Commissioner of Central Excise Vs. Universal Cables Ltd.

Commissioner of Central Excise Vs. Universal Cables Ltd.

SooperKanoon Citation : sooperkanoon.com/17457

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-12-2000

Reported in : (2000)(118)ELT386TriDel

Appellant : Commissioner of Central Excise

Respondent : Universal Cables Ltd.

Judgement :

1. The respondents herein are engaged in the manufacture of Insulated wires and cables falling under Chapter 85 of the Schedule to the CETA 1985. On 29-2-1992, i.e. the date appointed for presentation of the Annual Budget for the year 1992, they applied for and obtained permission from Central Excise Authorities for clearing the goods between 1700 hours to 2400 hours on 29-2-1992, on furnishing an undertaking that they would pay the differential duty amount, if there was any increase in the rate of duty applicable to goods cleared on budget day between the above mentioned hours, in terms of Rule 224(2A) of the Central Excise Rules. As per the Finance Bill, 1992, rate of duty on cables was enhanced from 25% to 30% ad valorem and therefore, in terms of the undertaking furnished under Rule 224(2A), the Jurisdictional Superintendent demanded defferential duty of Rs. 3,28,634/- on the cables cleared between 1700 hours to 2400 hours. The amount was paid by the respondents who then preferred an appeal to the Collector (Appeals) who set aside the demand holding, inter alia, that the increased rate of duty comes into effect only from mid-night of 29-2-1992/1-3-1992 following the Tribunal's decision in the case of Indian Explosives reported in 1985 (20) E.L.T.

139 and he also held that the demand was not enforceable since it was not preceded by a show cause notice. Hence this appeal by the Revenue.

2. On hearing both the sides, we find that in a recent decision of the Tribunal in the case of Mangalam Cement Ltd. v. Collector of Central Excise, Jaipur reported in 1998 (29) RLT 669, the Tribunal has held that the rate of duty as enhanced in the budget day is payable in terms of the undertaking, on budget day clearance between 1700 hours and 2400 hours, and there is no conflict with the provisions of the Provisional Collection of Taxes Act, which Act applies to collection of duty at rates enhanced by the Finance Bill pending its enactment in respect of clearances made after 00 hours' on the next day of presentation of the Budget. The Bench has considered the decision of the Tribunal in the case of Indian Explosives (supra) and the Tribunal's decision in the case of J.K. Synthetics Ltd. reported in 1993 (68) E.L.T. 246.

Following the ratio of the Tribunal's decision in the case of Manglam Cement, we hold that the enhanced rate of duty payable on budget day clearance between 1700 hours and 2400 hours. We also agree with the Revenue that the notice dated 27-3-1992 issued by the Superintendent for payment of differential duty at enhanced rate in terms of the undertaking furnished by the respondents is sufficient notice for demand. In the result we set aside the impugned order and allow the appeal.