

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1519 OF 2007

COMMISSIONER OF CENTRAL EXCISE, MUMBAI ... Appellant

VERSUS

OFFICIAL LIQUIDATOR FOR
M/S. BRIMCO PLASTIC MACHINERY PVT. LTD. ... Respondent

O R D E R

M/s. Brimco Plastic Machinery Pvt. Ltd. (hereinafter referred to as 'assessee') is engaged in the business of manufacturing excisable goods, viz., plastic machinery and installing and commissioning it at the factory sites of their customers. Most of the components of such machineries are manufactured by them at their factory while some components are bought from market and brought to their factory. All such components are taken in unassembled form for the purpose of convenient transportation to the site of their customers, where such machinery is assembled and installed. The assessee has been supplying the machinery in unassembled form and is assembling and not installing at buyer's place on contract basis and recovering the contract price by raising invoice.

The Department wanted to add certain cost incurred towards installation, erection, etc., for arriving at the transaction value. This was so done by the Commissioner in his Order-in-Original dated 31.08.1998 confirming the demand

which was raised in the Show Cause Notice. However, in appeal, the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as 'CESTAT') has reversed the said order and allowed the appeal of the assessee.

The issue which arises for consideration is as to whether the installation, erection and commissioning charges for equipment installed at customer's premises and values thereof can be added/included for determining the assessable value?

We find that on the facts of this case, while coming to the aforesaid conclusion, the CESTAT has relied upon the judgments of this court in '*PSI Data System Ltd. v. Collector*' [1997 (89) ELT 3 (SC)], '*Mittal Engineering Works Pvt. Ltd. v. Collector*' [1996 (88) ELT 622 (SC)], holding that inclusion of installation, erection and commissioning charges for equipment installed at customer's premises cannot be added/ included to determine the assessable value.

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 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.

We, thus, do not find merit in this appeal which is accordingly dismissed.

....., J.
[A.K. SIKRI]

....., J.
[ROHINTON FALI NARIMAN]

New Delhi;
September 29, 2015.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No. 1519/2007

COMMR.OF CENTRAL EXCISE,MUMBAI

Appellant(s)

VERSUS

OFFICIAL LIQ. BRIMCO PLASTIC MACH.P.LTD.

Respondent(s)

Date : 29/09/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s)

Mr. K. P. K. Pillai, Sr. Adv.

Mr. Ajay Sharma, Adv.

Mr. Arijit Prasad, Adv.

Mr. G. Tushar Rao, Adv.

Mr. B. Krishna Prasad, Adv.

For Respondent(s)

Mr. Ravindra Kumar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.

(Nidhi Ahuja)
COURT MASTER(Renu Diwan)
COURT MASTER

[Signed order is placed on the file.]