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

Appeal No. E/4542/2004 - EX[DB] Date 13/02/2009

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

To :
M/S INDIAN SUGAR & GENERAL ENGINEERING CO.
YAMUNA NAGAR, HARYANA
135001

M/S INDIAN SUGAR & GENERAL ENGINEERING CO. Appellant
Vs
C.C.E. FARIDABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 122/2009- **EX[DB]** dated 11-2-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
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3 S.D.R
~~4 J.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 Publictions (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 Kunj, New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
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Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
BENCH – Excise
E/4542/04

(Arising out of Order-in-Appeal No.41-CE/Appl/Div.Ambala/CE/2002 dt.22.7.04 passed by Commissioner(Appeals), Faridabad)

M/s. The Indian Sugar & General Engg. Corpn. Appellant

vs

CCE, Faridabad Respondent

Coram : Hon'ble Mr. D.N.PANDA, JUDICIAL MEMBER
Hon'ble Mr. RAKESH KUMAR, MEMBER TECHNICAL

Appeared for the Appellant : Shri Ravi Raghvan, Adv.
Appeared for the Respondent: Shri C.S.Rajput,DR

Date of Hearing: 21.1.09
FINAL Order No. 122/09-Ex

Per D.N.Panda:

The only dispute in this appeal is that whether out of the design and engineering charges of US $ 2,80,000, an amount of 30,000 US $ already included in the assessable value of the excisable goods which is reactor, calls for addition of balance of US $ 2,40,000 to the assessable value of the reactor. The appellant was manufacturer of reactor for Gujarat Refinery of IOC which was to take place at the site of IOC at Vadodra. IOC awarded a Turnkey Contract to an Italian concern called Belleli Energy. In that turnkey contract, reactor was to be installed. This is patent from page 1&2 of the paper book filed by the appellant. Break-up of the value of entire turnkey contract as appearing at page 11 of the paper book was as under:

S.No.	Description	Value
15.1	Reactor R-02 alongwith spares	1,90,50,000.00
15.2	Stainless Steel Internals	36,50,000.00
15.3	Structural parts	3,50,000.00
15.4	Piping alongwith valves and accessories	20,00,000.00
15.5	Field and Control instruments	42,00,000.00
	Total :	2,92,50,000.00

The value of the reactor being Rs.1,90,50,000.00, the attributable design and engineering charges for manufacture the reactor was 40,000 US $ exhibited by page 18 of the paper book. Revenue conceded that entire drawing and engineering charges was 2,80,000 US$ as appearing at page 18 should be included in the assessable value of reactor.

2. Ld. Counsel Shri Ravi Raghvan appearing for the appellant submits that the other design and engineering charges exhibited by page 18 of the paper book do-. not relate to reactor. Therefore, the design and engineering charges which is pertaining to reactor only should form part of assessable value of the reactor itself. There is no dispute in the appellate order passed by the Commissioner(Appeals) that this appellant has been aggrieved for includibility of entire design and engineering charges as appearing at page 18 as stated above to the assessable value of the reactor. This is clear from page 35 of the appeal folder. He, therefore, submits that

following decisions of the Tribunal come. to the rescue of the Appellant:

1. Alfa Laval(India) Ltd. vs CCE, Pune
   1998(100)ELt.502(Tri.)

2. Anand Engineers Pvt. Ltd. vs CCE, Mumbai-IV
   2004(175)ELT.783(Tri.-Mumbai)

3. CCE, Bangalore vs Kirloskar Electric Co. Ltd.
   2005(182)ELT.334(Tri.-Bang.)

3. Ld. DR on behalf of Revenue submits that entire design and engineering charges as appearing at page 18 of the Appeal folder being relatable to the reactor, whole of the value of design and engineering should be included in the assessable value of the reactor in terms of Valuation Rules. He relied on the following judgments:

1. Elecon Engineering Co. Ltd. vs CCE, Baroda
   2000(124)ELT,762(Tri.)

2. Naveen Industrial Projects(P) Ltd. vs CCE, Meerut
   2001(137)ELT.385(Tri.-Del.)

3. Macawber Beekay Ltd. vs CCE, Noida
   2008(229)ELT.404(Tri.-Del.)

4. Rival submissions of both the sides required perusal of Rule 6 of the Valuation Rules,2000. Rules provide for inclusion of the value of Engineering, development, art work, design work and plans and sketches undertaken elsewhere than in the factory of production and necessary to the assessable value of such goods. The impugned order nowhere shows whether "such goods" relate to the reactor only. Therefore, the design and engineering activity exhibited by page 18 read with page 11 of the paper book do not bring the reactor with total value

addition into fold of law in absence of any evidence to show that the value of engineering charges to the tune of 2,40,000 US$ was deliberately segregated to avoid payment of duty. There is no evidence on record to show that the engineering and designing charges of 2,40,000 US$ relate to the reactor only by any means or strength of law. We are compelled to interpretate the word 'such goods' appearing in Rule 6 of Valuation Rules,2000 to hold that the drawing charges pertaining to reactor only shall be added to assessable value. Therefore, the appellants succeede and the appeal is allowed.

Order dictated in the open Court.

(D.N.Panda)
Judicial Member

(Rakesh Kumar)
Member Technical

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