

**Collector of C. Ex. Vs. Statfield Systems (Coating) Pvt.**

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

**Decided On :** Jul-17-1996

**Reported in :** (1996)(87)ELT510TriDel

**Appellant :** Collector of C. Ex.

**Respondent :** Statfield Systems (Coating) Pvt.

**Judgement :**

1. These Revenue appeals are directed against the common Order-in-Appeal No. HN-47 & 48/PN-8 & 9/87, dated 25th February, 1987 of Collector of Central Excise (Appeals), Bombay.
2. The issue relates to admissibility of otherwise of exemption under Notification No. 105/80 in the light of charges incurred on drawing, designing, erection/commissioning charges of plant, bought out items, packing and forwarding charges and surcharges.
3. The Collector (Appeals) held that primarily the respondents undertake setting up industrial paints shops on turnkey basis where the removal takes place at the customers site. For setting up all these paint shops the respondents also procure bought out items from others and which are fitted at the site during the course of erection. The Assistant Collector's finding that the value of the bought out items and charges like erection charges, commissioning charges etc. have to be taken into consideration while determining the value of clearances under Notification No. 105/80 is not correct. The industrial paint shops is erected on turnkey from the

goods manufactured by the respondents and also from the bought out items which are removed to the site of erection. It is permanent in nature and therefore, while determining the eligibility of Notification No. 105/80, the value of bought out items and erection/commissioning charges which are incurred separately cannot be taken into account. The Collector (Appeals), therefore, set aside the order of the Assistant Collector and allowed the appeals of the respondents. Hence these Revenue appeals.

4. Arguing for the Revenue the Learned DR submits that the value of bought out items has to be included in the value of the goods supplied and in this connection he cites the case of Collector of Central Excise v. Indoprint Enterprises, 1988 (36) E.L.T. 513 (Tribunal). Drawing attention to annexure to the show cause notice he says that charges relating to commissioning, erection, designing, drawing, surcharge and bought out items had not been included while determining the eligibility limit for exemption under Notification No. 105/80 and therefore, demands have been rightly confirmed.

5. The Learned Advocate on behalf of the respondents submits that the bought out items were fitted during the course of fabrication at site and have no relation to the goods removed from the factory. Erection and commissioning charges cannot be included in determining the value since the paint shop which is set up at site cannot be considered goods as it is permanently fixed to the earth. Erection and installation is post manufacturing activity and is no way related to manufacture of goods which attracts duty. He submits that in the Revenue appeal technical know-how and royalty have been indicated but show cause notice does not give any bifurcation of the amounts. The expenditure on account of designing and engineering related to designing of the plant as such and not designing of goods. He however, is unable to indicate in regard to packing and forwarding charges, how much was incurred for movement of goods upto factory gate and what is the nature of other item "surcharge" shown in the show cause notice.

7. It is now well settled position that charges incurred on erection and commissioning cannot be added to the value of the goods. In the case of Quality Steel Tubes (P) Ltd. v. Collector of Central Excise, 1995 (75) E.L.T. 17 (SC), the

Hon'ble Apex Court held that plant and machinery embedded to earth, structures, erections and installations are not excisable goods since they do not pass the twin test of a being capable of being brought to the market for sale. In the case of Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. v. Collector of Central Excise, 1993 (65) E.L.T. 121 (Tribunal), the Tribunal held that evaporator J Plant built on cement concrete foundation and permanently laid and embedded in the ground is immovable property and not goods. Assembly, erection and commissioning thereof does not amount to manufacture. In the case of I.A.E.C. Bokers Pvt. Ltd. v. Collector of Central Excise, 1990 (48) E.L.T. 388 (Tribunal), the Tribunal held that fabrication of steel work and sheet roofing at the site of customer not being manufacture, duty not chargeable thereon but only on materials manufactured and cleared from factory for use in such fabrication and erection. In the case of Collector of Central Excise v. Radiant Electronics Ltd., 1996 (85) E.L.T. 102 (Tribunal), the Tribunal held that installation and commissioning of EPABX (Private Telephone Exchange) being post-manufacturing expenses are not includible in the assessable value of EPABX so long as such erection charges are realised separately depending upon the work done.

8. Erection and commissioning charges, therefore, in our view cannot be added to the value of the goods cleared from factory for fabrication of plant at the customers site.

9. We also find that the case of Indoprint Enterprises cited by the Learned DR is distinguishable. In that case what was supplied was a part of the machinery as a bought out item. Manufacturers supplied complete manufactured goods to the customer and it was sale value of the bought out item cleared by the respondents during the relevant period. In the case of Radiant Electronics Ltd., the Tribunal held that when bought out items are supplied besides manufactured articles value of such bought out items is not includible even if they are essential for the operation of manufactured goods provided they are not fitted or attached to the goods before clearance and no process is undertaken on such bought out items. Here the submission made before us is the bought out items are actually used in the fabrication of the plant at site. In our view, therefore, the value of these bought out items is not includible and we ordered accordingly. In regard to other items like

packing and forwarding charges, surcharge and designing and drawing charges as indicated in annexure to the show cause notice placed at Page 25 of the paper book, we find no findings as such have been given by the Collector (Appeals). It is contended before us by the Learned Advocate that drawing and designing charges do not relate to the goods as manufactured in the factory but relate to designing of plant as such which is built at customer site. If the designing and drawing charges do not pertain to goods as are removed from the factory their value cannot be included in the value of the goods for the purpose of determining eligibility to exemption.

9.1 The show cause notice has not indicated the break up of packing and forwarding charges. Charges incurred on account of packing have to be included in the assessable value. Charges moreover, incurred on account of handling and forwarding the goods upto factory gate alone are includible in the assessable value. No break up has been indicated in the annexure to the show cause notice. Similarly, nature of surcharge which is shown in Column 5 of the annexure is not clear nor is the Learned Advocate has fairly conceded by him, able to enlighten us as to the nature of this surcharge which was received by them.

10. We also find that no finding in regard to the plea of time bar has been given. We find that show-cause-notice dated June 26,1984 covers period for 1-1-1982 to 31-3-1984. The show-cause-notice does not, while invoking extended period, specifically state the ingredients which would justify extended period. In order to sustain demands under extended period show-cause-notice must specifically put on notice the respondents as to which of the acts of omission or commission he has committed to attract extended period. In the absence of this specific notice demand for extended period is not sustainable and we hold accordingly. Since as already indicated there is no bifurcation of packing and forwarding charges nor is any indication in regard to nature of surcharge, we are of the view that findings on these two items would have to be arrived at by the original authority only, since no material as such is before us. We, therefore, remand this matter on this limited aspect relating to packing and forwarding charges and surcharge only and direct that after ascertaining the nature of these items of expenses he should pass de novo order in accordance with law and in the light of observations made by us

about the other items of expenditure indicated in annexure to the show-cause-notice and also record the finding in regard to time bar again in the light of observations made by us. He shall thereafter pass fresh order in accordance with law and after observing principles of natural justice.

The respondents shall be at liberty to produce such additional evidence before the original authority as they consider would support their case. The appeals are disposed of in these terms.

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