

S.S. Engineers Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-01-2007

Reported in : (2007)(116)ECC377

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

Appellant : S.S. Engineers

Respondent : Commissioner of Central Excise

Judgement :

1. The above appeals arise out of two separate orders of the Commissioner of Central Excise, Pune, involving common issues and are hence heard together and disposed of by this common order. In both cases, duty demands have been confirmed on parts and accessories for sugar plant, such as cane unloader, feeder table, juice heater, juice clarifier, vacuum filters, evaporators etc., manufactured by the appellants herein at the site of M/s. Rajarambapu Sahakari Sakhar Karkhana Ltd. (subject matter of appeal No. E/965/06) and M/s. Mohanrao Sahakari Sakhar Karkhana Ltd. (subject matter of appeal No. E/966/06) and penalties have been imposed for clearance of the above, during the period in dispute without payment of duty. The claim of the assesseees that the items in question were not excisable goods as well as the alternate claim that if such goods are excisable, they are eligible to the benefit of exemption to captive consumption in terms of Notification 67/95 has been rejected. The extended period of limitation has been invoked against the appellants in both cases. In appeal No.E/965/06, the duty demand confirmed is Rs. 1,87,89,600/- together with penalty of equal amount. In appeal

No. E/966/06, the duty demand is Rs. 2,22,33,920/- together with penalty of equal amount. The period of dispute in both cases is April 2001 to October 2003.

3. It is the case of the department that the disputed items were not supplied by the appellants as a whole at the site of the sugar factories but assembled out of the various parts and components supplied by the sugar factories, as seen from the chart herein below: Parts/components brought at the site of M/s. Rajarambapu SSK and Mohanrao SSK for manufacture of excisable goods Gantry Girders, Ladders, Working Platforms, Railing Shad for Trolley, Two (sic) Cane Unloader Bridge. Trolley (complete with CT Drive Hoist & Holding Drums. Wire Ropes. Spur Gears Gear Boxes, Motors. Brakes.

Trusters. Limit Switches etc.) with sling attachment, Electrical Control Panel, Operator's Cabin etc. including electrical hardware.

Columns, Side Plates. Runner Beams. (sic) Hooks, Chutes, Rake, Staircase, all Sprockets & Shafts with Plummer Blocks. Bearings.

Stretching Gear, Idler Pulleys with Shafts, Brackets. Bush Bearings, Chain For 1st Cane Carrier, Slats. Motor with variable speed drive.

Reduction Gear Box. Spur Gear, Pinion Set, Starter. Base Frame.

Foundation Bolts for Cane Carrier Drive. Troughs Rakes. Chain. Runners.

Service Gangway Tensioning Devices. Set of Bagacillo Collecting Hopper with Bagacillo Screens and Sliding Door for feeding bagasse to boilers.

Central Shaft. Knives. Plummer Blocks & Bearings. Drive Base Frame.

Motor with Starter Reduction Gear Box. Coupling etc.

Shafts & Hubs. Flywheels. Bearing & Plummer Blocks. Couplings. Set of nuts & bolts for knives. knives, Motor with starter. Rails. Rotor Assembly complete with hubs, Flywheels, Bearing Plummer Blocks, Nuts & Bolts for Hammer. Hammers, Deflector & Anvil Plate. Anvil Suspension Gear Hood Rear Chutes, 750 HP SPDP Slipring Motors Head Stock with Wear Plate, Side Cap with pins Top Cap with

pins, Side Bearing. Top Half of Top Bearing, Bottom Half of Top Bearing. Mill Roller with crown pinion. Trash Beam with bolts. Trash Plates, Scraper Plate Holder, Scraper Plate Masseur Knife Holder with knives. Tail Bar. Service Gangway with staircase and railing. Hydro-pneumatic System control Panel. Tank with pumps, Pipes & fittings. Roller Movement Indicator, Hydraulic Accumulator Set of Forced Feed Lubricator with pipe & fittings, Set of Juice Troughs under the mills. Square Coupling for Tail Bar, Set of Base Frames for DC Motor of (sic) of Foundation Bolts & Anchor Plates. Under Feeder Roller complete with Brackets, Pinions, Donnelly type Chute, Level Sensing Device, DC Drive for Mills, Mill Reversing Arrangement complete in all respect, Slow Speed Gear Box, Gear Box complete with Oil Pump, Spur Gear for 1st motion, Spur Pinions for Mill Gearing, Slum of 1st motion Gear - 2nd motion Pinions, Set of Gear Guards, Pedestal Bearing for Mill Gearing. Base Frames for Mill Gearing complete with foundation (sic) Turbine complete with Base Frame.

Enclosed Reduction Gear Box, Main, & Auxiliary Panel and Safety Devices, Pressure Gauge, Steam Flow Meters. Tacho meter Panel complete with oil pipes & fittings. Alternator complete with Air Cooler. One Set of Battery AVR & Excitation Panels.

Registering Counter, Weighed Water Receiving Tank, Check Weighing Scale. Juice Weighing Scale. Weighed Juice Receiving Tank. Check Weighing Tank. Check Weigh Bridge- for "Juice Weighing Scale, Working Platform. Railing, Ladder, Weighed Molasses Receiving Tank, Molasses Diversion Arrangement.

170 MS H.S.A. Juice Heater 300 M2 H.S.A. Juice Heater, Condensate Receivers.

Flash Tank Shell. Tray of the Clarifier, Set of Central Tubes with arms & scrapers. Drive Head complete with Drive. Mud Tank. Clear Juice Column, Set of Valves, Pipes, Wheels, Chairs etc., Working Platform, Railing, Ladders.

Vacuum Filter complete with drive Fillerate Receiver. Mud Belt Conveyor including supporting structure at the Mud Discharge End. Mud Mixer Catchall installed in the line going to condenser.

Calandria with bottom saucer for 2000 M2 H.S.A, body semi-kestener (1st body). Calandria with, bottom saucer for 100C M2 H.S.A. body semi-kestener (2nd A body), Calandria with bottom saucer for 600 M2 H.S.A. body semi-kestener (2nd B body), Calandria with bottom saucer for 450 M2 H.S.A. body semi-kestener (3rd body), Calandria with bottom saucer for 250 M2 H.S.A body semi-kestener (4th body). Body of Evaporator, Calonal for Evaporator. A set of incondensibles collecting coils. syrup/juice samples etc.

Calandria for 60 T. vacuum pan with bottom saucer. Body for 60 T vacuum pan. Catchall for vacuum pan, Pan Discharge Valve complete with operation mechanism, Set of pan washing coils feeding headers and all other pan accessories.

Plain Tray-Grass Hopper, Multi Tray Grass Hopper, Drive Motor for Grass Hopper with pulley starter, V Belt etc., Hot Air Blower with air heater, old Air Blower.

Shafts. Sprockets. Plummer Blocks with bearing drive motor complete with variable speed drive, reduction gear box, starter etc.

Juice Sulphiter (with stirrer, drive etc.). SO₂ recovery tower with chimney. Lime proportionating device, syrup sulphitation unit. SO₂ recovery tower.

Multi-jet condensor for 750 MM diameter (sic) pipe including tail pipe.

Multi-jet condensor for 1100 MM diameter vapour pipe including tail pipe.

It is also the case of the department, as seen from the show cause notices and the impugned orders, that the items are huge items encompassing wide area and cannot be transported and installed as such in any other premises but require to be dismantled before transport and installation at any other site. In view of this admitted position, the ratio of the apex court in *Triveni Engineering and Indus. Ltd. v. CCE* is directly attracted to the facts of this case. In paragraph 20 of that decision, the apex court held that the marketability test requires that the goods as such should be in a position to be taken to the market and sold. In that case, for taking turbo alternator to the market, it has to be separated into components, viz. turbine and alternator and then would not remain turbo alternator and therefore the

turbo alternator cannot be excisable goods falling within the meaning of Heading 85.02. The Supreme Court set aside the finding of the Tribunal that the turbo alternator was excisable goods.

The above decision has been followed by the Tribunal in the case of CCE, Chandigarh v. Bhagwanpura Sugar Mills and Indica Chemical Indus. (P) Ltd. v. CCE, Meerut . We further note that vide Circular No. 58/1/2002-CX dated 15.1.2002, the CBEC has clarified inter alia that if any goods installed at site are capable of being sold or shifted as such after removal from the base and without dismantling into its component parts, the goods would be considered to be movable and thus excisable and if the goods are incapable of being sold, shifted and marketed without first being dismantled into component parts, the goods would be considered as immovable and therefore not excisable to duty. The clarification has been issued in the light of the apex court's judgment cited supra as well as in the case of Quality Steel Tubes Pvt. Ltd. v. CCE and Mittal Engineering Works Pvt. Ltd 4. The Commissioner has relied upon the decision of the Tribunal in CCE, Chennai v. Binny Ltd. , holding that similar items were excisable, however, as rightly pointed out by the learned counsel for the appellants, the assesseees did not challenge the Commissioner's order treating some of the sugar manufacturing equipment as movable and hence excisable, for the reason that the demand was dropped on the ground that it was barred by limitation and hence the finding of excisability was not contested by the assesseees.

5. In the light of the above discussion, following the ratio of the apex court's decision in Triveni Engg. and Inds. Ltd. supra, on the basis of which CBEC circular No. 58/1/2002-CX dated 15.1.2002, which is binding on the Revenue authorities, was issued, we set aside the demands and penalties and allow both the appeals.

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