material, the cost of such material is to be borne by the sub-contractors. In view of these terms and conditions of the contract, we find that the finding of the Collector, Central Excise that the sub-contractors are only hired labours are not sustainable as the subcontractors that is Essar Engineering Ltd. and Dynamic Construction Ltd. are the manufacturer of goods in question. Therefore, the demand from the appellants is not sustainable and is set aside.

Penalties are also set aside. As we are allowing the appeal on this ground only hence we are not going into the issue of limitation.

Appeals are allowed on the above terms.

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