

SUPREME COURT OF INDIA

Commissioner of Central Excise, Belgaum

Vs.

Mysore Kirloskar Ltd., Karnataka

C.A.No.6468 of 2002

(Ashok Bhan and J.M. Panchal JJ.)

09.05.2008

JUDGMENT

J.M. Panchal, J.

1. The instant appeal is directed against decision dated January 25, 2002 rendered by the Customs Excise and Gold (Control) Appellate Tribunal, South Zonal Bench at Bangalore, in Appeal No. E/744/95 whereby the order dated September 8, 1995 passed by the Commissioner of Central Excise, Belgaum, confirming the demand of duty of Rs.7,41,750/- and imposing penalty of Rs.75, 000/- on the additional amount of consideration of Rs.43,00,000/- received by the respondent for the preparation of designs, drawings, patterns, jigs, etc. is set aside.

2. The respondent, a company incorporated under the provisions of the Companies Act, 1956 was manufacturing machine tools, their accessories, high grade castings, pollution control equipments and other incidental and ancillary equipments. It owned and operated a main machine manufacturing factory at Harihar. It used to accept orders to manufacture engineering machines as per the drawings, patterns, jigs, fixtures and tools etc. developed by it. The respondent entered into such an agreement dated May 10, 1991 with ITC for manufacturing the machines. The agreement stipulated that the machines would be manufactured as per the specifications, prototype drawings and patterns prepared by it and approved by ITC. As per the agreement, the price of the machines was to be stipulated by ITC in orders to be placed upon the respondent company. For the agreement in question, the respondent was paid a sum of Rs.43 lakhs. The said sum was accounted as other income in the accounts and balance sheet of the respondent.

3. The Commissioner of Central Excise, Belgaum, issued a notice calling upon the respondent to show cause as to why duty of Rs.7,41,750/- on the additional amount of consideration of Rs.43 lakhs received by the respondent for the supply of machinery items be not levied under Rule 6(2) of the *Central Excise Rules, 1944*. The respondent gave reply to the said notice. However, the Commissioner of Central Excise, Belgaum, vide Order-In-Original No. 23/95 dated September 8, 1995 confirmed the entire duty demanded and also

imposed penalty of Rs.75, 000/- upon the respondent under Rule 173Q of the Central Excise Rules.

4. Feeling aggrieved, the respondent filed an Appeal No.E/744/95 before the Customs Excise & Gold (Control) Appellate Tribunal, South Zonal Bench at Bangalore ('the Tribunal" for short). The Tribunal allowed the appeal by Judgment dated January 25, 2002 giving rise to the instant appeal.

5. This Court has heard the learned counsel for the parties at length and in great detail. This Court has also considered the documents forming part of the instant appeal.

6. The question which arises for consideration in the instant appeal is whether the amount of Rs.43 lakhs received by the respondent towards charges for designs, drawings, tooling, jigs and fixtures etc. as per the agreement dated May 10, 1991 could have been loaded on the value of the machine made and delivered subsequently as per the separate written orders.

7. In order to resolve this controversy, it would be relevant to notice certain clauses of agreement dated May 10, 1991:-

"a. The company shall place upon MKL orders from time to time for manufacturing the machines and all such orders shall be in writing.

b. MKL shall manufacture the machines strictly in accordance with the specifications, the prototype and the drawings and patterns prepared by it and approved by the company in writing in terms of this agreement as detailed in Schedule B hereto.

c. In order to ensure that MKL manufactures the machines strictly in accordance with the specifications, the prototype and drawings and patterns approved by the company in writing, the Company's representatives will have the liberty of examining the machines manufactured by MKL during the process of manufacturing of such machines and also after the manufacture of the machines is completed, before or after the delivery of machines by MKL to the company."

Part IV at Page 6 is for the price of the machines and states:

"The price of the machines will be stipulated by the company in the orders placed upon MKL. All such prices shall be arrived at after prior negotiation between the parties hereto."

Part VIII at Page 7 is for excise duty and states:-

"The company shall reimburse the MKL the amount or amounts of excise duty paid by MKL on the manufacture of the Machines in terms of this agreement."

8. A bare reading of the terms of the agreement extracted above makes it very clear that the agreement was not merely for the preparation of design and drawings, but a total contract for design, drawing, manufacture of prototype, supply of the machines and payment of excise duty, etc. The contract could not have been read in isolation in parts, that is to say that the respondent had separately agreed to supply designs drawings etc. and also separately agreed to supply machinery.

9. It is true that the charges for drawings, designs etc. have to be added to the assessable value of the machines manufactured, based on use of such drawings, designs, jigs, fixtures, tooling etc. However, before adding the value of the drawings etc, it has to be established that the consideration had a nexus with the negotiated price of the assessable goods under clearance, i.e. machines in the instant case. Without establishing any such nexus, the Commissioner of the Central Excise could not have demanded the duty on the additional amount of consideration of Rs.43 lakhs. The agreements, i.e. the written orders, for the supply of four machines as per the gate passes in this case were not considered/relied upon in the original proceedings. Therefore, it could not be determined whether the prices of drawings, tooling etc. were part and parcel of the agreement for supply of machine. It is well to remember that each clearance is an assessment based on a separate contract and a contract price would normally be the value for assessable goods. The order passed by the Commissioner does not indicate that no machines were subsequently manufactured by the respondent after using drawings, designs, jigs, fixtures, tooling etc. supplied by the ITC. Therefore, loading of the entire amount of Rs. 43 lakhs without such a finding and recovery of duty thereon was not permissible at all. The order of the Commissioner does not indicate adequate reasons to invoke proviso to Section 11A(1). On the basis of vague allegations made in the show cause notice neither the proviso to Section 11A(1) could have been invoked nor penalty could have been imposed upon the respondent under Rule 173Q of the Central Excise Rules. On the facts and in the circumstances of the case, this Court is of the opinion that the Tribunal did not commit any error in setting aside the order passed by the Commissioner and the instant appeal which lacks merits, deserves dismissal.

10. For the foregoing reasons, the appeal fails and is dismissed. There shall be no orders as to costs.