CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 10.04.2018

Ex. RoA No. 50157 of 2018 and Ex. Appeal No. 1195 of 2008
(Arising out of Order-in-Appeal No. 53(RKS)/CE/JPR-I/2008 dated 13.03.2008 passed by the Commissioner of Central Excise (Appeals), Jaipur).

M/s Arunodaya Foundaries Appellant

Vs.

CCE, Jaipur Respondent

Appearance:

Ms. Priyanka Goel, Advocate for the appellant
Sh. M. R. Sharma, AR for the Respondent

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 51346/2018

Per: **Justice (Dr.) Satish Chandra**:

For the reasons mentioned in the RoA application, we recall our final order No. 55297 of 2017 dated 17.07.2017 where the appeal was dismissed for default. The appeal is admitted and restore to its original order.

2. With the consent of both the parties, we heard the appeal on merits.

3. The present appeal is filed against the order Order-in-Appeal No. 53(RKS)/ CE/JPR-I/2008 dated 13.03.2008 passed by the Commissioner of Central Excise (Appeals), Jaipur.

4. Brief facts of the case are that the appellants are manufacturers of Derek cranes, marble block cutting machines and marble gang saw machine falling under Chapter 84 sub-heading 8464 of the Central Excise Tariff Act, 1985. The

appellant after payment of Central Excise duty on complete manufactured machine before clearance, dismantled them for the purpose of convenient transportation. Then dismantled machines were reassembled at the site of buyer and installed and commissioned over there. The machines were permanently embedded to earth. The department has demanded the duty demand on installation and commissioning charges. Being aggrieved, the present appeal has been filed by the appellant.

5. After hearing both the parties and on perusal of record, it appears that the identical issue has come up before the Tribunal in the case of ***Autopack Machines Pvt. Ltd. vs. CCE, Thane-I -2016 (12) TMI 653-CESTAT Mumbai*** as well as in the case of ***CCE, Mumbai vs. Official Liquidator Brimco Plastic Mach. P. Ltd. -2015 (10) TMI 2281 (SC)*** where it was observed that-

> "*This is obvious conclusion on reading of Section 4 of the Central Excise Act as per which the transaction value is to be arrived at the time of clearance of the goods at the factory gate. All the expenses which are incurred post clearance (that too, after the supply of equipment) in respect of installation, etc., could not have been taken into consideration in the facts of the present case as noted by the CESTAT.*
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> *We, thus, do not find merit in this appeal which is accordingly dismissed.*"

6. By following the ratio laid down by the Apex Court (supra), we find no reason to sustain the impugned order which is hereby set aside.

7. In the result, the appeal filed by the appellant is allowed.

(Dictated and pronounced in the open Court).

(V. Padmanabhan) Member (Technical)	(Justice (Dr.) Satish Chandra) President

Pant