

Arun Engineering Vs. Commissioner of Central Excise, Chennai

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Chennai

Decided On : Apr-05-2011

Judge : The Honourable Ms. Jyoti Balasundaram, Vice-President & the Honourable Dr. Chittaranjan Satapathy, Technical Member

Appeal No. : Appeal No.E/435/2004 [Arising out of Order-in-Appeal No.49/2003 (M-IV) dt. 17.12.2003 passed by

Appellant : Arun Engineering

Respondent : Commissioner of Central Excise, Chennai

Advocate for Pet/Ap. : For the Appellant: R. Parthasarathy, Consultant. For the Respondent: T.H. Rao, SDR.

Judgement :

Per Jyoti Balasundaram

1. Duty demand of Rs.49,681/- together with interest by inclusion of the amortized cost of repair/service charges of moulds supplied to the assesseees, manufacturers of plastic caps and lids of containers, by Hindustan Lever Ltd. and penalty of Rs.1000/- imposed on the assesseees stand challenged in the present appeal.

2. We have heard both sides. It is the contention of the appellants that repair charges incurred long after inclusion of amortized cost of the moulds supplied free of cost by Hindustan Lever Ltd. cannot be construed as cost of the moulds and

therefore cannot be included in the cost of moulds so as to arrive at the amortized cost. We find that the adjudicating authority has decided the case ex-parte without recording any findings on the merits of the demand and the lower appellate authority has also not recorded any independent finding on merits except stating that, after the examination of case records and submissions, he is of the considered opinion that the repair charges are includible for the purpose of arriving at “amortized cost” and then extending the benefit of treating the total amount realized as cum duty price. Since there is no finding on the merits of the demand by either of the authorities below, interest of justice require that impugned order be set aside and the case remitted for fresh decision to the adjudicating authority who shall pass fresh orders after extending reasonable opportunity to the assessee of being heard in their defence. We order accordingly.

3. The appeal is thus allowed by way of remand.

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