

Fabtech Engineers Vs. Commissioner of C. Ex. and Cus.

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SooperKanoon Citation : sooperkanoon.com/41890

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-21-2006

Judge : J Balasundaram, Vice-, A T K.K.

Appellant : Fabtech Engineers

Respondent : Commissioner of C. Ex. and Cus.

Judgement :

1. Vide the impugned order, the Commissioner of Central Excise, Pune has confirmed short levy of Rs. 41,60,250/- together with interest and imposed penalty of equal amount under the provisions of Section 11AC upon the appellants herein who are engaged in the manufacture of LPG Tanker mounted on Trailer falling under CET Sub-heading 8716.00 on the ground that they were not including the value of 3 essential items viz.

Running gear, landing gear and pressure plates for the purpose of payment of duty on the finished goods.

2. We have heard both sides. We find that these 3 items above mentioned are parts of Trailer and not parts of Chassis for which the benefit of exemption under Notification No. 241/86-C.E. was claimed by the assesseees. The benefit of the Notification is available to motor vehicles falling under Headings 87.02, 87.03, 87.04 or 87.17 and manufactured from Chassis on which duty has been paid. The exemption from payment of duty is to the extent equivalent to the duty of excise leviable with reference to that part of the value thereof which represents the value

of the Chassis used in such motor vehicles. Since the 3 items the value of which was not included are not part of Chassis but part only of the finished goods, their value was required to be included in the value of the finished goods manufactured and cleared by the appellants. We, therefore, see no merit in the plea of the appellants that they were not required to include the value of these 3 items in the value of LPG Tank mounted on duty paid Chassis manufactured and cleared by them.

2. As regards the plea that the demand is barred by limitation, as classification list claiming the benefit of exemption under Notification 241/86 for motor vehicles for transport of goods (LPG tanks) under Chapter Heading 87.04 had been approved, we do not see any substance in the plea for the reason that it is not that the department has denied the benefit of Notification for motor vehicles but the dispute relates to the includibility of the value of the 3 items which, are not parts of Chassis in the assessable value of the finished goods.

We note that the Commissioner has relied upon the statement of working partner of the assesseees that the Central Excise department was never informed regarding the non-inclusion of value of running gear, landing gear and pressure plates in the assessable value of LPG Tanker-Trailer manufactured and cleared by them and he has therefore held that the assesseees had wilfully suppressed the facts about the non-inclusion of value of such items in the assessable value of the finished goods. We find that no case has been made out by the appellant regarding non applicability of the extended period of limitation and we uphold the finding that the assesseees were guilty of suppression. However, the alternate plea of the assesseees that the benefit of Modvat credit is required to be extended to them requires to be accepted, subject to their production before the Adjudicating Authority of documents evidencing the duty payment on these items in dispute. On verification of the duty paid nature of the items in dispute the benefit of Modvat credit shall be extended to the assesseees. Penalty imposed under Section 11AC for the period in dispute viz. March 1994 to October, 1997 is upheld as the argument that, that part of the penalty requires to be set aside as Section 11 AC was introduced on the Statute Book only on 8-8-96 is not legally acceptable in the light of the recent judgement of the Apex Court in the case of Impression Prints .

