Collector of Central Excise Vs. Ece Industries Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-26-1994

Reported in : (1995)LC115Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Ece Industries Ltd.

Judgement :

1. This appeal is filed by the department and directed against the order of Collector of Central Excise (Appeals), Ghaziabad, dated 9-8-1993. Shri A.K. Singhal, the learned DR appearing for the department submitted that the issue arising for determination in the appeal are with reference to include the assessable value of the expenditure incurred by the respondents in regard to (i) Staff Colony expenditure, (ii) expenditure incurred on Research & Development and (iii) expenditure relating to abnormal wastage. While the learned DR commenced his submissions with reference to the includibility of the expenditure on staff colony expenses, Shri V. Sridharan, the learned Counsel for the respondents submitted that the respondents are not contesting this plea appealed against. Therefore, the plea of the learned DR for includibility of this expenditure is upheld.2. In regard to the wastage, the learned DR contended that the Collector (Appeals) has worked out 50% without giving any basis as to how he arrived at the quantum. The learned DR submitted that in principle it is not disputable that wastage forms part of the assessable value. The learned Collector (Appeals) while restricting the same to 50%, should have given the precise reasons and basis for arriving at this

percentage. In the absence of any data and precise reasons this finding should be set aside and the matter remitted. At this stage, Shri Sridharan, the learned counsel for the respondents submitted that the respondents have filed a cross appeal contending that even 50% includibility of the wastage expenditure is not sustainable either in law or on facts of this case.

3. The learned DR further urged that so far as the expenditure under the Heading R & D is concerned, he has restricted the includibility to only 33-1 /3 % of the expenditure and the reason given in the impugned order is that the respondents are manufacturing only one type of elevator ACVV on the basis of collaboration agreement with Toshiba Company of Japan and total expenditure under the R & D Expenditure was incurred in respect of manufacture of two types of elevators, namely, ACVV and DCGL elevators. Even if the respondents are not manufacturing DCGL elevators, the R & D expenditure incurred on this score also would be includible in the assessable value and the reasons for excluding the same in the impugned order are not acceptable.

4. Shri V. Sridharan, the learned counsel for the respondents submitted that so far as the abatement given incurred R & D expenditure, the reasoning of the learned Collector (Appeals) in the impugned order has to be accepted because even the original authority, namely, the Assistant Collector of Central Excise in his order dated 9-8-1993 has held that the respondents have accepted 50% of the total advances as includible to form part of manufacture. This part of the finding was not appealed against or made a grievance in the appeal. The learned Counsel further submitted that when the department is not disputing the fact that the respondents are not manufacturing DCGL elevators any expenditure incurred towards R & D in respect of the same would not become includible as cost of production of other elevators namely ACVV.5. We have considered the submissions made before us. So far as the expenditure includible under the heading 'staff colony expenditure' is concerned the respondents are not contesting the issue; therefore, the plea of the learned DR is upheld and the impugned order stands modified accordingly.

6. In regard to the expenditure under the heading 'abnormal wastage', on going through the records and on consideration of the pleas urged, we are inclined to

agree with the plea of the learned DR that precise reasons have not been given as to how and on what basis the percentage was worked out. Therefore, without expressing any opinion on this issue, we set aside that point of the order and remand the same to the Adjudicating Authority for reconsideration in accordance with law with a liberty to the respondents to put forth all contentions available to them under law and both the sides are at liberty to adduce evidence before the said authority.

7. So far as the expenditure includible under the heading 'R & D expenditure' is concerned the learned Collector (Appeals) in dealing with this issue has observed as under :- "However, the party could not supply any chart proving that parts & components manufactured by them consists only 40% of the total contract value of lift. In the absence of that I consider 50% of the advances pertaining to the parts & components manufactured by them and accordingly notional interest on 50% of the total advances is liable to be included in the assessable value as a part of manufacturing cost of parts & components of lift." Taking note of the facts that admittedly the respondents are not manufacturing DCGL type of elevators and for the reasons given in the impugned order by the Collector (Appeals), extracted above, we are inclined to think that the reasons are acceptable. In this view of the matter, we uphold the finding of the impugned order in terms of the impugned order.

7A. In the result, the appeal stands disposed of as indicated above.

The appeal is remanded for reconsideration of the issue as indicated above.

8. The appeal is thus partly allowed in favour of the department and partly remanded.