

General Engineering Works Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-01-1993

Reported in : (1996)(81)ELT569TriDel

Appellant : General Engineering Works

Respondent : Collector of Central Excise

Judgement :

1. M/s. General Engineering Works have filed the above captioned appeals being aggrieved from the orders passed by the Collector of Central Excise (Appeals), New Delhi. Since the issue involved is common, the same are being disposed of by this common order. Shri K.K.Kapoor, the learned consultant has appeared on behalf of the appellants and Shri Prabhat Kumar, the learned SDR, for the respondent. Shri K.K.Kapoor, has pleaded that the appellants are the manufacturers of railway points, and crossings, and stranded wire and they have entered into contract with railways. He has argued that the issue involved is inclusion of inspection charges at the instance of the buyer in addition to the regular inspection charges incurred by the appellants on their own, in the assessable value. The price lists are filed in Part-II. He argued that the inspection charges are not includible in the assessable value. In support of his arguments, he cited the following judgments:-Shree Pipes Ltd. v. Collector of Central Excise, reported in 1992 (59) E.L.T. 462 (Tribunal);Shree Pipes Ltd. v. Collector of Central Excise, reported in 1992 (62) E.L.T. A51 (SC); and (3) G.E.C. of India Ltd. v. Collector of C.E. reported in 1993 (63) E.L.T. 151 (Tribunal).

2. Shri Prabhat Kumar, the learned SDR who has appeared on behalf of the respondent, pleaded that the facts of the case are distinguishable as the inspection was done before the clearance of the goods from the factory. In support of his argument, he has relied on a decision of the Hon'ble Supreme Court in the case of Union of India v. Bombay Tyre International reported in 1983 (14) E.L.T. 1896 (S.C.). He also cited another decision in the case of Madhavnagar Cotton Mills Ltd. Sangli v. Collector of C.E. Pune, reported in 1986 (25) E.L.T. 443 (Tribunal). He pleaded for the rejection of the appeals.

3. We have heard both the sides and have gone through the facts and circumstances. The facts are not disputed. The goods manufactured by the appellants and are inspected by M/s. RITES which is the agency of Indian Railways and the inspection is at the instance of the railways.

We have looked into the submissions made by both the sides and also perused the judgments cited by the learned consultant as well as by the learned SDR. The matter is fully covered in favour of the appellants in the case of Shree Pipes Ltd. v. Collector "15. I have carefully considered the submissions from both sides and I find sufficient force in the plea of the learned advocate, Shri Asthana. In fact, the case of the appellant is on a stronger footing in respect of testing/inspection charges carried out subsequent to what is necessary for putting the goods in wholesale market that what it is in the case of special secondary packing. In the case of packing there is a legal provision for including the cost thereof and yet the Supreme Court in the case of Bombay Tyre International Ltd. has held that value of special secondary packing which is not a part of the normal feature of wholesale trade should not be included in the value of the excisable goods. Following the same analogy, we are of the view, in the face of the admitted facts that the goods already stood fully manufactured, ready for delivery in wholesale market and were actually sold to other wholesale customers, that cost of testing/inspection carried out by the DGS&D at the instance of specific customers, namely PHED, Rajasthan should not be included in the value of the goods".

The Hon'ble Supreme Court has upheld the above decision of the Tribunal and the relevant portion reported in 1992 (62) E.L.T. A51 (SC) is reproduced below :-

"Inspection/Testing Charges not includible - The Supreme Court Bench comprising Hon'ble Chief Justice of India and Hon'ble Mr. Justice N.P. Singh on 27-7-1992 dismissed Civil Appeal No. 2465 of 1992 filed by the Collector of Central Excise against CEGAT Order No. 796/91-A dated 2-12-1991 reported in 1992 (59) E.L.T. 462 (Tribunal) (Shree Pipes Ltd. v. Collector of C.E.) - The Appellate Tribunal in its order in question had held that when inspection and testing are conducted by DGS&D at the request of specific customers, the inspection charges and additional testing charges are not includible in the assessable value".

4. In view of the above discussion and the reasons given above, we do not find any reason why the appellants should not get the benefit of the earlier judgment of the Tribunal. Accordingly, we set aside the impugned order and allow the appeals. Revenue authorities are directed to give consequential relief to the appellants.

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