

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/3981/2004 WITH C.O.11/05,4036 &6224/2004 - EX[DB]

Date 09/01/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. DELHI-I

THE COMMISSIONER OF CENTRAL EXCISE, DELHI I
& II, CENTRAL REVENUE BUILDING, I.P. ESTATE,
NEW DELHI.

C.C.E. DELHI-I

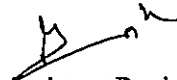
M/S REALTIME SYSTMES LTD.

Appellant

Vs
Respondent

EX[DB] dated 01-01-09

I am directed to transmit herewith a certified copy of Final order No. 21-23/2009-
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

M/S REALTIME SYSTMES LTD.

M/S REALTIME SYSTEMS LTD., A-235, OKHLA INDUSTRIAL AREA, PHASE-I NEW DELHI. -20

2. Adv. / Consult

SH. R. C. VACHHER, ADV.,
113, NAVJEEVAN VIHAR,
N. DELHI-17

3 S.D.R

~~4 I.C.D.R~~

5 Bar association, CESTAT, New Delhi

6 M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017

7 M/s Centax Publications (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3

8 Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)

9 Raghuraman's 44-B, Regal Flat, Shipra Suncity, Indirapuram - 201010, Ghaziabad, DT, U.P.

10 Nidheshak publications, I.P.Estate, new Delhi

11 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026

12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar, Chennai

13 Taxindiaonline.com Pvt.Ltd, B-XI/8183, Vasant Kuni, New Delhi - 110070

14 Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

15 Office Copy

16 Guard file


Assistant Registrar
(Excise Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi - 110 066.
Principal Bench, New Delhi**

COURT NO. II

**Excise Appeal Nos. 3981 of 2004 with C.O. No. 11 of 2005 and
Excise Appeal Nos. 4036 & 6224 of 2004**

CCE, Delhi - I

Appellant
[Shri S. Shah, Auth. Rep. (DR)]

Versus

M/s Real Times Systems Ltd.

Respondent
[Shri R.C. Vachher, Advocate]

and vice-versa

**CORAM : Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Rakesh Kumar, Technical Member**

DATE OF HEARING : 02/12/2008.

FINAL Order No. 21-23/09-09 Dated : _____

Per. D.N. Panda :-

1. Revenue is in appeal in case No. 3981 of 2004 contending that the order passed by the learned Adjudicating Authority is proper in imposing the levy on both the ^{following} counts :

(1) adding installation charge of Rs. 22,11,427/- to the assessable value and (2) taxing the inputs used in the computer.

The second cause gave rise to duty demand of Rs. 76,800/- (Rupees Seventy Six Thousand Eight Hundred only) is for use of the goods in the computer supplied. Learned Commissioner (Appeals) granted relief to the Appellant on first count. Learned DR submits that the work order of the Telephone Authority itself shows that a composite contract was executed by the Respondent, involving supply and service. When such

contract is executed, exempting installation from duty is inconceivable, and the amount of Rs. 22,11,427/- (Rupees Twenty Two Lakhs Eleven Thousand Four Hundred Twenty Seven only) should be included in the assessable value. The respondent had also deducted 8% of the contract value for maintenance. Learned Appellate Authority below without proper examination of the facts which emerge out of the purchase order held that the installation and commission charges shall not form part of assessable value. This is erroneous.

2. The Assessee is in appeal in Appeal case No. 4036/2004 against duty demand of Rs. 76,800/- (Rupees Seventy Six Thousand Eight Hundred only) with equal amount of penalty. There is also cross objection by Assessee against appeal of Revenue. Assessee's appeal in appeal case No. 6224 of 2004 is against penalty of Rs. 1.00 lakh (Rupees One Lakh only) imposed on Shri A.C. Khare, Managing Director of Appellant Company.

3. Learned DR further submits that the duty demand of Rs. 76,800/- (Rupees Seventy Six Thousand Eight Hundred only) on supply of computers components being an integral part of computer supplied by Appellant that should be rightly be brought to levy to duty.

4. Learned Counsel Shri R.C. Vachher appearing on behalf of Respondent in appeal case No. 3981 of 2004 and for Appellants in appeal case Nos. 4036 of 2004 and 6224 of 2004 relying on the judgment of Tribunal in the case of **Carrier Aircon Ltd. vs. CCE, Delhi - III** reported in **2003 (110) E.C.R. 348** and in the case of **Rockwell Automation India Pvt. Ltd. vs. CCE, Ghaziabad** reported

in **2008 (86) R.L.T. 797 (CESTAT - Del.)** submits that commissioning and installation charges as well as training charges are beyond the scope of levy of duty. He has submitted a bunch of copies of the invoices which goes to say that there was a separate charge for realization of service charges towards training, installation and maintenance charges. Relying on such invoices, he pleads that the charges so collected separately and not related to manufacture shall not form part of assessable value.

5. So far as the appeal of the respondent registered as appeal case No. 4036 is concerned, his submission is that they are on the limited issue of levy of duty of Rs. 76,800/-. This amount was levied erroneously presuming that bought out items were also manufactured goods and supplied with computers manufactured by the Appellant and held to be part of assessable value. Learned Commissioner without examining such aspect of bought out item directed levy of duty to the extent of Rs. 76,800/- and penalty of that amount.

6. Heard both the sides in appeal case No. 3981 of 2004 filed by revenue and appeal case No. 4036 of 2004 filed by the assessee. We have gone through the respective invoices copies filed by the assessee and also looked into the purchase order placed by the General Manager, Telephones, Delhi. The purchase order clearly shows that that was for supply of HDSL 3 Pair (Pair Gain). Details of the goods are embodied in "Annexure - A" to the purchase order dated 03/10/01. The annexure clearly shows that the goods were to be delivered as the goods only. The service contract of installation can be gathered from the warranty clause under para 7 of the purchase order. When the goods were cleared, there is nothing on record of revenue to show that

above goods were cleared with the value of services included in the clearance invoices. Therefore, the documents relied upon by both the sides in the whole case throws light that the contract entered into between assessee and Mahanagar Telephone although was a composite contract, there was clear divisibility of supply and service, ^{by} a thorough reading of the purchase order.

7. In view of aforesaid reasons, we are of the view that the services agreed by the purchase order was distinct from the value of the goods and the services rendered by bunch of invoices ^{were} in respect of training, installation and maintenance charges. These are independent of each other. Therefore service not being manufacture was not goods and not liable to duty. We also find the decisions of the Tribunal cited by the learned counsel are coming to rescue of Respondent.

8. In the result we dismiss the appeal of Revenue against grievance of ^{no} levy of duty of Rs. 22,11,427/- (Rupees Twenty Two Lakhs Eleven Thousand Four Hundred and Twenty Seven only) ^{held by learned Commissioner (A)} and confirm the demand of levy of Rs. 76,800/- on computer items in absence of any evidence adduced by the assessee to show that those were distinctly supplied goods without being integral part of computer system. Accordingly assessee's appeal on the grievance of duty of Rs. 76,800/- and penalty of equal amount is dismissed and ^{we} confirm the first Appellate order ^{on such issue -}. The cross objection of the assessee calls for dismissal in view of our above said order and we do so.

APPEAL CASE NO. 6224 OF 2004

Learned counsel Shri R.C. Vachher appearing on behalf of appellant submits that the appeal before the learned Commissioner was

within time since the day of communication to the aggrieved Mr. Khare was 27/06/2004. But the Appellate Authorities finding such date to be 13/12/03 erroneously dismissed the appeal holding that to be time barred. The erroneous finding ^{has} caused injury to the aggrieved since ^{should} only the appellant under Section 35 of the Central Excise Act, 1944. The aggrieved had the knowledge about injury caused to him by the impugned order on 27/06/2004. Learned Commissioner (Appeals) relied on the letter dated 13/08/04 issued by the Deputy Commissioner and concluded that when the order was not served on the aggrieved that should have been returned to the Adjudicating Authority. Therefore, the appeal suffered from bar of limitation. But this is unjust and unreasonable.

2. Learned DR appearing supported the order passed by the learned Commissioner (Appeals). He submits that Mr. Khare who was imposed with penalty, loosing his appeal before the learned first Appellate Authority did not prefer appeal before Tribunal. Therefore, the assessee M/s Real Times Systems Ltd. who has not aggrieved for imposition of penalty on Mr. Khare, had no locus standi to seek appeal before Tribunal. To this objection of revenue, learned counsel appearing on behalf of appellants submits that Mr. Khare not being in service, the assessee preferred appeal on his behalf. He also submitted that the penalty of Rs. 1,00,000/- (Rupees One Lakh only) was deposited by the company on behalf of Mr. Khare.

3. Heard both sides on this appeal and perused the records.

4. We have gone through provision of Section 35B of Central Excise Act, 1944 which confers right to an aggrieved to appeal before

Tribunal. We are unable to find from the submission from the learned counsel ^{as to} how the assessee was aggrieved by the appeal order passed by the learned Appellate Authority. Therefore without going into the question of limitation which was subject matter of the first Appellate Authority's order, we are satisfied that this appeal calls for dismissal. Accordingly, we dismiss this appeal.

(Dictated and pronounced in open court)

(D.N. Panda)⁰¹
Judicial Member

(Rakesh Kumar)
Technical Member

PK