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Modinagar Rubber Mills Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-24-2000

Reported in : (2000)(72)ECC330

Judge : R T Lajja, P Bajaj

Appellant : Modinagar Rubber Mills

Respondent : Cce

Judgement :

1. This appeal has been filed by M/s. Modinagar Rubber Mills against the Order-in-Original dated 21.02.94 passed by the Collector of Central Excise, Meerut vide which duty demand of Rs. 4,64,315.51 and penalty of Rs. 7,50,000 had been imposed on them. The facts of the case may briefly be stated as under.

2. The appellants are engaged in the manufacture of transmission rubber belting falling under Chapter 40 of the Schedule to the Central Excise Tariff Act, 1985 and had been availing SSI exemption benefit under Notification No. 83/83 dated 3.3.83. They had been clearing the goods during the period 1.4.83 to 30.09.83 on the basis of prices approved vide Price List No. RP/2/82 dated 6.2.82 without claiming the reduction on account of excise duty. However, later on they again filed price list No. 4/83 claiming therein, from the sale price deductions on account of cash discount average freight, etc. They were issued four show cause notices for the period mentioned therein by alleging that they had realised the duty amount from their customers while at the time of the clearance of the goods they had

made debit entries in respect of the duty amount leviable on the goods in the PLA. But later on, at the close of the month, they had been taking credit of the same amount in the PLA on the ground that they had paid duty on the goods wrongly and that they were not required to pay any duty as they had been working under S.S.I, exemption. The appellants did not file any reply to the show cause notices in spite of providing number of opportunities to them to file the same and to appear for personal hearing. The Collector thereafter proceeded to adjudicate upon all the four notices and confirmed the duty amount and also imposed penalty referred to above on them.

3. Feeling aggrieved by the order of the Collector of Central Excise, the appellants have come up in appeal before the Tribunal.

4. Shri P.K. Jain, Representative of the Company has prayed for the adjournment on the ground that some documents have to be filed but those had not been made available to him by the Excise Department. But we have gone through the record and we do not find any substantial ground to allow any further adjournment to the appellants as already number of opportunities have been afforded to them. The matter is old one and pertains to the period between April to Sept., 1983 and the show cause notices were issued to them in the months of Sept., Nov., 1984 and Jan. 1985. Therefore, we proceed to decide the matter after hearing both the sides.

5. We have gone through the record. The allegations against the appellants were that at the time of clearance of the goods, they used to make debit entries in respect of the duties claimed to be leviable on the same in the PLA but later on, at the close of the month, they had been taking credit of the same amount in the PLA on the ground that they had paid duty on the goods wrongly and that they were not required to pay any duty as they had been working under S.S.I, exemption.

However from the perusal of the impugned order, it is clearly evident that the appellants were not afforded proper opportunity to defend themselves. In para-9 of the order, the Collector had no doubt recorded that the appellants were granted number of opportunities to appear before him and they did not appear but details of the dates and the opportunities given had not been mentioned by him. The

Collector should have allowed them one final opportunity so that the appellants or their representative could produce record/ documents which now they intend to produce and which were in the custody of the Excise Deptt. and copies were also not made available to them in spite of their best efforts in support of their defence. Therefore, we find that the impugned order has been passed by the Collector in violation of the rules of natural justice resulting in miscarriage of justice. Therefore, the matter deserves to be sent back for re-adjudication after allowing the appellants reasonable opportunity to produce the documents in support of their plea. No doubt the matter is old one. But we are constrained to send back the matter to the adjudicating authority for re-adjudication after providing proper opportunity to the appellants to present their defence in the interest of justice.

6. In view of the above, the impugned order of the Collector is set aside and the case is sent back to the adjudicating authority for fresh decision in the light of the observations made above. The authority will try to dispose the case preferably within the period of six months. The appeal of the appellants accordingly stands allowed by way of remand.

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