Collector of Central Excise Vs. Electronic and Engg. Co.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-11-1996

Reported in : (1997)(90)ELT434TriDel

Appellant : Collector of Central Excise

Respondent : Electronic and Engg. Co.

Judgement :

1. In this appeal filed by the Revenue, the only point for our consideration is, whether in case of any violation when goods are received under Chapter X Procedure of the Central Excise Rules, duty had to be paid by the user of the goods or by the manufacturer who had manufactured the goods received by the user under Chapter X Procedure.

2. The respondents M/s. Electric & Engg. Co. have desired that the matter be decided on merits. On behalf of the appellants/Revenue, Shri P.K. Jain, SDR, referred to the provisions of Notification No.56/78-C.E., dated 1-3-1978 and submitted that it is clearly mentioned in the notification that in default of not furnishing the relevant information, the L-6 licensee had to pay the portion of the duty which is exempt under that notification.

3. We have carefully considered the matter. Under Notification No.56/78-C.E., dated 1-3-1978 the room air conditioners were partly exempted from duty subject to the various conditions as contained in that notification. Under condition No. 2(b), it is provided that the air conditioner received in terms of that notification shall not

be resold within a period of five years from the date the air conditioners are installed in the specified establishment and in the event of breach of any of the terms of the undertaking, he shall pay on behalf of the manufacturer the portion of the duty which is exempt under that notification. In clause (ii) it had been provided that the written undertaking will be by the owner i.e. user of the air conditioner or the Chief Executive of the establishment in which the air conditioner was required to be used. It is thus clear from the wording of the notification that the written undertaking for the fulfilment of the user conditions is by the customer or the L-6 licensee who receives the air conditioner.

4. It is also provided in the notification that the procedure specified in Chapter X of the Central Excise Rules is to be followed. Chapter X procedure of the Rules prescribes a detailed procedure to be followed both by the manufacturer of the specified excisable goods and by the person wishing to obtain remission of duty on such goods. The person wishing to obtain the remission of duty is required to apply through the proper officer in the form AL-6 and the proper officer had to grant licence to such persons in form. L-6. The person concerned was required to execute a bond in prescribed form. The goods were required to be removed from the factory of manufacturer under authority of CT-2 certificate to be issued by the proper officer at the place of intended receipt. Under Rule 196 if any excisable goods obtained under Rule 192 are not duly accounted for as having been used for the purpose and in the manner stated in the application or are not shown to the satisfaction of the proper officer to have been lost or destroyed by natural causes etc., then the duty had to be paid by the applicant i.e.

the person who applies for a AL-6 licence. This also clarifies that the liability in case of default, mis-use etc. is on the user. The view taken by the Collector (Appeals) is thus not valid. Accordingly, the order of the Collector (Appeals) is set aside and the appeal of the Revenue is allowed.