

Collector of Central Excise Vs. General Cement Products (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-30-1988

Reported in : (1989)(20)ECC45

Appellant : Collector of Central Excise

Respondent : General Cement Products (P) Ltd.

Judgement :

1. In the first instance the six applications for condonation of delay were taken up for consideration. The applications relate to filing of the Supplementary Appeals by the Department. The main consolidated appeal of the Department, against the consolidated impugned Order-in-Appeal, was filed within the prescribed time-limit. The learned Advocate of the Respondents did not oppose the applications for condonation of delay. We condoned the delay and took the supplementary appeals on record.

2. The Appeals themselves were heard thereafter. On careful consideration of the submissions of both the sides and record, we find the common point of dispute in all the seven appeals is whether Central Excise duty is payable on one per cent or so of Cement Concrete Poles destroyed during the quality control testing within the factory or not.

The contention of the Department is that the goods were fully manufactured prior to the testing, they were accounted for as the day's production in the statutory RG-1 Register and thereafter they were deposited in the bonded store room of the

factory; if the goods were removed from the bonded store room for testing, an exemption Notification was required to remit the duty payable thereon, but no such exemption notification existed. The Department maintains that the testing in this case amounted to utilisation of fully manufactured Cement Concrete Poles within the factory of manufacture and duty had to be paid on such captive utilisation.

3. We do not agree with the Department's contention. The Cement Concrete Poles in question were meant for supply to UP State Electricity Board against specific contracts. These Poles are used for distribution of electric energy and for tele-communication purposes.

There is a specific requirement in the contracts that before the goods could be considered as fit for delivery, they had to pass the prescribed quality control test. For this purpose, about one per cent of the poles were selected at random and they were subjected to various specified tests till they broke in the testing process. The goods were despatched to the Electricity Board only after the samples had passed the prescribed tests. In the circumstances, it has to be held that the goods became marketable and fit for delivery only after they had passed the prescribed quality control tests, and not before. Unless the goods reach a stage where they are fit for delivery, they cannot be considered as fully manufactured goods. The quality control test was a mandatory requirement before the goods produced could be considered as fully manufactured. We agree with the learned Collector (Appeals) that no Central Excise duty was payable on the Cement Concrete Poles which got destroyed in the course of mandatory quality control tests which were a part of the production process of the poles.

4. The necessity for an exemption notification would arise only after the goods have been fully manufactured and they are utilised thereafter. Here, the quality control test was done at a stage prior to the stage when the goods could be considered as fit for delivery and fully manufactured in that sense.

5. In the result, we find no substance in these appeals and dismiss all seven of them.