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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Nov-05-1999

Reported in : (2000)(68)ECC191

Judge : S Peeran, V Ashtana

Appellant : Coney Electronics

Respondent : Commissioner of Central Excise

Judgement :

1. This appeal arises from the Order-in-Original No. 6/95 dated 6.1.1995 passed by the Collector of Central Excise, Madras confirming duty amount of Rs. 2,38,664 on 86373 cassettes cleared to the dealers by M/s. Coney Electronics and received by dealers without evidence and duty of payment in the guise of IC covers and clearance as fresh cassettes in the guise of cassettes received for re-conditioning under Rule 173 H and returned back in terms of Rule 9(2) read with Section 11A(1) of the CE Act, 1944.
2. The above duty quantification includes duty leviable on 2347 cassettes of M/s Sound & Vision and 600 cassettes of M/s Cassette Rek, both of Bangalore, ordered for confiscation and released on redemption fine.
3. Penalty of Rs. 20,000 under Rule 173Q has been ordered. There is also an (sic) for confiscation of 2347 cassettes unaccounted for and non-duty paid coney brand cassettes valued at Rs. 32,585 seized from the premises of the appellants under

Rule 173Q of the CE Rules. The same had been released on payment of fine of Rs. 500. There was further order of confiscation of 600 cassettes tapes of Coney brand valued at Rs. 6,000 received from M/s Cassette Rek, Bangalore under Air parcel No. 2882584 dated 18.1.1983. The same was released on payment of fine of Rs. 500.

4. The Collector had passed the above order on remand of the proceedings by CEGAT to re-consider the pleas raised by the appellants against the earlier adjudication order. The Collector has given a fair hearing after detailed consideration of the points raised and passed a detailed considered order. The same is challenged before the Tribunal.

5. The matter was heard and on behalf of the appellants, Shri PV Srinivasa Raghavan, learned Counsel argued the matter.

6. Referring to the allegations in the show cause notice in particular to the allegations that the appellants had indulged in large scale evasion of Central Excise duty and cleared such excess production, the learned Counsel submitted that the department has not proved with evidence about the "said excess production". There is no evidence to show that the appellants had clandestinely manufactured and cleared the goods without accountal. He pointed out that the Collector has proceeded solely on the basis of the statements recorded from the dealers. It is his submission that the mere statements of the dealers are not sufficient for the purpose of upholding the demands of suppressed production. It is his contention that the Revenue has not proved the place of purchase of raw materials, excess production and clandestine removal and cannot base the case solely on the basis of mere statements recorded from the dealers. The learned Counsel submits that the evidence relied upon by the Collector in the order is vague and not conclusive to prove the quantum of clearances for the purpose of computing duty. He relied upon large number of judgments where the law of clandestine removals has been laid down by the Tribunal.

Therefore, he prays for setting aside the order for lack of evidence in the matter.

7. Shri S. Sankaravadivelu, learned DR took us through the evidence on record and points out that evidence is conclusive in nature. Findings given by the Collector are not based on evasive or shakey evidence but on correct evidence i.e., records maintained by the dealers with regard to receipt of goods from the appellants with their own brand name. He pointed out that the Collector's finding is detailed one and the entire evidence has been discussed. He also pointed out that the dealers have not resiled and retracted the statements. The appellants have not chosen to cross-examine the dealers and therefore, the aspect of receipt of cassettes without payment of duty has been proved beyond any reasonable doubt.

8. On consideration of the submissions made and on perusal of the records, we are satisfied that the Collector has re-considered the evidence on record on de-novo consideration with lot of care and has examined the evidence on record. The Collector after detailed examination has found sufficient evidence on record to hold manufacture and clandestine removal without payment of duty of 86,373 cassettes by the appellants through the dealers without evidence of payment of duty.

He has noted the voluntary statements of the appellants themselves with regard to clearance of fresh cassettes as rectified goods under Rule 173 H and agreed to pay duty of Rs. 5773.95 relating to this offence. A letter dated 17.8.1985 has been written by the appellants to M/s.

Kishen Electronics in reply to their letter dated 14.8.1982 wherein the General Manager of M/s. Coney Electronics clearly admitted that they had sent fresh pieces and not the same pieces duly rectified and also their admission that for the purpose of taxation terminology they have written duly rectified and returned. In view of this clear admission confirmation of demand on this aspect by the Collector cannot be challenged and the same is upheld.9. The Collector has clearly discussed the evidence pertaining to seized cassettes from the dealers which had been manufactured and supplied by the appellants without payment of duty. The seized quantity were 86,373 cassettes from eight dealers. All the eight dealers except two had admitted in their statements about the supply of these cassettes in the guise of IC covers. Only two dealers i.e., Shri Mutheraja, and Shri V.M. Suresh

of M/s. Cassette Rek, Bangalore had retracted their statements belatedly. Other dealers had not retracted their statements. The appellants had also not chosen to cross-examine these admissions made by the dealers with regard to receipt of cassettes from the appellants in the guise of IC covers. The Collector has noted that although no cassettes appeared to have been seized from the premises of these 8 dealers, i.e., other than these M/s. Sound & Vision and M/s. Cassettes Rek. On the other hand Shri Suresh of M/s.

Cassettes Rek had admitted in his statement dated 21.1.1983 and 11.4.1983 of receiving cassettes without gate pass and also admitted that he did not receive any IC Covers as noted in the invoice 4653 dated 13.1.83 of M/s. Coney Electronics but had only received blank cassettes. The Collector has noted that no plea had been put up establishing that the goods were duly accounted. The Collector has noted that not only all the dealers had contended before the original adjudicating authority prior to the issue of the earlier order that they had fully accounted for the cassettes seized from them, but also the allegation of clearance of 86,373 cassettes is not based only on the statement of such dealers from whom any seizure was effected. The Collector has noted that there was evidence of suppressed production and therefore, the case had been conclusively proved by the department.

He has held that there is suppressed production and therefore, case had been conclusively proved by the department. He has noted that submissions recorded under Section 14 of the CE Act, is valid and admissible piece of evidence and particularly when it is not retracted. Therefore, he held that statements of eight dealers with regard to clearance and receipt of 86,373 cassettes without payment of duty is sufficient to conclude case. He has noted that out of these 6000 cassettes which had been seized from Shri V.M. Suresh of M/s.

Cassettes Rek and he did not choose to retract the statement till he filed reply to the show cause notice. Even Shri Muthreja of M/s. Sound Vision had admitted in his statement dated 22.2.1983 about receipt of cassettes from the appellants in excess of the quantity invoiced as well as under the guise of IC covers and did not choose to retract the same till lapse of considerable period of time even in the writ

petition filed before the High Court against the earlier order. From these findings we find that the conclusion arrived at by the Collector is sustainable more particularly for the reason that the appellants have not cross-examined any of the dealers who have not retracted their statements. Retraction has been done belatedly after a lapse of considerable period of time by only two dealers as noted above.

Therefore, their retraction has not affected the conclusion arrived at by the Collector. The Collector has also noted that M/s. Sound & Vision failed to account the cassettes found unaccounted in their premises at the time of seizure which clearly supports the plea that the earlier statements given by them was voluntary one. The Collector has also noted the corroborative evidence in the form of original packing declared to contain IC covers, but actually containing blank cassettes which had been recovered from the premises of M/s. Cassette Rek Bangalore to prove that what was cleared were cassettes and not IC covers. This is as per the statement of Shri Suresh who had admitted to having received 1000 blank cassette tapes and not IC covers as described in the invoice. He has also noted that 2347 video cassettes seized from M/s. Sound & Vision Bangalore and the initial admission with regard to non-duty payment of these items. Collector has also noted 10,630 unaccounted cassettes seized from the premises of M/s.

Kishen Electronics and Tine Television, Bangalore. The corroborative statement admit non-payment of duty by Shri Kishan Lekwani. We have considered all these aspect of the matter and find that the conclusion has been arrived at by these piece of evidences which is unchallenged without any cross-examination and hence the various findings arrived at is based on seizure of goods which had been cleared without payment of duty. Therefore, the Collector has arrived at the conclusion on the basis of evidence on record.

We also note that the judgments which are cited by the appellants are distinguishable. In those cases there was no seizure from the dealers and statements about non-payment of duty. In the cases cited there were no admissions as the party had done in the present case. In view of the statements not having been cross-examined, therefore, the appellants have not made out a

case for interference of the order of the Collector.

10. Penalty imposed is only Rs. 20,000 as against the duty evasion of over Rs. 2,38,664. There is no ground for reducing the penalty or the redemption fine in the present case. There is no merit in the appeal and hence the same is rejected.

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