

Collector of C. Ex. Vs. General Engineering Servicing

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-17-1988

Reported in : (1989)(42)ELT86TriDel

Appellant : Collector of C. Ex.

Respondent : General Engineering Servicing

Judgement :

1. This is an appeal against the orders of Collector of Central Excise (Appeals), Madras. The brief facts of the case are that the respondents undertook structural steel work and AC sheeting work in one of the units of Andhra Pradesh State Federation of Co-operative Sugar Factories and they completed 2391 Sq. M. of AC sheeting work as well as AC water gutters and down-take pipes in the sugar factory. The respondents took the following pleas before the lower authority :- (i) They have been doing the installation work only and no fabrication is involved and the installation work is not assessable to duty.

(ii) They have been attending to AC shuttering work for the construction of house sheds. It amounts to immovable property and that no duty will be attracted by goods pertaining to immovable property.

(iii) The AC guttering work undertaken by them do not come under the purview of Section 2(f) of Central Excises and Salt Act, 1944.

3. The findings of the original authority in regard to the pleas made are as under :- (i) The primary issue is whether the product brought into shape under the terms of the contract is by way of installation only or fabrication also is involved. A reference to the contract reveals that the agreement under the contract is for fabrication of structurals of various spares, columns, bracings etc. erection of the structurals and roofing with A.C. sheeting etc. Even condition (3) of the Special Condition of the contract lays down that payment shall be made at running account for fabricated material at site, fortnightly or monthly as agreed to between the sugar factory and the Corporation.

In view of these provisions of the contract the completed project involved fabrication and erection though the invoices raised are for part of the work that is yet to be completed, the material for which the invoices are raised and the work connected thereto cannot be treated in isolation but has to be viewed in the context of the completed project. Hence that plea that no fabrication is involved and only erection is involved and not chargeable to duty is not acceptable.

(ii) As regards the contention that the contracted house sheds are immovable property and that no duty is leviable on the goods pertaining to immovable property, it is to be stated that the term "Excisable goods" under T.I. No. 68 of Central Excise Tariff are those goods that are not specified elsewhere in the Tariff. Nowhere in the Act it is stated that the 'goods' should be movable property.

In the sale of goods Act, 1930, the terms "goods" is designed as meaning every kind of movable property other than...things attached or part of land. The sale of goods is not the criterion for the purpose of levy of

excise duty. As per the provisions of Section 3 of Central Excises and Salt Act, 1944, excise duty is leviable on goods produced or manufactured. The end product which is the resultant of comprehensive contract involving various items of work is leviable to duty and the part of the job undertaken in the comprehensive contract cannot be taken in isolation even though the invoice is raised and amount reimbursed to facilitate rotation of money between parties. The contention of the unit that the AC guttering and down-take pipes are not manufactured by them, are already suffered duty when cleared from the manufacturing unit had no bearing on this as there is no provision for such exemption under the law.

3. On appeal, the Collector (Appeals) based on one of his earlier orders has held as under :- "I have considered the appeal. I find the issue is similar to the one which was examined by me earlier in my order-in-appeal No. 125/83(G), wherein I had held that when duty paid bought out items like AC sheeting and foundation bolts were used in a turnkey project and where these goods were not subjected to further processing or manufacture and therefore, had not lost their identity, the dept.

can not subject the goods to further levy. Following the ratio of this decision, I allow the appeal and set aside the impugned order demanding duty on the value of AC sheets and other goods like S type louvers supplied by appellant firm to site, as part of their turnkey project." 4. The Collector, who is appellant before us has inter alia urged the following grounds :- (i) A reference to the contract revealed that the agreement under the contract is for fabrication of structures of various spares, columns, bracings etc., erection of the structures and roofing with A.C. sheeting etc. Even condition 3 of the Special Condition of the contract lays down that payment shall be made at running account for fabricated material at site for fortnightly or monthly as agreed to.

In view of these provisions of the contract, the completed project involved fabrication and erection. Hence the plea that no fabrication is involved and only erection is involved and not chargeable to duty is not maintainable.

(ii) As regards the contention that the contracted house/shed is an immovable property and that no duty is leviable on goods pertaining to immovable property, it is submitted that the term "excisable goods" under T.I. No. 68 are those goods that are not specified elsewhere in the Tariff. Nowhere in the Central Excise Act it is stated that "goods" do not include immovable property.

5. The Ld. J.D.R. for the department fairly brought to the notice of the Tribunal that the matter was covered by an earlier Order of the Tribunal, Order No. 578/87-B2, in the case of the very same party. He merely reiterated the arguments of the Revenue in that case. The respondents in their letter referred to the earlier order of the Tribunal in their favour and wanted the case to be decided in the light of the same.

6. We observe that in the present case, the Collector has not stated specifically as to the nature of the fabrication work done on any particular raw materials by the appellants and also the nature of any excisable goods which came into existence. He has nearly relied on the terms of the contract but has not come on record to show that any new products emerged during the fabrication stated to have been done by the respondents in the course of their contract work for the purposes of the levy of Central Excisable duty. The Ld. J.D.R. for the department also made no plea in this regard. We observe in respect to the very same party that the Tribunal on the similar points raised before them in their order No. 578/B1 have negated the plea of the Revenue and held that no goods emerged for the purposes of Central Excise levy. In view of what we have stated above and following the ratio of the judgment of the Tribunal, referred to supra we find no merit in the plea of the Revenue and dismiss the appeal.