Computer Joint-i Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-14-1999

Reported in : (2000)(116)ELT162TriDel

Appellant : Computer Joint-i

Respondent : Collector of Central Excise

Judgement :

1. The appellants filed this appeal against order-in-original passed by the Collector of Central Excise, Bombay. In the impugned order, the Collector of Central Excise held that the appellants manufactured computers and cleared the same without payment of central excise duty.

In the impugned order, a demand of Rs. 3,45,291.35 on 87 computers, manufactured and cleared without payment of duty, was confirmed. A demand of Rs. 9,135/- is also confirmed on the two computers seized from the premises of appellants and both the computers ordered to be confiscated with an option to the appellants to redeem the same on payment of redemption fine of Rs. 20,000/-. A penalty of Rs. 40,000/- was also imposed on the appellants.

2. Brief facts of the case are that on 17-8-1989, the business premises of the appellants were visited by the officers of Revenue department and it was found that the appellants are engaged in the manufacture of computers and cleared the same without payment of duty. Two computer systems, valued at Rs. 58,000/-, which were found in the premises, were taken into possession. Shri Deepak

Ahuja, Manager of the appellant company made a statement under Section 14 of the Central Excise Act and admitted the fact that the computers are being assembled in the premises of the appellant firm. He explained in his statement that the parts were purchased from the market and the same were assembled together to make a central processing unit and monitors, keyboards, printers and other peripherals are sold together to different customers.

3. Statement of Shri Deepak K. Daryani, proprietor of appellant firm was also recorded under Section 14 of the Central Excise Act on 17-8-1989. In his statement, he admitted that computers are being manufactured in the premises of the appellants. He also admitted that during the period from 4-7-1988 to 28-2-1989, 25 computers were manufactured and after 1-3-1989, about 10 computer systems were assembled and cleared without payment of duty. He agreed to pay the central excise duty. Shri Shaji Thomas, who was working as an Engineer with the appellant firm, also admitted the manufacture of computers in his statement recorded on 17-8-1989.

4. on 5-1-1990, Shri Deepak K. Daryani again made a statement admitting, having assembled computer system himself and he also admitted that some computer systems were got assembled by some Engineers. He named four Engineers - (1) Mr. B.S. Diwakar; (2) Mr.

Nandan S. Wadhavkar; (3) Mr. Anirudh Junnarkar; and (4) Mr. Shaji Thomas. He also produced some challans showing that spare parts are being supplied to these Engineers for assembling the computers. He also submitted that for assembly of the computers, he is paying Rs. 250/- to Rs. 500/- to the Engineers. S/Shri Anirudh Junnarkar and Shaji Thomas could not be produced by the appellants for investigation. Therefore, no enquiry was made from them. The enquiries made from the two Engineers revealed that they had not undertaken any assembling of computers at their places. They had assembled computers at appellants' premises.

5. On the scrutiny of record, it was found that the appellants cleared 85 computers without payment of duty. A show cause notice was issued and, thereafter, the adjudication order was passed.

6. Ld. Counsel, appearing on behalf of the appellants, submits that apart from assembling the computers, through different Engineers, the appellants are also engaged in trading of computer systems. He submits that 20 computers were purchased and delivered to the customers. He submits that on few occasions, they supplied parts of computer system to outside qualified engineers for assembling the same on payment of job charges. Therefore,. the Engineers, who assembled the computers, are manufacturers of computer system. He, further, submits that the Engineer, namely, Shri Nandan S. Wadhavkar, in his statement admitted that 20 to 25 computers were assembled at the residential premises of his friend, Shri Kamlesh Parikh from the parts supplied by the appellants on payment of job charges. He submits that similar statement was made by Shri B.S. Diwakar. He submits that, thereafter, the Revenue authorities compelled both the above mentioned engineers to retract from the statements. He, further, submits that the appellants asked for cross-examination of witnesses, which was refused without any cogent reason. He, therefore, submits that the impugned order was passed in violation of principles of natural justice. He, further, submits that the voluminous record was taken into possession from the premises of the appellants, which was never returned to the appellants. He, therefore, prays that the appeal be allowed.

7. Ld. JDR, appearing on behalf of the Revenue, submitted that the Manager and the owner of the appellant firm, on the visit of the Central Excise Officers, admitted the manufacture of the computers. On that stage, the appellants had not disclosed the fact that the computers are being manufactured through independent manufacturers and engineers on payment of job charges. He, further, submits that the appellants named four engineers, who alleged to have been manufacturing the computers on their behalf but out of these four, the appellants had produced only two engineers, who later on admitted before the Revenue authorities the computers are actually being assembled at appellants' premises. He, further, submits that during the enquiries made by the Revenue, Sh. Deepak K. Daryani, the owner of the appellant firm, could not identify computers manufactured by the different engineers. He, further, submits that Shri B.S. Diwakar admitted that delivery challans, showing delivery of components and his signatures had been obtained subsequently. He submits that in view of the admission made by the Manager and the owner of the appellants on the date of visit.

9. In this case, the allegation against the appellants is that they have manufactured and cleared the computers without payment of duty.

The appellants are not questioning the dutiability of the computers.

The contention of the appellants is that the computers were manufactured through job workers and they named 4 engineers, who manufactured the computers on their behalf. Out of 4, the appellants only produced 2 engineers, who admitted later on that the computers are, in fact, assembled at the appellants' premises. The appellants asked for the cross-examination of 9 persons including Sh. Shaji Thomas and Sh. Deepak K. Daryani. Both the persons were, as per appellants, assembling the computers on their behalf but these were not produced before the Revenue authorities during investigation.

10. Further, when the Manager and the owner of the appellants firm, in their initial statements, admitted that the appellants were manufacturing computers at their premises and record was taken into possession and at that time, nothing was shown or stated by the appellants to allege that the computers were actually manufactured by the independent job workers and not the appellants. In view of admission made by Deepak K. Daryani, proprietor and Deepak Ahuja, Manager in their statements which were not retracted by them, the denial of cross-examination of the persons, who during the investigation, admitted that the computers were actually assembled at the premises of the appellants, is not in violation of principles of natural justice.

11. In view of above discussion, we find no infirmity in the impugned order confirming the demand of duty on the computers manufactured by the appellants. However, taking into consideration the facts and circumstances of case, the redemption fine on 2 computers valued at Rs. 58.000/- is reduced to Rs. 10,000/- from Rs. 20,000/- and penalty is also reduced to Rs. 10,000/- from Rs. 40,000/-. Otherwise the impugned order is upheld. The appeal is disposed of as indicated above.