

The Commissioner of Central Vs. Taher Ali Industries and Projects

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Nov-06-2006

Reported in : (2007)(210)ELT270Tri(Bang.)

Judge : S Peeran, J T T.K.

Appellant : The Commissioner of Central

Respondent : Taher Ali Industries and Projects

Judgement :

1. These appeals have been filed against the Orders-in-Appeal No. 110 & 111/2005 dated 29.4.2005, passed by the Commissioner of Customs & Central Excise (Appeals-III), Hyderabad.
2. The appellants manufactured MS Pipes and supplied to Hyderabad Metro Water Supply Board. After removal from the factory, they carried out the work of laying and commissioning of MS pipes. The point at issue is whether the cost of in-lining and out-coating of MS Pipes with cement mortar is includible in the assessable value. The Original authority decided the case and held that the cost has to be included in the assessable value. The party went in appeal to the Commissioner (Appeals) and the Commissioner (Appeals) relying on various case laws held that the cost of in-lining and out-coating is not includible in the assessable value. The Revenue has come in appeal against the Orders-in-Appeal on the following grounds: (i) The Contract is between M/s Taher Ali Projects & HMWBSS and the tender price "inter-alia" includes the intrinsic value, of mortar

coating. Hence for the purpose of assessable value the transaction value which is tender price in this case between supplier and buyer, needs to be taken into consideration as a whole.

(ii) The case law and the Circular quoted by the Commissioner (Appeals) cannot be applied to the present case as assessee in the instant case knows the value receivable on account of the supply, well in advance and the duty payable also. When the value quoted to the supplier is a comprehensive one and as such no deductions available the duty is payable on total value of supplies, even though some processes involved do of amount to manufacture.

(iii) The above point was settled by Hon'ble Supreme Court in the case of Sidhartha Tubes v. CCE 2000 (115) ELT 32 (S.C.), wherein it clearly held that "process not amounting to manufacture, still cost thereof includible since it added to intrinsic value of the product to make up full commercial value which was charged by the assessee".

The Commissioner (Appeals) has neither discussed or distinguished the same in his order. It appears the Commissioner (Appeals) has lost sight of the actual purport of the Hon'ble Apex Court judgment and has given a contradictory interpretation.

(iv) Further the other unit which is undertaking the in-lining and out-coating work, is not paying any central excise duty or availing any Cenvat credit on the inputs. They are only collecting the job work charges. Further there is no sale involved between these companies. Out of many processes one process is being done at this unit, and will not fall under the situation mentioned in the case laws referred above by Commissioner (Appeals).

4. We have gone through the records of the case carefully. The Respondents are undertaking the process of in-lining and out-coating only at the site after the clearance of MS Pipes which have already been manufactured in the factory. In these circumstances, the Supreme Court's decision in the case of Sidhartha Tubes v. CCE 2000 (115) ELT 32 (S.C.) will not be applicable as process were not carried out in the factory but only at site. The facts of the case are similar to the

case of IVRCL Infracstructure & Projects Ltd. v. Commissioner of Central Excise, Nasik wherein it was held that the process of coating inner and outside of pipes undertaken at work site, away from the factory of manufacturer, subsequent to clearance of pipes after payment of duty is not includible in the assessable value. Further the Tribunal's Mumbai Bench in the case of Welspun Gujarat State Rohran Ltd. v. CCE, Vadodara-II 2006 (194) ELT 340 (Tri. - Mumbai) has held that coating of pipes done at premises of independent factory of job worker does not amount to manufacture and the value addition outside factory is not includible in the assessable value. Ratio of the above mentioned decisions would be clearly applicable to the present case. In the present case, the MS Pipes are cleared from the factory prior to the process of in-lining and out-coating with cement mortar. The above process are carried out only at the site. Hence the decision of the Commissioner (Appeals) in not including those value in the assessable value is legal and proper. There is no merit in the Revenue's appeals.

Hence we reject the same.

(Operative portion of the order has been pronounced in the court on completion of hearing)

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