

PETITIONER:
M/S. THERMAX LIMITED

Vs.

RESPONDENT:
COLLECTOR OF CENTRAL EXCISE

DATE OF JUDGMENT: 15/04/1998

BENCH:
S.C. AGRAWAL, S. SAGHIR AHMAD

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S. SAGHIR AHMAD, J.

In this appeal in which four sets of court fees have been paid, the correctness of the common judgment passed by the Customs Excise and Gold (control) Appellate Tribunal (for short, 'the Tribunal') in the three appeals filed by the Revenue and one filed by the present appellants, is questioned.

2. The appellants manufacture high pressure Boilers, Process Heat Equipment etc. as per requirements of the customers. The manufacturing process includes pre and post manufacturing steps. Since Boiler has to be manufactured according to the requirements of the customers, the pre-manufacturing process includes the inspection of site where the Boiler is to be installed and the making of its drawings and designs etc. for which the appellants charge and had all along charged separately from its customers. The post-manufacturing steps include the installation, erection and commissioning of the Boiler at the site for which also the appellants have charged specific amounts from their customers under separate invoices.

3. Three separate show cause notices dated December 26, 1983; February 2, 1984 and July 30, 1984 were issued to the appellants in which it was pointed out that during the period from 1.2.1983 to 30.6.1984, the appellants had supplied Boilers but had not included the designing and engineering charges and the erection and commissioning charges in the assessable value even though such charges were recovered by them from their customers on separate invoices. It was indicated in these notices that the designing and engineering, erection and commissioning charges etc. were the charges which constituted the value of the "products" and were, therefore, assessable to excise duty. Consequently, an amount of Rs. 1,14,990.71 was demanded from them.

4. The Assistant Collector, Central Excise by his separate orders dated May 3, 1986; May 7, 1985 and June 1, 1985 held that the expenses on designing and engineering charges were expenditure incurred on the goods produced and consequently it constituted the part of the value of the goods. As

regards erection and commissioning charges, it was held that since the sale would be complete only on the erection and commissioning of the Boiler at the customers' site, the expenses incurred in erection and commissioning of the Boiler would also be included in the value of the goods. The demand was confirmed only for Rs. 78.454.50 as excise duty.

5. These orders were challenged by the appellants before the Collector of Central Excise (Appeal), Bombay and the Collector by his common order dated December 15, 1985 disposed of all the three appeals with the finding that the designing and engineering charges were includible in the value of the goods but erection and commissioning charges were in the nature of post-manufacturing expenses and cannot be treated as part of the assessable value of the goods.

6. The Revenue, thereafter, filed three appeals before the Tribunal which have been allowed by the impugned judgment.

7. There was another appeal before the Tribunal which was filed against the show cause notice dated August 4, 1987 issued by the Collector of Central Excise to the appellants for the period from April, 1982 to May, 1987 alleging that the appellants had not included and reflected in the invoice prices, the amounts separately recovered in separate invoices from their customers directly relating to their manufacturing activities for (1) designing and engineering; (2) technical services and training charges and (3) erection and commissioning charges. In the show cause notice, excise duty amounting to Rs. 65,33,098/- was demanded under Rule 9(2) read with Section 11A(1) of the Central Excise Act, 1944. The appellants refuted the allegations made in the show cause notice but the Collector confirmed the demand and imposed a penalty of Rs. 17 lakhs on the appellants. It was against this order that an appeal was filed before the Tribunal by the appellants. These four appeals were disposed of by the Tribunal by common judgment against which the present appeals have been filed.

8. Shri V. Lakshmikumaran, learned counsel appearing for the appellants contended that the decision of the Tribunal as also that of the Assistant Collector insofar as they relate to the inclusion of drawing and designing charges in the assessable value of the Boiler are not challenged but the decision relating to the inclusion of erection and commissioning charges in the assessable value of the Boiler installed by the appellants at the customers' site is positively wrong and is liable to be set aside. It is contended by him that before manufacturing the Boiler, the officials of the appellants visit the site at which the Boiler is to be installed and, thereafter, they prepare the necessary drawings regarding the design of the Boiler according to the need of the customer and, thereafter, the Boiler and its parts are manufactured at the appellants' factory. Consequently, the expenditure incurred in drawing and design which is separately charged by the appellants from the customers can, it is conceded, be legally included in the assessable value of the goods.

9. The only question, therefore, with which we are left in these appeals is whether the erection and commissioning charges for which the appellants had separately charged from its customers could be legally included in the assessable value of the goods, namely, the Boiler manufactured and supplied by the appellants. Or, to put it differently, whether the installation and commissioning charges are exigible to excise duty? This controversy stands concluded by two decisions of this Court.

10. In *PSI Data Systems Ltd. vs. Collector of Central Excise*, 1997 (89) ELT 3 (SC), it was held that the charges

for installation of computers and training of customer's personnel to operate and maintain it, was not includible in the assessable value of the computer. The Court even went to the extent of saying that the value of softwares sold along with the computer was not includible in the assessable value of the computer.

11. In *Mittal Engineering Works (P) Ltd. vs. Collector of Central Excise, Meerut*, (1997) 1 SCC 203, Mono Vertical Crystallisers which were used in sugar factories for exhausting molasses of sugar were assembled, erected and attached to the earth at the site of the customers' sugar factory. The process involved welding and gas cutting as deep Mono Vertical Crystallisers had to be assembled, erected and attached to the earth by a foundation at the site of the sugar factory. It was held that the erection and installation of a plant was not excisable.

12. In coming to this conclusion, reliance was placed on an earlier decision of this Court in *Quality Steel Tubes (P) Ltd. vs. Collector of Central Excise*, (1995) 2 SCC 372, in which also it was held that erection and installation charges cannot be included in the assessable value of the goods. It was held thus :-

"erection and installation of a plant cannot be held to be excisable goods. If such bringing in its ambit structures, erections and installations. That surely would not be in consonance with accepted meaning of excisable goods and its exigibility to duty."

13. In view of the above, the judgment passed by the Assistant Collector as also by the Tribunal that installation and commissioning charges have to be treated as assessable value of the goods supplied by the appellants are not correct and are liable to be set aside. Since we are disposing of these appeals on merits on coming to the conclusion that the installation and commissioning charges could not be included in the value of the goods, the question of limitation relating to the show cause notice issued under Rule 9(2) read with Section 11A of the Act from the period from 1982-83 to 1987-88 is not decided.

14. The appeals are accordingly partly allowed, the judgment and orders dated May 3, 1985; May 17, 1985 and June 1, 1985 as also the show cause notice dated August 4, 1987 issued by the Collector of Central Excise and his order passed thereon together with the judgment passed by the Tribunal in that regard to the extent they relate to inclusion of installation and commissioning charges are set aside without there being any order as to costs.