Akasaka Electronics Ltd. Vs. Commissioner of C. Ex.

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SooperKanoon Citation : sooperkanoon.com/9742

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-11-1996

Reported in : (2000)(115)ELT817Tri(Mum.)bai

Appellant : Akasaka Electronics Ltd.

Respondent : Commissioner of C. Ex.

Judgement :
1. Duty of Rs. 9.78 lakhs and penalty of Rs. 1.50 lakhs has been demanded and imposed was relevant on findings in the Commissioner's order that the assessee did not include in the assessable value of printed circuit boards manufactured by it the cost of tooling which had been developed for such manufacture, and suppressed such non-inclusion.

2. The Advocate for the applicant contends that it is not possible to establish any clear relationship between the cost of the tooling and the number of items manufactured. He relies upon the interim order of this Tribunal reported in Automotive Axles Ltd. v. C.C.E. - 1995 (79) E.L.T. 275 and the observations in an earlier decision.

3. The Deptartmental Representative contends that these two decisions are distinguishable because in one case there had been no manufacture and in the other case the cost of tooling had been included. Neither of these two decisions have been satisfied in the present case.

4. The issues involved in this appeal are arguable. We do not find a prima facie case in favour of the applicant. We, therefore, order that the duty be secured by bank guarantee to be submitted before the Commissioner within two months from orders. On this being done waiver of pre-deposit of the penalty is granted and its recovery stayed.