

Elecon Engineering Co. Ltd. Vs. C.C.E.

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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 : Elecon Engineering Co. Ltd.

Respondent : C.C.E.

Judgement :

1. This appeal is directed against an excise duty demand of over Rs. 1.8 crores and imposition of penalty of Rs. 30 lakhs. Duty demand is on Coal Handling Plant erected by the appellant on job contract basis at Ropar for Punjab State Electricity Board. The demand is upon a finding that the said Coal Handling Plant is excisable under 84.28 of the Central Excise Tariff.

2. The submission of the Id. counsel for the appellant is that the very issue (duty liability of Coal Handling Plant erected) was the subject matter of dispute between the appellant and the revenue in regard to some other job contracts and the issue now remains settled by different judgments. Reference is being made in this connection to the judgment of the Apex Court on an appeal filed by the revenue in regard to the Order-in-Appeal of the Tribunal in appellant's case - Elecon Engineering Co. Ltd. v. C.C.E., Chandigarh] in Civil Appeal No.165/2000. It is being pointed out that the Apex Court rejected the appeal with the following observations: C.A. No.../2001 (D19205/1999), C.A. No. 165/2000 and C.A. No. 1078/2000: Without going into the correctness of the legal propositions in the orders under challenge and having regard to the facts of these cases the civil

appeals are dismissed" [reported in 2001 (132) ELT A 89 (SC)].

The aforesaid judgment was in regard to Coal Handling Plant erected by the same appellant for the Punjab State Electricity Board. Reference is also made to the judgment of the Hon'ble Gujarat High Court in the appellant's own case - Elecon Engineering Co. Ltd. v. Union of India] where the Hon'ble High Court held that Coal Handling Plant consisting of large civil structures, lengthy conveyor belts and civil structures to support conveyor belts, spread over several hectares of land cannot be called an excisable goods since it was immovable property. The learned Counsel has taken us extensively through the facts of the case herein and has established that facts are identical to the cases covered by the above decisions.

3. We have perused records and heard learned SDR also. The present Coal Handling Plant has also been assembled and erected in the same way as the Coal Handling Plants dealt with in the earlier orders of the Hon'ble Supreme Court and High Court. Therefore, the present case remains covered in favour of the appellant by the aforesaid judgments of the Supreme Court and High Court. Accordingly, the appeal is allowed after setting aside the impugned order, with consequential relief, if any, to the appellant.

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