Blue Star Ltd. Vs. Collector of Central Excise

Blue Star Ltd. Vs. Collector of Central Excise

SooperKanoon Citation : sooperkanoon.com/15325

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-05-1999

Reported in : (1999)LC58Tri(Delhi)

Appellant : Blue Star Ltd.

Respondent : Collector of Central Excise

Judgement :

1. Matter called. None for the appellants. They have desired that the matter be decided on merits on the basis of available records. Hence we have heard Shri R.K. Sharma, ld. SDR for the Revenue. He stated that the brief facts of this case are as follows : (a) Question involved in the present matter is whether the (1) Ducts for air conditioning system and (2) Flanges, manufactured by the appellants herein on a job contract basis at the site and premises of third person viz., India Cements Ltd., is liable to duty or not and whether the appellants can be called upon to pay the duty. Lower authority has found on the basis of the submissions of the appellants herein that duct and flanges as mentioned above are new commodities manufactured from Plates and Angles. They are not immovable goods and therefore they are liable to duty. It has also been observed by the lower authority that the appellant being independent contractors and performing their work under a contract entered into with India Cements Ltd., are to be treated as manufacturers of those goods. Therefore the duty liability for manufacture of those goods devolves on the appellant herein.

3. First plea taken by the appellants was that the Show Cause Notice for demand of duty under Section 11A can be issued only by the Collector concerned during the period and not any Additional Collector.

This plea has been rejected by the lower authority on the ground that the definition of the 'Collector' in the C.E. Rules includes Additional Collector and there is no contrary definition of the 'Collector' in the Act. Therefore the expression 'Collector' in Section 11A of the Act would also include the Additional Collector. Accepting the said finding, we reject the plea of the appellant.

4. Next plea of the appellant is they are not the manufacturers and they merely performed the job given by M/s. India Cements Ltd. on the basis of material supplied by the latter and also at the site and premises of M/s. India Cements Ltd. Nothing has been brought to our notice that the terms and conditions of the contract with the appellant were between the agent and the Principal or servant and Master. In the impugned order, the appellant has been found as an independent contractor. We have no reason to differ from the same. Therefore in our view they are the manufacturers of the goods. Consequently the duty liability, if any, would devolve on the appellants being independent contractor.

5. Next question to be decided is whether the goods (ducts and flanges), as aforesaid manufactured from duty paid sheets and angles supplied by the M/s. India Cements Ltd., are to be treated as new goods. We observe that duct has been fabricated out of steel plates or sheets. The nomenclature and use of ducts is totally different from that of raw material viz., sheets. The ducts cannot also be said to be immovable goods. They have been merely laid along the wall of the factory or the sheds of M/s. India Cements Ltd. as rightly pointed out by the ld. lower authority. Sheets have been first converted into intermediate products - duct sections. These sections have to be joined together by making a complete duct for movement or conveyance of the cold air from the central air conditioning system. This cannot be called as immovable goods or having been permanently fixed on the walls. These have been temporarily fixed with the help of flanges manufactured by the appellants out of duty paid angles. Flanges therefore also become duty, paid manufactured from the raw material, angles. We have gone

through the impugned order and detailed findings given by the adjudicating authority as mentioned above bring out the fact that the new commodities as explained therein by act of fabrication undertaken by the appellant herein have been brought into existence. The two types of articles viz., duct and flanges are liable for duty as held by the lower authority.

6. In view of the foregoing discussions we do not find any substance in the appeal filed by the appellants herein. Consequently we reject the same.