

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.2

Excise Appeal No.102 of 2011

(Arising out of Order-in-Appeal No.52/Kol-V/2010 dated 30.11.2010 passed by Commissioner of Central Excise, (Appeal-I), Kolkata.)

M/s.Viswa Industrial Company Limited
(Formerly M/s. Vishwa Industrial Company Private Limited)
(62A, Hazra Road, Ballygunge, Kolkata-700019.)

...Appellant

VERSUS

Commissioner of Central Excise, Kolkata-V

.....Respondent

(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata.)

APPEARANCE

Shri N.K.Chowdhury, Advocate for the Appellant (s)

Shri S.Mukhopadhyay, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75298/2023

DATE OF HEARING : 3 May 2023

DATE OF DECISION : 3 May 2023

Per : K. ANPAZHAKAN :

The issue involved in this case is whether pre delivery inspection charges received by the Appellant would be includible in the assessable value or not. The Appellant stated that they have sold their goods mainly to Government agencies/collieries etc. Inspection was not

mandatory, but conducted at the option of the buyer. Even though they have their own Quality Control Department, this inspection was undertaken by some agencies engaged by them. Initially the Appellants have paid the 'inspection charges' and later got it re-imbursed from the buyers. The Appellant was not getting any excess amount re-imbursed over and above the actual amount of 'inspection charges' paid by them. The inspection charges re-imbursed was not profit in the hands of the Appellant. It cannot be additional income for the sale of such goods. Hence they contended that the inspection charges re-imbursed by the buyer cannot form part of the assessable value.

2. The Authorized Representative for the Department stated that the Appellant has not submitted any evidence regarding the payment made by them to the third party inspection agency first and the same amount was reimbursed by the customer later. Hence, it is an additional consideration for the sale and accordingly, includable in the assessable value

3. We have perused the findings of the Commissioner (Appeals) in the impugned order. We observe that pre-delivery inspection charges are includible in the assessable value when such pre-delivery inspection is mandatory and an essential condition for the sale of the goods. However, it is observed that in the case the pre-delivery inspection is not a mandatory one. It was conducted only at the instance of the customer and the customer has reimbursed the same charges paid by the Appellant to the inspection agency. There is no evidence available on record to establish that the Appellant has collected any amount over and above the inspection charges initially paid by them to the inspection agency. In the absence of any such evidence, it cannot be held that the inspection charges are additional consideration received in connection with the sale of the goods and includible in the assessable value. Accordingly we hold that the inspection charges in this case are not includible in the assessable value and hence the demand is not sustainable.

4. In view of the above discussion, we allow the Appeal filed by the Appellant.

(Dictated and pronounced in the open Court.)

Sd/

(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

Sd/

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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