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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-14-1998

Reported in : (1999)(111)ELT822TriDel

Appellant : Kirtronics

Respondent : Commissioner of Central Excise

Judgement :

1. On a visit to the assessee's factory, the officers found 1390.345 kgs. of enamelled copper wire which was not recorded in the R.G. I register. The Assistant Commissioner confiscated the excess goods and permitted their redemption on the fine of Rs. 20,000/-. He also imposed a penalty of Rs. 5,000/- on the assessee. The Commissioner (Appeals), up-held the findings but reduced the fine to Rs. 5,000/- and the penalty to Rs. 3,000/-. The appeal is against this order.

2. Shri A. Sisodia, Id. Advocate placed reliance on several judgements of the Tribunal including the case of Kamal Plywood & Allied Industries (P.) Ltd. v. C.C.E., Meerut reported in 1996 (82) E.L.T. 323 in stating that the orders of confiscation and imposition of penalty could not sustain where it was not shown by the department that the non-recording was to facilitate clandestine removal. He, further, argued that the enamelled wires and cables can be termed as fully manufactured goods only when quality control inspection is over, the goods are packed and weighed. In substantiation of his claim, he referred to a process flow chart in which the R.G. 1 stage was shown to be after inspection, packing and

weighment. It was his submission that the goods seized had not reached the stage at which entry had to be made in the R.G. 1 register. Therefore the order of confiscation was wrong in law.

5. The central point for consideration is whether the goods had reached the stage at which the entry had to be made in the R.G. 1 register.

Ordinarily, at the time of filing of classification lists or the declarations, a process of manufacture chart is filed although there is no such stipulation in the rules. Ld. Advocate was not able to show whether the process chart placed on record was submitted to the department by the assesses.

6. The R.G. 1 point had been prescribed by the Revenue authorities by way of Trade Notices No. CBEC Letters F. No. 261/33B/1/81-CX-VI, dated 22-3-1982 and 261/33B/1/81, dated 3-9-1992 as extracted in R.K. Jain's Central Excise Law Guide Sixth Edition Page 1036 prescribed the R.G. 1 point as under : '85 Electric Wires and R.G. 1 stage for electric wires and cables Cables. should be when they are reeled or rolled on drums etc., and are disconnected from the machine. Their production should be accounted for in R.G. 1 at this stage. If they are not packed and transferred to store-room, their stock should be shown in column 15 of R.G. 1 i.e., goods in finishing room. In column 17 of the R.G.1 register (remarks column), the manufacturer should make an appropriate entry whenever the goods are required to be taken out for inspection as also the quantum of rejects obtained during the day. After they are tested, packed and labelled, they should be transferred to store-room and accounted for in column 16 of R.G. 1 register.

Remission of duty on rejects should be granted in accordance with the provisions of Rule 49 of the Central Excise Rules, as and when the rejects are destroyed and suitable debit can be made from the closing balance shown in RG 1. Non-entry in R.G. 1 of the fully manufactured and properly tagged electric wire when found packed and stored in the stock room, is violative of Rule 53" 7. According to this prescription, the entry had to be made in the R.G.1 register if not in the "finished goods column".

The format of the register takes into account and provides for the stage where the goods are manufactured but are not marketable. Based on these instructions, it would appear that the assessee did contravene the Rule 53. However, there are doubts on two counts, firstly, it is not known whether the department's instructions, as extracted above, were still current or not. There have been instances where the R.G. 1 point has been changed from time to time by the Board on consideration of certain technical aspects. Secondly, it is not known as to on which date the process chart was filed by the assessee with the department.

If the chart was filed before the date on which the present case took place, then the department cannot say that the R.G. 1 point was earlier than that adopted by the assessee. It is, however, correct that even if the goods were not marketable, due entry was required to be made in the record. This, however, is at best a technical violation, which does not require very severe action.

8. I have taken cognizance of various citations made by the Id. Advocate. The case law cited by him no longer holds place in view of the Tribunal's judgement in the case of Autolite (India) Ltd. v. C.C.E., Jaipur reported in 1997 (93) E.L.T. 397 (Tribunal). The judgement cited by the Id. Advocate had followed the Andhra Pradesh High Court in the case of Southern Steel Ltd. v. U.O.I, reported in 1979 (4) E.L.T. (J 402) (A.P.). In the Autolite (India) case, the Tribunal had observed that the wrong reliance was placed on the Andhra Pradesh High Court judgement.

9. I find that the Commissioner had shown leniency. But the extent of leniency was still lacking. I, therefore, retain the order relating to the fine, but remit the penalty imposed under Rule 173Q.

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