

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

West Block No. 2, R.K. Puram, New Delhi - 110 066.

Date of Hearing/Order : 15.10.2014

Appeal No. E/457/2006-EX(DB)

[Arising out of Order-in-Appeal No. 142/RPR-I/2005 dated 17.11.2005 passed by the Commissioner (Appeals), Customs & Central Excise, Raipur]

For Approval & Signature :

Hon'ble Mr. Justice G. Raghuram, President

Hon'ble Mr. R.K. Singh, Member (Technical)

1. Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?
2. Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?
3. Whether their Lordships wish to see the fair copy of the order?
4. Whether order is to be circulated to the Department Authorities?

CCE, Raipur

Appellant

Vs.

Surya Alloys Industries (P) Ltd.

Respondent

Appearance:

Shri M.S. Negi, A.R.

- for the Appellant

None

- for the Respondent

Coram : Hon'ble Mr. Justice G. Raghuram, President

Hon'ble Mr. R.K. Singh, Member (Technical)

F. Order No. 54145/2014

Per R.K. Singh :

None present on behalf of the respondent

2. The Revenue has filed this appeal against the Order-in-Appeal No.142/RPR-I/2005 dated 17.11.2005 which set aside the Order-in-Original No. 28/Dem/Adj/Bil/2005 dated 12.4.2005. In terms of the said order-in-original a duty demand of Rs.27,724/- was confirmed along with interest and equal mandatory penalty.

2. The respondents supply "Inserts" to Railways or to other parties on behalf of the Railways. Before supplying the said goods they have to get them inspected by RITES. The respondents had been paying inspection charges to RITES and recovering the same from their customers. But the said charges were not included in the assessable value. The original adjudicating authority held that the said charges were includible in the assessable value and hence the impugned demand along with interest and penalties. The Commissioner (Appeals) set aside the said order-in-original holding that such charges are not includible in the assessable value. The Commissioner (Appeals) essentially relied on various judgements which held that the cost of additional and secondary inspections carried out at the request of the buyer and for which buyer has to pay are not includible in the assessable value.

3. Revenue filed this appeal on the ground that the Commissioner (Appeals) has incorrectly held the inspection by RITES to be additional /secondary inspection and that the inspection by RITES was not optional. The Revenue further asserted that the issue is fully covered by CESTAT judgement in the case of Hindustan Gas & Industries Ltd. Vs. CCE, Baroda - 2001 (133) ELT 481 (Tri-Mumbai).

4. We have considered the matter. It is seen that sale of "Inserts" was to Railways or to others on behalf of Railways and inspection by RITES was a necessary condition of sale. It was not in the nature of secondary or optional inspection and therefore the Commissioner (Appeals) was not right in holding the inspection charges to be not includible in the assessable value on that ground. As a matter of fact, the said goods could not be sold without the said inspection by RITES and therefore cost of inspection is clearly includible in the assessable value under Section 4 of the Central Excise

Act, 1944. The need for an elaborate discussion on this issue is obviated in the wake of the CESTAT judgment in the case of Hindustan Gas & Industries Ltd. (supra) which covers an identical issue in identical circumstances. The said judgement having considered the judgements in the case of Shree Pipes Ltd. Vs. CCE - 1992 (59) ELT 462 (T) and in the case of Hindustan Development Corpn. Ltd. Vs. CCE - 1996 (85) ELT 58 (T) which were referred to by the Commissioner (Appeals) came to a clear finding that the impugned charges were includible in the assessable value. Para 4 and 5 of the said judgement are quoted below :

4. *It is settled law that charges paid for inspection or testing by a third party at the option of the buyer cannot form part of the assessable value. This is because such inspection or testing inspections has nothing to do with the marketability. In cases where the buyer does not opt for inspection by a testing agency, the same goods have become marketable without it. The position would be different in a case where every buyer insists upon such inspection by a testing agency. In that case, the goods cannot be sold till that inspection takes place. In no case can the appellant sell the goods without testing by RITES. The inserts manufactured by the appellant cannot be sold unless they are tested and approved by RITES. They therefore do not become marketable till that such testing takes place. As we have seen, it is the buyer who pays the testing charges to the appellant. It is contended that the buyer is in turn reimbursed these charges by Railways. We have to keep in mind that the sleeper manufacturers sell, not inserts themselves, but sleepers, fitted with the inserts. As far as the appellant is concerned, it recovers, in every case, the charges for inspection from its buyers, the Railways or the sleeper manufacturers. The costs incurred for such testing would therefore form part of their value.*

5. *This aspect, the absence of optionality and the existence of every buyer insisting upon tests by RITES do not appear to have been present in Hindustan Development Corporation v. C.C.E.. In that case, the Tribunal has recorded a finding of the fact that the inspection charges were paid, not by the manufacturer, but incurred by the Railways, the only buyer. The ratio of that judgment, and of the judgment in Shree Pipes, would not apply to the facts before us.*

5. In view of the foregoing, we allow the Revenue's appeal and set aside the impugned order.

(Justice G. Raghuram)

(R.K. Singh)

President

Member (Technical)

