Precision Tooling System Ltd. Vs. Collector of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-19-1997

Reported in : (1997)(94)ELT375TriDel

Appellant : Precision Tooling System Ltd.

Respondent : Collector of C. Ex.

Judgement :

1. Appellant is absent in spite of notice of hearing, but has sent a request for decision of the appeal on merits. We have heard Shri K.Srivastava, SDR and perused the papers.

2. We are handicapped in deciding the appeal on account of the failure of the appellant to produce copies of relevant records such as show cause notices, contract, invoices and even the original order. We have only a copy of the appellate order and the memorandum of appeal.

3. Appellant was manufacturing tools and toolings falling under erstwhile Tariff Item 68 and 51A respectively. The appeal memorandum states that at one stage appellant had filed a price list in respect of tools claiming certain deductions and the same was returned with the direction to delete discount claimed for. Obviously, this relates to goods falling under Tariff Item 51A. In regard to goods falling under Tariff Item 68, in respect of an earlier period, appellant availed benefit of Notification No. 120/75. After the Notification ceased to be in force, appellant was availing the benefit under Rule 173C(11) of the Central Excise Rules, 1944.

Apparently, sales were being effected through M/s. Alfred Herbert India Ltd. Three show cause notices were issued, bearing dates 29-10-1986 (for October, 1985 to September, 1986), 19-2-1987 (for October, 1986 to January, 1987) and 25-6-1987 (for February, 1987 to April, 1987), containing short levy demands. The common allegation was that as per contract entered into with M/s.

Alfred Herbert India Ltd., commission ranging from 10% to 15% was being given to M/s. Alfred Herbert India Ltd. and the commission could not have been deducted from the assessable value and, therefore, duty should have been paid on the same, but was not paid. The notices were resisted by the appellant on merits and the first show cause notice was also opposed on the ground of limitation. The Assistant Collector overruled all the contentions and confirmed the demand. In appeal, Collector (Appeals) held that the show cause notice dated 29-10-1986 was barred by time. However, he confirmed the demands under the two later notices. This order is now being challenged.

4. The appellate order clearly states that appellant had entered into a written contract with M/s. Alfred Herbert India Ltd. as per which commission ranging from 10% to 15% was to be paid to M/s. Alfred Herbert India Ltd. in respect of sales conducted through them. The appellate order also indicates that the commission was granted on the catalogue prices of the appellant and that in cases of goods sold independently in the ordinary course of trade without involving M/s.

Alfred Herbert India Ltd., prices were more on ac-count of the absence of the commission. On this basis, it was held that duty was paid on the price less commission and commission could not be deducted in order to arrive at the assessable value and the modus operandi was adopted to escape correct assessment. Even in the memorandum of appeal there is a claim that appellant was justified in passing on the commission to M/s.

Alfred Herbert India Ltd. The inevitable conclusion is that what was being passed on was commission and not discount. That being so, the same cannot be deducted from the assessable value. Therefore, the duty demand even in the cases governed by Rule 173C(11) of the Rules can be said to be justified.

5. In the memorandum of appeal it is stated that the two companies are not related. The question of relationship would not arise in this case which has been decided entirely on the question whether the commission paid to M/s. Alfred Herbert India Ltd. was deductible or not. We agree that the same was not deductible.