

SUPREME COURT OF INDIA

Gujarat Mineral Development Corporation Limited

Vs.

C.C.E. and C, Ahmedabad

C.A.No.4225 of 2000

(Ashok Bhan and Arun Kumar JJ.)

10.11.2005

ORDER

1. This is a statutory Appeal under Section 130E of the *Customs Act, 1962* (for short 'the Act') against the final order bearing No. 1644/99A dated 23rd December, 1999 (hereinafter referred to as the 'impugned order') passed by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (hereinafter referred to as the 'Tribunal') in Appeal No. C/154/97-A whereby the Tribunal has rejected the appeal and confirmed the orders of the Deputy Collector, Customs, Kandla and Commissioner (Appeals) Central Excise & Customs, Ahmedabad rejecting the claim for refund of Rs. 1, 71, 78, 129.21 as not admissible.

2. The appellant herein is a statutory corporation being a Government of Gujarat undertaking which is engaged in the business of extracting various kinds of minerals including lignite and selling the same. The extraction of different minerals and coal is done at various sites of the corporation.

3. The appellant imported machinery and accessories for their lignite project from M/s. TAKRAF Export, German Democratic Republic (East Germany), as it was at the relevant time.

4. The Customs Authorities accepted the price of the mining equipments as per the invoices of M/s. TAKRAF Export and completed the assessment in respect of 9 bills of entry for total CIF value of Rs. 21, 45, 80, 895.80 and total duty of Rs. 14, 80, 84, 167.50 was paid as per project assessment under Tariff Item No. 98.01 under the *Customs Tariff Act, 1975*, Appellant paid the Customs Duty charges in respect of the design and engineering charges under protest.

5. For the purpose of the contract, the break-up of the total contract price is as follows:

| | |
|-----------------------------|---------------------|
| “(i)Manufacture & Supply CI | Rs. 190, 010, 600/- |
| (ii)Design & Engineering CI | Rs. 30, 790, 650/- |

| | |
|--|---------------------|
| (iii)Ocean Freight (Approx.) CI | Rs. 17, 178, 093/- |
| (iv)Supervision/Long Term Term Test CI | Rs. 26, 771, 200/- |
| | ----- |
| Total | Rs. 264, 750, 543/- |

6. Disputing its liability to pay customs duty in respect of design and engineering charges paid to the supplier abroad, appellant filed an application for refund of Rs. 1, 71, 78, 129.21 paid towards customs duty in respect of design and engineering charges (i.e. Rs. 3, 07, 90, 650/-) as these charges were paid for technical assistance and in assembling the plant. The refund claim of the appellant was rejected by all the adjudicating authorities below.

7. Counsel for the appellant contends that the appellant would be liable to pay the import duty on the designing and engineering so far as it has gone as an input into the manufacture, supply and transportation to GDR Port of machineries, equipment, but strongly denies its liability to pay the customs duty on the cost of designing and engineering which has gone into the erection, commissioning and supervision of short term and long term tests of machinery and equipments, as the latter has taken place in India and is a post importation activity.

8. Counsel for the parties are agreed that the Tribunal has not considered this aspect of the matter and therefore the order of the Tribunal be set aside and the matter be remitted to the Tribunal for a fresh decision. Accordingly, we accept this appeal, set aside the order of the Tribunal and remit the matter back to the Tribunal for a fresh decision in accordance with law and if need be by taking additional evidence. Since the appellant has already paid the entire amount of customs duty and the said amount is lying with the authorities for the last 18 years, we would request the Tribunal to dispose of the matter as expeditiously as possible.

9. The Appeal is allowed, as indicated above. No costs.