Super Electricals Vs. Collector of C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-01-1984

Reported in : (1989)(43)ELT519TriDel

Appellant : Super Electricals

Respondent : Collector of C.E.

Judgement :
1. The question for decision in this appeal to the Tribunal is whether the whole or part of Central Excise Duty of Rs. 14,972.48 P. demanded from the appellants is time-barred and whether the imposition of penalty of Rs. 1,000/- on the appellants is justified.

2. The appellants are engaged in the manufacture of bare aluminium strips falling under Tariff Item 27(b), bare copper strip falling under Tariff Item 26A(ii) and double paper covered aluminium strips and double paper covered copper strips falling under Tariff Item No. 68.

3. The appellants were availing exemption upto the value of Rs. 30 lakhs in respect of the goods falling under Tariff Item 68 of the CET in terms of Notification No. 105/80-C.E., dated 19-6-1980 and in respect thereof had filed the necessary declaration. The present proceedings against the appellants commenced as a result of surprise visit dated 29-5-1982 of the Anti-Evasion Staff of Headquarters office, Jaipur. The Antivasion Staff found that the appellants were manufacturing bare aluminium/copper strips falling under Tariff Item No. 27(b) and Tariff Item No.

26A(ii) and were not maintaining any accounts of the production or clearance of the said goods. Show Cause Notice dated 6th October, 198*2 was, therefore, served on the appellants calling upon them to show cause notice why for the period 24-9-1981 to 27-5-1982, Central Excise duty be realised from them on the quantities cleared and penalty imposed. The appellants filed reply dated 27-4-1983 denying the allegations. After following the usual procedure, the Additional Collector, Jaipur by Order dated 27-8-1983 demanded Central Excise duty of Rs. 14,972.48 P. and also imposed a penalty of Rs. 1,000/-.

4. During arguments before us, Shri K.G. Sooji, learned Consultant for the appellants did not challenge the classification of the bare aluminium strips and bare copper strips under Tariff Item No. 27(b) and No. 26A(ii) or the double paper covered strips under Tariff Item 68.

5. We do not, therefore, express any findings about proper classification in this case.

6. Shri Sooji confined his arguments only to question of penalty and the demand being restricted to a period of six months preceding the date of Show Cause Notice applying the shorter period under Section 11A of the Central Excises and Salt Act, 1944. We notice that the appellants well before the search dated 29-5-1982 and the Show Cause Notice dated 6th October, 1982 had on 20-9-1981 filed a declaration claiming benefit of Notification No. 105/80-C.E., dated 19-6-1980. In this declaration in Col. 9, process of manufacture, the appellants had mentioned 'Rod is drawn to the required size, then flattened annealed and fed to covering machine and hence the end product (Insulated Strips) is obtained'. Thus from this declaration, the Department knew that the appellants were making double paper quoted (insulated strips) from bare copper strips or bare aluminium strips. In the circumstances, even if the appellants held no bond for manufacture of these strips, that would for this case make no difference because in substance, the article was the same and Department was fully aware of the process of manufacture. There was no suppression or mis-statement of facts or fraud or collusion on the part of appellants. In such a case, the time limit applicable for raising demand would be the shorter period of six months and not the longer period of five years.

7. As to penalty also, we do not think that -retrospective amendment made in Rule 9(2) of Central Excise Rules, 1944 can be evoked for imposing penalty for a past period. Even otherwise, on the facts and circumstances of the case, imposition of penalty is not justified.

As a result of foregoing discussion, the demand of duty from the appellants is restricted to a period of six months preceding the receipt of the date of show cause notice. Rest of the demand of duty is set aside. Penalty imposed on the appellants is also set aside. The appeal is thus partially allowed.