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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-03-1998

Reported in : (1998)LC164Tri(Delhi)

Appellant : Methodex Systems Ltd.

Respondent : Collector of Central Excise

Judgement :

1. In this appeal filed by M/s. Methodex Systems Ltd., the matter relates to the demand of central excise duty in respect of the products which the appellants had classified under Heading No. 83.04 and which the Revenue had sought to classify under Heading No. 94.03. The Collector of Central Excise, Indore, who had adjudicated the matter had classified the products under Heading No. 94.03 of the Central Excise Tariff, had demanded duty of Rs. 6,63,037.14 and had imposed a penalty of Rs. llakh.

2. We have heard Shri R.D. Pahwa, Consultant, who appeared for the appellants and Shri Satnam Singh, SDR, who is present for the respondents /Revenue.

3. We have carefully considered the matter. We find that the period involved in these proceedings is from 1-3-1988 to 31-7-1989 and the show cause notice had been issued on 22-12-1989. The learned Consultant referred to the classification list effective from 7-3-1988 in which they had described their products in detail and had declared the classification under sub-heading No. 8304.00. This classification list had been duly approved by the Assistant Collector of Central Excise on 15-10-

1988. We find that in the show cause notice with regard to the suppression, the following observations had been made: "And whereas by suppression the noticee had intention to clear the goods valued at Rs. 2,79,647.97 without payment of duty to the tune of Rs. 44,044.54. Considering the non-accountal of production as technical breach of rules the Assistant Collector (Preventive) on 23-8-1989 had ordered release of goods with the direction that penal provisions will be considered at the time of adjudication." We do not find any details as on what basis the suppression could be established. In the memorandum of charges also, there are no grounds to substantiate the charge of suppression.

4. Before the adjudicating authority, the appellants had taken a plea that no show cause notice for revision of the classification list had been issued. He referred to the show cause notices for the period August, 1989 to December, 1989, January, 1990 to March, 1990, and April, 1990 to August, 1990. We find that the period involved in these proceedings is 1-3-1988 to 31-7-1989. The charge of suppression could not be substantiated on the ground of show cause notices for the subsequent period. In para 4.6, the adjudicating authority had observed as under: "I do not agree with the contention of the noticee that the differential duty cannot be demanded with retrospective effect inasmuch as this is a case of suppression of facts and the noticee had never disclosed the facts to the Department that the goods in question were designed to be placed on the floor or ground." We consider that this observation alone is not enough to substantiate the charge of suppression.

5. Thus, without going into the other aspects of the matter, we consider that on the question of limitation, the appellants have a case. As a result, without going into the merits of the matter, we allow the appeal on the ground of limitation alone. Ordered accordingly.

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