

Hindustan Development Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-08-1995

Reported in : (1996)(85)ELT58TriDel

Appellant : Hindustan Development

Respondent : C.C.E.

Judgement :

1. These are two appeals filed by M/s. Hindustan Development Corporation Limited against orders dated 21-6-1989 and 15-6-1989 passed by Additional Collector of Central Excise, Calcutta-1 Collectorate holding that they were liable to pay duty on the goods manufactured by them namely, Railway Points and Crossing after including in the assessable value the inspection charges paid by their customers, Railways to M/s. Rail India Technical and Economic Service Limited (RITES). As the appellants had not included such inspection charges in the assessable value of their products and had not disclosed the same in their Price Lists and suppressed the fact that inspection charges would be paid by the Railway Board, the extended period under Section 11A of Central Excises and Salt Act, 1944 was held to be correctly applicable. Accordingly duty demands of Rs. 1,07,277.56 and Rs. 1,37,599.03 were confirmed by him in the two adjudication orders. As the issue involved in both the appeals is common and they were argued together by both the sides, we are passing this common order.

2. Shri K.K. Kapoor, learned Consultant appeared for the appellants. He submitted that the matter stands covered by Tribunal decisions in the following

cases: General Engineering Works, Bharatpur v. Collector of Central Excise Shree Pipes Ltd. v. Collector of Central Excise (3) 1993 (63) E.L.T. 151 - G.E.C. of India Ltd. v. Collector of Central Excise.

Shri Kapoor stated that the first case related to the identical issue of inspection charges paid by the customers, viz., Railways to RITES for testing of the goods manufactured by the appellants therein. The second decision above which related to M/s. Shree Pipes Ltd. has been upheld by the Honourable Supreme Court in 1992 (62) E.L.T. A51. The third case mentioned above involved the question of Testing Charges for tests carried out at the instance of the buyers. It had been held that such charges cannot be included in the assessable value. Shri Kapoor also made an alternate plea that the notices which had led to the impugned adjudication orders largely related to a period beyond six months and hence were barred by limitation. He concluded his arguments with the plea that the appeals be allowed.

3. Shri B.K. Singh, learned Senior Departmental Representative opposed the contentions raised by Shri Kapoor. He stated that the Tribunal decisions in the case of General Engineering Works relied upon by him and which related to similar goods supplied to Railways where testing charges had been paid by RITES by Railways had not specifically examined the issue involved but had only followed the earlier decision in the case of Shree Pipes. In the circumstances, it is the latter decision that has to be examined to see whether the present case is comparable to it. Shri Singh contended that the Shree Pipes decision turned on its own facts which are different from the present case. In that case the issue related to additional testing charges conducted by DGS&D at the request of specific customers, such cost of testing being borne by the customers. He read out para 9 of said decision. Shri Singh then submitted that as against such a position that obtained in the said case, in the present case the tests carried out by RITES is not in addition to the tests and inspections that were carried out by the appellants themselves. Where such tests carried out by RITES were in lieu of the tests to be carried out by the manufacturers themselves, such tests and inspections are part of the manufacturing process and their cost is includible in the cost of manufacture of the products in question. Without such tests the goods were not marketable and

Railways would not buy the goods without tests. The special testing enhances and enriches the value of the goods and in view of the Supreme Court judgment in Bombay Tyre International Ltd. - 1983 (14) E.L.T. 1896 such charges would form part of the value of the goods. He also relied upon the decision in Madhavanagar Cotton Mills v. Collector of Central Excise, Pune reported in 1986 (25) E.L.T. 443. He pleaded that the impugned orders be upheld and the appeals dismissed.

4. We have considered the submissions. We have gone through the appeal and the decisions cited. We find that the issue involved stands covered by the Tribunal decisions in the case of Shree Pipes Ltd. and G.E.C. of India Ltd. Shri Singh, learned Senior Departmental Representative had sought to distinguish the present case from the Shree Pipes case on the ground that the tests and inspections carried out in that case by DGS&D were over and above the normal tests carried out by the manufacturers and were done at the specific instance of the buyers which he contended was not the case here. His submission was that the tests carried out by RITES in the present case were the only tests and were in lieu of the tests which should have been carried out by the manufacturers themselves. We find that this contention goes against the one raised by the appellants in the appeal. They had stated in their appeals that after fabrication of the points and crossings at their factory, the same are inspected by their own Inspection Team and after their Inspection Team is satisfied with the goods, informations are given to RITES about the goods lying at their factory in fully manufactured condition and the same being ready and available for inspection by RITES. They had enclosed one specimen copy of such an intimation to RITES. We find on a perusal of the same that it was certified therein that the stores offered had been inspected by them and found to conform to the governing specifications. We are satisfied that the contention raised by the appellants stands to reason. There is also no evidence to the contrary to support the contention raised by Shri Singh, learned Senior Departmental Representative during the hearing of the appeal that the tests and inspections by RITES are the only inspections and the manufacturers had not carried out any such inspection earlier and the RITES inspection was in lieu of the inspection by the appellants themselves. No manufacturer would also simply manufacture such goods to be supplied to the Railways where the safety of railusers will be of primary concern without any tests by themselves. The

documentary evidence put up by them bears out the actual position and supports their contention. Because of the safety factor, the Railways apparently want to reassure themselves about the quality of the goods and had entrusted the work of additional tests to the specialised agency, RITES which is also under the Ministry of Railways. Such tests are carried out at the instance of the Railways, the buyers and the expenses incurred therefore are not part of the manufacturing cost. The present case is fully covered by the Tribunal decision in the Shree Pipes case which has also been upheld by the Honourable Supreme Court. In the circumstances, we set aside the impugned orders and allow the appeals.

5. As the appeals are allowed on merits, we have not considered the alternate plea raised by the appellants about the extended period beyond six months being not available to the department for issue of the show cause notices.

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