

**Kerala State Electronics Dev. Vs. Collr. of C. Ex.**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Jan-27-1994

**Reported in :** (1995)LC392Tri(Delhi)

**Appellant :** Kerala State Electronics Dev.

**Respondent :** Collr. of C. Ex.

**Judgement :**

1. The short point for our consideration in this appeal is whether the value of the 'Battery' is includible in the assessable value of the 'uninterrupted power supply' system.

2. Kerala State Electronics Development Corporation Ltd., Trivandrum, were engaged in the manufacture of uninterrupted power supply (UPS) system, and parts thereof, falling under Heading No. 8543.00 of the Schedule to the Central Excise Tariff Act, 1985 (the 'Tariff'). It was alleged in the show cause notice dt. 21-1-1991, that stationary storage battery, an integral part of the UPS system, was invoiced separately, and its value was not included in the price of the UPS system for the purposes of determining the assessable value, during the period 28-8-1986 to 31-3-1989. The Central Excise duty evaded was worked out at Rs. 5,88,724.85. The appellants pleaded that the battery is not manufactured by them and that the UPS system could work without a battery. On adjudication the Collector of Central Excise, Cochin held that the battery was an integral part of the UPS system, and relying upon the Supreme Court decision in the case of Name Tulaman Manufacturers Pvt. Ltd. v. CCE, 1988 (38) E.L.T. 566 (SC), he decided that the

value of the battery would form part of the assessable value of the UPS System.

3. The matter was posted for hearing on 15-11-1993 when Shri K.Narasimhan, Advocate appeared for the appellants. The respondent were represented by Shri Prabhat Kumar, SDR.4.1 Shri K. Narasimhan, the learned Advocate stated that the battery in their case was a bought out item, and once installed, becomes a part of the structure. He referred to Notification No. 68/86-C.E., dt.

10-2-1986 under which storage stationary battery enjoyed exemption from duty. The learned Advocate submitted that the ratio of the Supreme Court decision in the case of Name Tulaman Manufacturers Pvt. Ltd. v.CCE -1988 (38) E.L.T. 566 (SC) was not applicable to the facts of the present case. It was argued that if there was no interruption in the power supply from the mains, then the UPS system could work without a battery. In support of his arguments the learned Advocate relied upon the following decisions : (1) Webel Telecommunications v. CCE -1987 (32) E.L.T. 453 (Trib.) - value of optional accessory which is not an integral part of the walkie-talkie set is not includible in the value of the walkie-talkie sets.

(2) Diamond Clock Manufacturing Co. v. CCE -1988 (34) E.L.T. 662 (Trib.) - the value of bought-out items supplied to customers is not includible in the assessable value of the meter, cleared in incomplete form.

5.1 Shri Prabhat Kumar, the learned SDR submitted that in the UPS system the battery is the source of power when the power is interrupted, and is an essential part of the system, and that the UPS system was not complete without the battery. The question of non-manufacturing of batteries was not relevant for assessing the UPS system. The learned SDR pleaded that the matter was entirely covered by the Supreme Court decision in the case of Name Tulaman -1988 (38) E.L.T. 566 (SC).

5.2 In support of his arguments the learned SDR also relied upon the following decisions : (1) Rallis India Ltd. v. CCE, 1993 (67) E.L.T. 144 (Trib.) - Fan Unit, Throttle Lever and Bowden cable being essential parts of engine, their value was includible in assessable values of the engine.

(2) Dayaram Metal Works Pvt. Ltd. v. CCE, 1985 (20) E.L.T. 392 (Trib.) - bought out parts along with the manufactured equipment/machinery to be included in value of clearances.

(3) Auto Control Pvt. Ltd. v. CCE, 1993 (63) E.L.T. 156 (Trib.) - Daizy Wheel being an essential part of electronic typewriter and not an accessory, their value was includible in the assessable value of electronic typewriter.

(4) CCE v. Lawkin Pvt. Ltd., 1987 (31) E.L.T. 700 (Trib.) - Thermal over- load protector is an integral part of motor, and its value is includible in assessable value of Rotor/stator.

(5) Bajaj Auto Limited v. CCE, 1989 (44) E.L.T. 763 (Trib.) - value of foot rest is includible in the assessable value of scooters.

(6) Pandora Pvt. Ltd. v. CCE, 1985 (21) E.L.T. 469 (Trib.) - additional water tank being integral part of cooler, its value is includible in assessable value of cooler.

(7) Tata Iron and Steel Co. v. UOI, 1988 (33) E.L.T. 297 (Patna) - Cranes removed in CKD condition were dutiable.

5.3 The learned SDR added that the item is known in the market as UPS system, and the order is placed for supply of UPS system; fixing to the ground is, as in all items of machinery, to check vibrations, otherwise it could work without fixing. In this connection the learned SDR relied upon the Tribunal's decision in the case of IGE India Ltd. v. CCE, 1991 (53) E.L.T. 461 (Trib.), wherein it has been held that assembly of bought out items at customer's site amounts to manufacture.

6. In rejoinder the learned Advocate stated that all relevant documents had been produced before the Collector, and that the UPS system was not a 'system' and calling it as such, will not make it a system.

7. We have carefully gone through the facts and circumstances of the case, and have given our due thought and consideration to the submissions made by both the sides.

8. The appellants were engaged in the manufacture of UPS system. As alleged at page 2 of annexure 'A' of the show cause notice, chloride stationary batteries for UPS system were supplied and cleared for the projects and were charged to the customer as per invoices of Keltron Controls, Aroor. These had been charged separately as per separate invoices, a part of the amount charged for the UPS system and their other components, but had not been included in the assessable value of the UPS systems concerned. (refer pages 44, 45, 57, 62 of the paper-book).

9. The contracts entered into by the appellants with their customers were "for supply, erection, supervision and commissioning of UPS system" (pages 65, 76 and 107 of the paper-book). It is admitted by the appellants that the orders for the supply of batteries are placed through them (refer para I(iii) of the written submissions). The batteries were supplied by them to their customers as part of the contract for supply of UPS system (refer pages 8, 58, 59, 60 and 62 of the paper-book). Not only the price of the battery has been charged by the appellants to the customers, specifically and separately, even the extra price had been charged by them for increasing the UPS battery capacity (page 63 of the paper-book). The invoice dt. 30-6-1988 reads "Extra price for increasing the UPS battery capacity from 400 A+1 to 800 A+1 refer our invoice for battery Nos. 33036 dt. 30-6-1988 and 33039 dt. 30-6-1988." The amount charged was Rs. 10 lakhs vide invoice No. 33041 dt. 30-6-1988.

10. There are certain industries - say those producing polyester fibre, yarn etc., in which even a short interruption of power supply will break the flow of production, leading to wastages and clotting of in-process material. There are also certain industries - say computer net work wherein the data may be lost in case of interruption of power supply. Sensitive electronic equipment may be damaged by power fluctuations. To meet such conditions, the UPS system is installed.

Depending upon the stand-by time required, the battery of particular capacity is used.

11. UPS system could be off-line or on-line, but in both battery is an integral and an indispensable part. It provides "uninterrupted" character to the system. Off-line

UPS system is in the nature of stand-by equipment, while in on-line system, even when the main line is on, the current passes through the system. In both the systems when the main line (different phases, in case of more than one phase in the existing line) fail, then without any interruption, the battery automatically takes over immediately, and when the current is restored, or the generator takes over then the battery automatically gives over to the main supply, or to the generator. The battery is thereafter recharged by means of a battery charger. The battery charger forces electrons through the battery in a direction opposite to that of the discharge process. This action reverses the chemical reactions that occur when a battery discharges. The reversed reactions of the charging process restore the electrode materials to their original form. They also increase the amount of sulphuric acid in the electrolyte to a satisfactory level. After a battery has been charged it can again produce current. Stand-by generator is not substitute for UPS system, as the stand-by generator cannot take over the power supply automatically as is done by the UPS system of which battery is an integral part. The battery is interconnected using metallic links and is connected to the UPS equipment by means of cables generally planted underground (refer annexure 'A' of written submissions).

12. There are many types of off-line UPS systems; most of them offer protection only against power failure, while few of them may also offer protection against spikes, surges, line noise and high and low voltages. On-line UPS isolates the attached equipment from the power line. Batteries are always kept fully charged and during a power loss, no switching is needed, and thus no interruption takes place.

13. According to the "Standard hand-book for electrical engineers - 11th edition by Fink and Beaty" (McGraw Hill Book Co. page 28-5,) in the UPS system a battery supplies power to the inverter when the AC power-source is interrupted upto several minutes. Battery typically uses lead calcium cells and usually are selected to provide full load power for 10 minutes.

14. The adjudicating Collector of Central Excise has observed as under : "UPS stands for uninterrupted power supply system and as the very name indicates,

without the battery being linked with the UPS system, the system will fail to sustain as a source of uninterrupted power supply. The system constituted without a reliable DC system and the battery ceases to be an uninterrupted power supply system.

During the failure of the AC supply source, the existence of the uninterrupted factor is possible only because of the battery part of the system." 15. In the case of *Texmaco Limited v. CCE*, 1992 AIR SCW 2020 the Hon.

Supreme Court have observed that the value of the article was the full intrinsic value of the article inclusive of the cost of the materials and components supplied free by the customer, and irrespective of the fact that no expenditure was incurred by the manufacturer on such components. The Hon. Supreme Court added that the assessable value would take into account the full commercial value.

16. The nexus with the manufacturing activity of the assessee while assessing the final product in which bought out items are used may not be a relevant criteria in all cases. In fact in so many items what the manufacturers are engaged in is the assembly of the various bought out items to bring into existence a new excisable commodity.

17. In the case of *Kirloskar Brothers v. UOI*, 1992 AIR SCW 1324 the appellants carried on business of manufacturing power Driven Pumps and mono-block pumps. For manufacturing mono-block type power Driven pump sets, and power Driven pumps, they were purchasing electric motors from another company. Although the matter related to the old Section 4, the general observations of the Hon. Supreme Court that "the value of the excise duty paid on the electric motor is not deductible while arriving at the assessable value under Section 4(a) of the Act", are relevant.

When even the excise duty paid on the components was includible in the value of the article concerned, where could be the question of exclusion of the value of such component for the purposes of assessing the article of which it was a component.

18. In the case of Name Tulaman Manufacturers Pvt. Ltd. v. CCE, 1988 (38) E.L.T. 566 (SC) the weigh-bridges consisted of three different parts namely, (1) Platform (2) Load cells, and (3) Indicating system.

The appellant in this case only made the indicator system. He got manufactured the platform from other people, and the load cells were imported. The three components were brought together at site, fitted and assembled together to work as one machine. The Hon. Supreme Court rebutted the contention that as a part of machine was liable to duty, the whole end-product should not be dutiable as separate excise goods.

19. By including the value of the component - battery - while assessing the assessable value of the UPS system, it is not the battery as such which is being charged to duty, but the UPS system of which the battery is an essential component. It will make no difference to the levy on the final product as to whether component is entitled to exemption or not. In fact, there are many such exemption notifications in the Central Excise Tariff which provide exemption to specified parts/components, subject to the condition that the finished products in which they are used, are dutiable. [refer exemptions relating to original equipment (OE)].

20. Accordingly, the appeal is hereby rejected, and the impugned order is confirmed.

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