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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-09-1998

Reported in : (1999)(107)ELT434TriDel

Appellant : Bhageria Marbles

Respondent : Collector of Central Excise

Judgement :

1. In this appeal filed by M/s. Bhagaria Marbles, the matter relates to the demand of differential Central Excise duty calculated on the basis of the private records recovered from the premises of the appellants on 5-9-1990 when Central Excise officers visited their premises and conducted stock taking. In the private records, the production was entered per sq. mtr. and in their excise records also the stock was entered per sq. mtr. There was a difference. The appellants had explained that the two exercise books recovered were maintained by their contractors for claiming their wages and they did not reflect their correct production. The matter was adjudicated by the Collector of Central Excise, Jaipur, who demanded a differential duty of Rs. 2,41,422/- and imposed a penalty of Rs. 25,000/-.

2. I have heard Shri Punkaj Mullick, Advocate, for the appellants. The learned Advocate submitted that the appellants had explained that the exercise books recovered belonged to their contractors and that the differential was on account of breakages. The broken pieces known as crazy were not entered in their records as they did not incur any Central Excise duty liability and enjoyed exemption under Notification No. 16/90-C.E., dated 20-3-1990. He further explained that at the first

opportunity the appellants had explained this position. The labour was concerned only with their wages and, therefore, even if the slabs were broken, they were eligible for their wages. It has resulted into the differential. He referred to the statement of Shri Naval Kishore Bhageria, Proprietor, which is at page 26 of the paper book. In particular, he referred to page 27, answer to the second question. He relied upon the Tribunal's decision in the case of Shakti Chemical Industries, v. Collector of Central Excise, Baroda, -1995 (76) E.L.T.410 (Tribunal). He pleaded that no differential duty was chargeable and in any case the amount of penalty imposed was in excess.

3. In reply, Shri T.A. Arunachalam, JDR, submitted that the appellants had admittedly not maintained any records of broken pieces. They had not furnished any invoices and that there was no ground for the labour to enter different production figures than the one in the excise records. He submitted that the plea of crazy broken pieces was an after-thought. He reiterated the grounds taken in the order.

4. I have carefully considered the matter. The appellants were engaged in the manufacture of marble slabs. The marble blocks were being brought for sawing. On 5-9-1990, the Central Excise officers visited their premises and exercised certain checks. It was found that the unit had maintained private records in the form of exercise books, production slips and ledgers. It was found that all the stocks maintained in their private records was not so entered in their excise records.

5. The appellants had explained that the difference related to the broken pieces and that the broken pieces were not accounted for as they did not attract any Central Excise duty. I find that the broken pieces were excisable but were enjoying exemption under Notification No.16/90-CE., dated 20-3-1990. The marble in or in relation to the manufacture of which any process was ordinarily carried on with the aid of power and where the electromotive fore used exceeded 10 H.P. were dutiable under sub-heading No. 2504.21. Under sub-heading No. 2504.90, the marble not covered by any other sub-heading was classifiable and attracted a tariff rate of 10% adv. Under the aforesaid Notification No. 16/90-C.E., dated 20-3-

1990, the goods classifiable under subheading No. 2504.90 attracted a nil rate of duty. It is thus clear that but for the exemption notification the goods classifiable under sub-heading No. 2504.90 were excisable and attracted adv. rate of duty not related to the sq. mtr. Therefore, if the goods were classifiable under the said sub-heading 2504.90, they were required to be entered in the records.

6. In the statement of the proprietor, it has been mentioned that the stocks in the note books related to the one on the basis of which the wages were to be paid to the contractors. The stock is maintained as per sq. mtr. It has been admitted that the stock in sq. mtr. reflected the marble after sawing. It is also admitted that no record as such had been maintained about the breakage of the slabs after sawing.

7. The appellants have pleaded that the contractors were only for loading and unloading of the goods from the trollys. I do not find any mention of this fact in the statement. The differential duty had been worked out on the basis of the private records which I find are in exact measurements upto 2 decimal points.

8. The learned Advocate had submitted that the contractual labour were only concerned with the full block as such and were not concerned with the exact measurements of the marble after sawing. I find that the exact measurements upto 2 decimal points had been recorded in the private records and nowhere it has been made out that the measurements written by them also included the measurements of the broken pieces.

9. Taking all the relevant facts and considerations into account in so far as the demand of duty is concerned, I do not find any ground to interfere with the view taken by the adjudicating authority. The demand of differential duty of Rs. 2,41,422/- is confirmed.

10. However, taking into account the relevant facts and considerations of the case, I reduce the amount of penalty from Rs. 25,000/- to Rs. 10,000/-(Rupees ten thousand only).

11. Thus, the demand of differential duty of Rs. 2,41,422/- is confirmed and the amount of penalty is reduced from Rs. 25,000/- to Rs. 10,000/- only. Ordered

accordingly.