

i.G.E. (India) Ltd. Vs. Collector of Central Excise

i.G.E. (India) Ltd. Vs. Collector of Central Excise

SooperKanoon Citation : sooperkanoon.com/6145

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-18-1990

Reported in : (1991)LC124Tri(Delhi)

Appellant : i.G.E. (India) Ltd.

Respondent : Collector of Central Excise

Judgement :

1. These two appeals are filed by the assessee i.e. Elpro International Ltd. and their related person I.G.E. and both the appeals are disposed of by this common order as the issues are inter-connected.

2. The assessee (hereinafter referred to as Elpro) was incorporated in 1963 to manufacture low powered X-ray equipment, and some of the components and parts of high powered X-ray equipment of different models and specifications. It has L-4 licence, and manufactures portable and mobile low powered X-ray equipment. This X-ray equipment includes bought out items one of which is X-ray tubes which is manufactured by BEL. X-ray equipment thus manufactured is sold to I.G.E. I.G.E. in turn sell the low powered X-ray equipment to their customers viz; doctors, clinics and hospitals. Since Elpro do not have the facility to manufacture high powered X-ray equipment, they manufacture 3. The parts and components thus manufactured are sold to I.G.E. which in turn purchases X-ray tube unit and high voltage cables from BEL, and other non-essential parts from other manufacturers to make it a complete X-ray unit, sells the same to their customers under an agreement. The shareholding of Elpro is as follows :General Electric Co.

of India - 40%Investment Corpn. of India - 6%Nationalised Commercial Banks - 10%Govt. Institutions like Indian Assurance Co. Ltd. - 8%General public - 36% 4. After the introduction of Tariff Item No. 68, the deptt. levied Central Excise duty on the items manufactured by Elpro on the prices at which the parts and components were sold to their customers by I.G.E.Elpro paid duty under protest. Till February 10th, 1986 Elpro filed invoices in lieu of Price-lists. Thereafter, from March 1st, 1986 the price-lists were filed under part IV at the instance of the deptt. and the duty was paid on the prices at which the goods were sold by I.G.E.under protest.

5. I.G.E. was incorporated in 1930 and carrying on business in buying components/parts of electro-mechanical equipments, and engaged in private services such as installation, assembling, fitting, commissioning etc. They sell a complete electromechanical machine to their customers. It has 16 branches and four resident engineers all over India and 110 highly qualified technical personnel. They buy from Elpro X-ray tables, floor to ceiling X-ray column stand and X-ray generators comprising of controls and high voltage transformers. The X-ray tubes and high voltage cables which are essential in completing the X-ray equipment are purchased from BEL directly, store them in their godown at Bombay and Patna. According to them, a complete high or medium powered X-ray machine comprises of the following components/parts.

(vi) X-ray generator comprising of X-ray controls, and high voltage transformers, 6. The components/parts thus, purchased from Elpro and BEL are tested, assembled, fitted, inserted and demonstrated at the customers site in pursuance of an agreement entered into with them.

7. In addition to the above, the following material is necessary for bringing into existence a complete X-ray machine and I.G.E. purchases the following items from other manufacturers: 8. While so, a show cause notice was issued by the deptt. on 18-11-1987 to Elpro and I.G.E. & others. The allegations against Elpro inter alia are that they failed to furnish full and complete description of X-ray equipment in the classification list; that they failed to include in the assessable value amounts recovered by their related persons I.G.E.on account of installation charges and 'testing charges' and submitted the value of 'incomplete X-ray machine', that value

of essential/integral parts of the said X-ray machine such as X-ray tube unit, high tension cables, have been deliberately excluded from the price submitted to the deptt., in a bid to 'undervalue' the product and thereby evaded the central excise duty; that they have failed to declare the correct pattern of sale through their 'related persons' and have deliberately excluded a part of the advertisement expenses; made the central excise department believe that the product despatched from the factory by Elpro was incomplete X-ray machine conforming to the description in the classification list, when in fact, an incomplete X-ray machine was despatched from their factory and after fitting the incomplete machine with certain essential components by their 'related persons', the machine was sold to the customers, and that they entered into a conspiracy and a secret understanding with Elpro. It was proposed in the show cause notice to recover duty for the period from Oct., 82 to June, 87 amounting to Rs. 12,38,863-37.

9. The allegations against I.G.E. are that they were directed to show cause why a penalty should not be imposed under Section 9(2) for entering into a conspiracy with Elpro and abetting the commission of an offence viz; the evasion of central excise duty.

10. Both Elpro and I.G.E. filed their replies. On giving a personal hearing to the parties, the Collector confirmed the demand and imposed a penalty of Rs. 25,000/- against both.

11. The Collector held that 100% of the X-ray equipment, semifinished, was sold to I.G.E. by Elpro, and paid duty on the price finally charged by I.G.E. on their incomplete X-ray equipment but after excluding the price of essential components like X-ray tubes and cables in respect of X-ray machines of high rating. I.G.E. supplied certain bought out items along with the semi-finished manufactured items by Elpro to the customers and got them inserted and commissioned at the customers site.

X-ray tubes units and high tension cables are essential parts of the X-ray equipment. He also observed that the price of bought out items has been raised to the extent of nearly 30% to 40%. He further observed that Elpro supplied incomplete X-ray equipments under the agreement executed between them and

I.G.E. and the transaction between Elpro and I.G.E. is not on principal to principal basis. He also held that the completion of the product has been set up by assembling different items required for completion of X-ray parts and therefore, setting up of the same, amounts to manufacturing process within the definition of Section 2(f) of the Act.

12. On the question of the 'related persons', he held that General Electric Co. is having 40% share capital in Elpro. Therefore, Elpro is owned by General Electric Co. I.G.E. is an affiliated company of General Electric. Therefore, Elpro is a creation of I.G.E. In the circumstances he observed that the prices charged by I.G.E. should form part of the assessable value and accordingly, Elpro/ I.G.E. should have filed price lists in part-II along with a copy of the contract.

13. He further held that I.G.E. is the real manufacturer of the X-ray equipment and its accessories. Elpro International was having mutual interest in the company of I.G.E. and vice versa.

14. He directed Elpro/I.G.E. to pay duty on the full contract value of X-ray equipment excluding the cost of erection and commissioning. He also observed that Elpro/I.G.E. are entitled for modvat of duty paid on the components wherever admissible.

15. According to the Collector, the assessable value for the purposes of approval of the price-lists is in part-II under the provisions of Section 4. He also held that the assessable value should be the contract value minus the actual cost of erection, installation, but, should include all the expenses such as after sale service, marketing and selling organisational expenses, advertisement expenses, incurred by Elpro and I.G.E. up to the date of delivery of complete X-ray system at the site on account of storage charges, handling charges, interest on inventory and the value of bought out items.

16. He observed that X-ray equipment is not immovable property but goods assessable under Section 4 of the Act.

17. Challenging the above order Shri Banerjee on behalf of I.G.E. raised the following contentions: The order of the Collector traverses beyond the allegations made in the show cause notice. It was contended that the show cause notice against I.G.E. only directed to show cause as to why penalty should not be imposed on them under Section 9(2) of the Central Excises and Salt Act, 1944, for having entered into a conspiracy with Elpro and thereby abetting the commission of an offence namely, evasion of central excise duty whereas the Collector held I.G.E. as manufacturer and makes them liable to pay duty on the X-ray equipment. I.G.E. was incorporated in 1930 whereas Elpro was set up in 1963, to manufacture lightening arresters, magnets, heating elements, and components/parts of X-ray equipment. Elpro sells these components/parts to I.G.E. on principal to principal basis and I.G.E. in turn purchases the remaining essential parts from BEL and other manufacturers and undertakes installation at the site of the customers. This system of procuring the components and parts from Elpro and BEL and other manufacturers has been in vogue since 1963 and till 1975 these components/parts of the X-ray machine were not liable to levy of any excise duty. Therefore, the allegation that the system was devised to evade payment of excise duty is beyond anybody's comprehension.

18. The department was aware of the system in operation and forced Elpro to pay duty on the prices charged by I.G.E. and never treated I.G.E. as manufacturer. The components/parts purchased by I.G.E. from BEL and other manufacturers never entered the premises of Elpro but are stored in their godown and transported directly for assembling, installation, erection and commissioning by I.G.E. personnels.

Therefore, privity of contract is between Elpro, BEL and other manufacturers and the end customers, as I.G.E. alone enters into a contract with the end customers for supply of X-ray equipment. Mere purchase/collection of various components/parts does not bring into existence a X-ray machine. I.G.E. has to undertake various operations to bring into existence the X-ray machine, namely, i) assembling of various components which become immovable at this stage, ii) inter-connection of wiring of various components/parts, iii) calibration of various components commissioning of the machine. All these activities are described as

installation which is an engineering work requiring 10 to 12 weeks and highly qualified and trained and experienced engineers. The work of installation is an engineering work and not manufacturing activity and the assembling of various components/parts renders most of them immovable. Relying on *Tata Robins Fraser Ltd. v. CCE* - 1990 (15) ETR page 34, he submitted that mere collection of various components/parts at site partly by manufacture from its own factory, partly getting them from other factories partly buying some from the market will not amount to manufacture within the meaning of Section 2(f) of the Act. He also relied on the following passage of *Diamond Clock Mfg. Co. Ltd. v. CCE* [1988 (34) ELT page 662] :- "The Anand traders supply bought out items to their customers. These consist of cables and adaptors. It appears that these three are essential for the operation of the meter but they are not manufactured by the appellants, nor are they fitted into the machines before clearance. If this is the factual position and only incomplete machines are cleared from Diamond factory the value of such parts supplied to customers by 'Anand Traders' later should not be included" and contended that I.G.E. purchases some parts from Elpro and some parts from BEL and non-essential parts from other manufacturers. The essential parts purchased from BEL never entered the factory premises of Elpro and are stored in their godown and they are not fitted in their premises before clearance but are assembled at the customer's site, therefore, no duty is payable by I.G.E. on the complete X-ray machine.

19. He also submitted that the judgment of the Supreme Court in *Name Tulaman Manufacturers (P) Ltd. v. CCE* [1988 (38) ELT page 566] is not applicable to the facts of the present case.

20. It is further submitted that IGE is not a related person of Elpro.

The activity carried on by I.G.E. is akin to dewatering system which came up for consideration before this Tribunal in *Wellpoint System* case [1986 (26) ELT page 1015]. Therefore, the assembling of components/parts at site by I.G.E. does not amount to manufacture within the meaning of Section 2(f).

21. He finally contended that X-ray equipment becomes immovable property at the stage of assembly i.e. before installation i.e. before the work of inter-connection of

wires, calibration or commissioning of X-ray machine is done. Therefore, no excise duty is leviable on X-ray machine.

22. Mr. Gopal Prasad, appearing on behalf of Elpro in addition to the contentions already raised by Mr. Banerjee submitted that the order traverses beyond the show cause notice as the allegation in the show cause notice is gross undervaluation of goods whereas in the order the Collector held that Elpro manufactured and supplied a complete X-ray machine a case under Section 3, read with Section 2(f) of the Act.

23. Elpro admittedly cleared from the factory only an incomplete X-ray system, additions to such incomplete X-ray system by I.G.E. at customer's site and the installation charges incurred at customer's site cannot form part of the assessable value under Section 4 of the Act. Further the goods cleared from Elpro and goods on which duty is sought to be levied are not the same. Therefore, the question of I.G.E. being related person is irrelevant. In support of this contention Shri Gopal Prasad relied upon the order of this Tribunal in *Diamond Clock Mfg. Co. v. CCE* (supra).

24. There is no allegation that I.G.E. is a favoured buyer. Therefore, the question of related person does not arise. In support of his contention he relied on the order of this Tribunal in *ICIM v. CCE* [1989 (41) ELT page 287].

25. Admittedly, Elpro manufacture only an incomplete X-ray system, the demand of duty by including the value of bought out components by I.G.E. and installation and other charges is opposed to Section 4 of the Act. In support of this contention he relied on the orders of this Tribunal in *Carbon Inds. (P) Ltd. v. CCE* [1985 (19) ELT page 435]; *Wellpoint Systems case* [1986 (26) ELT 1015].

26. The department sought to recover differential duty from Elpro being duty worked out on the entire X-ray system less the duty already paid on the components/parts manufactured and cleared. Short levy of duty can be collected only in respect of the same goods, such short levy in the order under appeal is sought to be collected in respect of differential duty alleged goods, i.e. on the one hand duty paid on the clearances of incomplete X-ray system, and duty leviable on

complete X-ray machine installed by I.G.E. Such a proceeding is beyond the provision of the Act.

27. It is next contended that the department is sought to recover the duty from Elpro not only on the value of the goods manufactured and cleared from Elpro's factory but also on the value of bought out components of I.G.E. which never entered L-4 premises of Elpro and on installation charges incurred by I.G.E. which is beyond the scope of Section 4 of the Act.

28. It is submitted that the share-holders of Elpro and I.G.E. are as follows :-
Shareholders of M/sElpro Shareholders of I.G.E. General Electric 40% General Electric 40% Investment Corpn. of India Faridabad Investment Co. Ltd. 53% Nationalised commercial banks 10% S.C. Dabriwala 1% Govt. Institutions like New India R.K. Dabriwala 2% General public 36% Mrs. Indu Dariwala 1% Total number of shareholders 1394 Mrs. Parameshwari Devi 1% The above shows that I.G.E. is not a related person of Elpro within the meaning of Section 4(4)(c) of the Act in view of the judgment of the Supreme Court in Attic Industries.

29. It is next contended that Elpro entered into a contract with I.G.E. which is only for the supply of 3 items namely, Floor to Ceiling X-ray rails, X-ray column/tube stand, and X-ray tables which is on principal to principal basis whereas I.CE.'s contract with the customers is for the supply of complete X-ray equipment and it includes procurement from Elpro some of the mechanical and electrical components/parts manufactured by Elpro; procuring from BEL the essential components/parts; procuring other bought out items from other manufacturers; undertaking assembling of various components referred to above at the end customers site. Therefore, it cannot be held that I.G.E. is the related person of Elpro.

30. It is next contended that the order is beyond the scope of the show cause notice, as it holds that the related person completes the assembly and manufacture of X-ray machine by attending to fitting of essential components and installation at the end customers site. The Collector added in construing the definition of manufacture to include installation and testing job undertaken by I.G.E. It is further submitted that the definition of related person is not satisfied as

either Elpro or I.G.E. are associated with each other directly or indirectly or have interest directly or indirectly in the business of each other. It is neither a holding company, nor a subsidiary company.

I.G.E. is neither a relative or distributor of I.G.E. Therefore, the concept of the related person is not applicable to them.

31. Taking up the appeal of I.G.E. first the main contention is that the order of the Collector traverses beyond the scope of the show cause notice.

32. In this context it is relevant to extract the allegations against I.G.E. in the show cause notice. They are as follows :- " I.G.E. (India) Ltd. Bombay-21 and the Directors and employees mentioned at S. Nos. 11 to 20 are also directed to show cause to the Collector of Central Excise and Customs, Pune, P.M.C.'s Commercial Bldg., Hirabagh, Tilak Road, Pune 411002 as to why, penalty should not be imposed on them under Section 9(2) of the Central Excises and Salt Act, 1944 for entering into a "conspiracy" with the assessee and thereby abetting the commission of an offence viz. the evasion of Central Excise duty." 33. In short, the proposal in the show cause notice is to impose penalty under Section 9(2) for entering into conspiracy with the assessee namely, Elpro and abetting the commission of offence i.e.

evasion of central excise duty.

34. We may at the outset point out that Section 9(2) provides for imprisonment for a term which may extend to 7 years and with fine, if any person convicted of an offence under Section 9 is again convicted of an offence under Section 9. It is not clear how Section 9(2) is relevant as it neither deals with conspiracy nor abetment of an offence.

34.1 We may also consider the findings of the Collector against I.G.E. They are as follows :- "M/s I.G.E. are real manufacturer of X-ray equipment and its accessories. The assessee/I.G.E. has entered into a contract for supply of complete X-ray system and not separately, factory made goods, bought out items etc.

The assessee/I.G.E. has not done trading in the bought out items but received the same from the suppliers at their site or where installation work of X-ray system is going on as a part of the complete X-ray apparatus to be manufactured or supplied at the site.

The assessable value to be given for an approval in the price-list is part II but the provisions of Section 4(l)(a) should actually be the contract value minus the actual cost of erection/installation but it would include inter alia all expenses incurred by the assessee/I.G.E. upto the date of delivery of complete X-ray system.

Profit earned by assessee/I.G.E. has to be included in the assessable value....

As mentioned above bought out items i.e. X-ray tube units, High Tension cables are not traded but complete X-ray system is manufactured and supplied by the assessee/I.G.E., as such on the entire value of so-called contract the assessee/I.G.E. has to pay central excise duty.

"As I understand it is nothing but composite excisable article as emerged at the customers site which both, Elpro & I.G.E. are joining hands with each other and make contribution and supply to customers." 35. In short, the findings of the Collector are, that I.G.E. is the manufacturer of the complete X-ray system and they are not trading in any bought out items and that the assessable value should be the contract value minus the cost of installation as the I.G.E. supplies the entire X-ray system, and therefore, I.G.E. has to pay excise duty on the entire contract value of the X-ray system.

36. The Collector makes both Elpro and I.G.E. liable to pay duty on entire X-ray system.

37. We have already referred to the allegations made in the show cause notice in the earlier part of this order. According to which I.G.E. conspired and abetted the evasion of central excise duty. There is no allegation that I.G.E. has actually manufactured and that they are not trading in any bought out items and that the assessable value should be the entire contract value, on which I.G.E. has to pay central excise duty. Therefore, we are of the view that the order of the Collector

against I.G.E. traverses beyond the show cause notice and is, therefore, cannot be sustained. We accordingly set aside the order of the Collector in so far as I.G.E. is concerned.

38. Now taking up the appeal of Elpro the main contention is that they supply only components/parts of high rate X-ray machine under the contract namely: (iii) X-ray table with base and bucky comprising of imported grid, and I.G.E. purchased essential parts from BEL namely, X-ray tube unit, and High voltage cable and from BEL and other non-essential parts from other manufacturers and that I.G.E. is not a related person and it is only at the instance of the department they are filing the price-list under part-IV and paying duty on the prices at which I.G.E. is selling to customers in respect of those components/parts and that X-ray equipment is not goods and immovable property, and therefore, X-ray equipment is not liable to pay any excise duty.

39. The liability of Elpro to pay duty on the entire X-ray equipment arises provided:

40. It is an admitted fact that Elpro is supplying only the components and parts namely: (iii) X-ray table with base and bucky comprising of imported grid.

etc.

under a contract to I.G.E. It is also an admitted fact that I.G.E. is purchasing the essential parts namely X-ray table unit & High Voltage cable from BEL and other non-essential parts from other manufacturers.

It is also an admitted fact that Elpro is paying duty on components/parts supplied by them under the contract to I.G.E. on the price at which I.G.E. is selling them to their customers. It is also an admitted fact that they are filing price-list at the instance of the department under part IV and paying duty under protest, It is also an admitted fact that I.G.E. is entering into contract with the end customers for the supply of entire X-ray machine though the said agreement is not before us. We may also point out that the agreement entered by Elpro with I.G.E. is also not before us.

41. The Collector on one hand holds that I.G.E. is a related person and on the other hand he says that I.G.E. is an agent and relies on the decision of the Supreme Court in Coromandal Fertilizers. I.G.E. cannot be a related person as well as an agent of Elpro. It should either be a related person or an agent. In either case Elpro has to pay duty on the entire value of X-ray equipment provided the X-ray equipment is goods supplied to the customers. In this context we may examine the finding of the Collector that I.G.E. is a related person of Elpro. According to him I.G.E. is a related person for the reason General Electric Co. is having 40% share capital in Elpro. Therefore, Elpro is owned by General Electric Co., I.G.E. is an affiliated company of General Electric Co., therefore, Elpro is a creation of General Electric Company, I.G.E. It is not clear what the Collector means by saying that I.G.E. is an affiliated company of General Electric Company. It is the GEC which is holding 40% shares in Elpro, I.G.E. does not become the related person of Elpro if GEC holds 40% shares in Elpro. In other words the shares are held by GEC in Elpro and not by I.G.E. The relationship between I.G.E. and GEC and Elpro are not elaborated, and discussed.

42. We may now refer to the definition of related person under Section 4(4)(c) of the Act. It reads : " 'related person' means a person who is so associated with the assessee that they have interest directly or indirectly in the business of each other and include a holding company, a subsidiary company, a relative and a distributor of the assessee and distributor of such distributor." The first part of the definition speaks of a person who is associated with the assessee that they have interest directly or indirectly in the business of each other. The Collector has not referred to any material as to how Elpro and I.G.E. are interested in the business of each other. There is no evidence as to the financial or administrative control, or interest of Elpro in I.G.E. and vis-a-versa. No inquiry is made to establish mutuality of interest between Elpro and I.G.E. Further the share holding of both the companies which were referred to in earlier paragraph does not indicate mutuality of interest between the two. Merely holding 40% shares that too by General Electric Co. in Elpro does not make I.G.E. the related person of Elpro.

43. It is true that Elpro was filing price lists under part-IV and paying duty in respect of components/parts supplied by them to I.G.E. on their prices to the

customers. However, the payment of duty is under protest. Further the fact that Elpro filed price-list under part IV without challenging the same by way of appeal does not estop them from claiming that I.G.E. is not their related person as there could be no estoppel against law. Before holding I.G.E. is the related person of Elpro the criteria laid down in Section 4(4) (c) should be satisfied.

Admittedly, the second and 3rd part of the definition of the related person is not satisfied. The Collector draws an inference from the fact that I.G.E. is raising the prices of the bought out items while depressing the prices of the components and parts purchased from Elpro, and therefore, there is a mutuality of interest. There is no evidence that some consideration has flown back from I.G.E. to Elpro or vice-versa.

44. We, therefore, direct the Collector to make an inquiry as to how I.G.E. is a related person of Elpro within the meaning of Section 4(4)(c). He has to consider the administrative, financial interest and control of both the companies and the mutuality of interest between the two companies. We may also point out the fact that the price of bought out items is enhanced by 30 to 40% may not be a ground sufficient to establish financial interest between the two unless there is a clear finding that there is a flow back of money to Elpro.

45. The Collector in his order also holds that I.G.E. is the sole selling agent of Elpro, but does not refer to any material in support of his finding. It is true that Elpro sells the components/parts to I.G.E. under an agreement. This agreement is not before us. The Collector is, therefore, directed to re-examine the agreement and any other relevant material and consider whether I.G.E. is an agent of Elpro.

46. The next question to be considered is whether X-ray equipment is immovable property, and therefore, not excisable goods under Section 2(d) of the Act.

47. It is contended that since X-ray table floor to ceiling column, tube stand, X-ray generators and other things are fastened to the earth and the X-ray tube units and high voltage cable are fitted the X-ray equipment is immovable property and, therefore not excisable goods.

48. The expression immovable property is not defined under the Central Excises and Salt Act, 1944. Therefore, we have to take recourse to the definition under the General Clauses Act. Section 3(26) defines immovable property and it reads as follows :- "'immovable property" shall include land, benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth;'

49. The Madras High Court in *K.N. Subramaniam Chattiari v. M.Chidambaram* (AIR 1940 Madras 527) while construing the definition of immovable property observed that "a thing is imbedded in earth or attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached, then it is part of the immovable property. If the attachment is merely for the beneficial enjoyment of the chattel itself then it remains a chattel even though fixed for the time being so that it may be enjoyed. The question must in each case be decided according to circumstances". No doubt, this decision arose under the transfer of property Act. The said decision was considered by Madras High Court in *Peruman Naicar v. Ramaswamy Kone and Anr.* (AIR 1969, Madras 346). The learned judges held that "for a chattel to become part of immovable property and to be regarded as such property we should think, it must become attached to the immovable property as permanently as building or a tree is attached to the earth. If in the nature of things the property is movable property and for its beneficial use or enjoyment it is necessary to imbed or fix on earth though permanently i.e. when it is in, use it should not be regarded as immovable property for that reason". The learned judges referred to with approval the observations made by a single judge of the same High Court in *Subramaniam v. Chidambaram*.

50. From the above it follows, by nature, if the property is movable and for its beneficial use or enjoyment it is necessary to fix it on earth though permanently i.e. when it is in use, it is not immovable property. In the instant case the components/parts both essential and non-essential are fixed to earth for its beneficial enjoyment and by fixing it to the earth it does not become part of the earth, and therefore, it is not immovable property. It is also not disputed that X-ray equipment can be dismantled and shifted. From the records we find that the dismantling charges were also collected from one of the customers.

51. Therefore, we are of the view that X-ray equipment is not immovable property.

52. The next question to be considered is whether assembling the bought out items at customers site amounts to manufacture.

53. The Supreme Court in *Name Tulaman Mfgs. (P) Ltd. v. CCE* [1988(38) ELT page 566] was considering a question whether the activity of assembling 3 components, namely; i) Plateform; ii) Loadcell; iii) Indicating system, amounts to manufacture. The weigh bridge was manufactured by the appellants which consists of three parts, i) Plateform, ii) Loadcell, iii) Indicating system. The contention of the appellants was that they got the plateform manufactured from other people. The loadcell was imported and the appellants only made the indicator. In other words, the case of the appellants was that it manufactures only the indicator system. The Tribunal held that "the appellant bought out the 3 components together at site fitted and assembled them together so that they can work as one machine as such the appellants manufacture and created weigh bridge." Challenging the above order of the Tribunal it was contended before the Supreme Court that the appellants were liable to pay duty only for the indicator system which they have manufactured. Repelling the same it was held that: "The activity of assembling three components, i) plateform, ii) loadcell, and iii) indicating system, amounts to manufacture as it brings into existence weigh bridge a new product known to the market and known under the excise item. The mere fact that the appellants bought out two parts and manufactured only indicating system and paid duty thereon will not change the position because parts and end products are separately dutiable".

54. Similarly, in *Tata Iron & Steel Co. Ltd. v. U.O.I.* [1988 (33) ELT page 297] it was held that where the entire assembly cannot be transported, that can be done only in knocked-down condition. The supply in that condition does not mean that no excisable article has come into existence. Therefore, cranes transported in knocked-down condition are also liable to duty.

55. From the above it follows that if a person assembles some items at site and brings into existence a new item known to the excise law and also to the commercial world as such, the assembling amounts to manufacture and the new product is dutiable.

56. In the instant case Elpro manufactures three items and supplies them to I.G.E. and I.G.E. procured two essential items from BEL and non-essential items from other manufacturers and assembles them at the site of the customers. By assembling these components/parts a new product namely, X-ray machine/equipment known to the excise law and commercial world comes into existence. In the light of the Supreme Court judgment (supra) the assembly amounts to manufacture and the new product is dutiable.

57. The reliance placed by both the appellants on Diamond Clock Mfg.

(P) Ltd. (supra) may not be of much assistance to them as the order of this Tribunal in the said case did not have the benefit of the observations of the Supreme Court in Name Tulaman case.

58. The order of this Tribunal in Tata Robins Fraser Ltd. v. CCE [1990 (15) ETR page 34] though the judgment of the Supreme Court in Name Tulaman case was referred to there was no discussion as to why it was not applicable to the facts of the case. It was observed that "the Collector had not pointed out as to which item have been specifically assembled at site out of the components bought out by the appellants, at site either from their own works or from the independent fabricator or purchased from the market. He has apparently taken the completion of the products as assembly of the machine at site. The product itself being an immovable property cannot be charged to duty". In other words, the subject matter of the appeal was the assessability of Turn Key project which admittedly is immovable property and not goods.

Therefore, not dutiable. Therefore, the order of this Tribunal in Tata Robins is not relevant to the facts of this case.

59. In the light of the above observation the appeal of Elpro International is remanded to the Collector for consideration afresh.

The appeal filed by I.G.E. (India) Ltd. is allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com