Commissioner of Central Excise Vs. J.M.P. Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-17-2000

Reported in : (2000)(121)ELT50TriDel

Appellant : Commissioner of Central Excise

Respondent : J.M.P. Industries

Judgement :

1. The Revenue has filed the present appeal against the order-in-Appeal No. 305/CE/CHD/2000, dated 7-2-2000 passed by the Commissioner (Appeals), Chandigarh setting aside the demand confirmed by the Assistant Commissioner holding that the central excise duty is required to be paid only at one stage and as the duty had been paid subseuently by the second unit of the Respondents, no duty is chargeable.

2. Shri M.P. Singh, learned D.R., submitted that the Respondents M/s.

J.M.P. Industries manufacture Iron Castings falling under sub-heading 7325.10 of the Schedule to the Central Excise Tariff Act; that during the month of March 1994 they cleared castings valued at Rs. 7,84,190/- at nil rate of duty that the Assistant Commissioner under adjudicating order No. 43/98 confirmed the demand of central excise duty amounting to Rs. 78,419/- and imposed a penalty of Rs. 54,000/- holding that the respondents were required to clear the castings only after payment of appropriate central excise duty; that the Commissioner (Appeals), however, set aside the adjudication order as the Respondents had cleared the

castings after undertaking the process of shot blasting, chipping, grinding etc., on payment of duty from their another concern.

The learned D.R. further submitted that the duty is to be paid by the unit which manufactures the excisable goods; that under the various provisions of Central Excise Rules such as Rules 9 & 49,173F and 173G the goods can be removed from the place of manufacture only on payment of central excise duty; that there can not be any waiver of the duty in favour of the manufacturer of the goods on the ground that someone else has discharged the duty liability.

3. On the other hand Shri Sudhir Malhotra, learned Advocate, submitted that the Respondents are having two units namely J.M.P. Industries, and J.M.P. Mfg. Co.; that these two units are one entity as J.M.P. Mfg. Co.

is Proprietor of J.M.P. Industries; that both the units were having one Sales Tax number; that as the castings were exempt from payment of duty under Notification No. 275/88-C.E., dated 4-11-1988 and this notification was rescinded only w.e.f. 1-3-1994, they had, under bonafide belief, cleared the castings at nilrate of duty to their proprietary unit for further processing and clearing on payment of duty: that they had cleared the goods under the statutory GP-1; that central excise duty is chargeable only once and that has been fully discharged by the proprietary unit at the time of clearance; that if duty is demanded from them then the credit of the same would be admissible under Rule 57E of the Central Excise Rules. The learned Advocate also submitted that if the Respondents are asked to pay the duty again this will amount to double taxation. He finally submitted that imposition of penalty is incorrect as the goods were duly accounted for in the books of account and these were cleared under GP-1 only and as such there was no malaficle intention to evade payment of duty.

4. We have considered the submissions of both the sides. The facts, which are not in dispute, are that the Respondents manufacture the castings which were classified by them under sub-heading 7321.10 of the Central Excise Tariff and the same were cleared by them to their another unit without payment of duty. Their main plea is that their second unit has discharged the duty liability and that too on enhanced value. As per provisions of Section 3 of the Central Excise Act, central

excise duty is payable on the goods manufactured in India in such a manner as may be prescribed. The manner of payment is prescribed in the Central Excise Rules. Rule 7 of Central Excise Rules provides that every person who produces or manufactures any excisable goods shall pay the duty leviable on such goods. Further, Rule 9 provides that no excisable goods shall be. removed from any place where they are manufactured, whether for consumption, export, or manufacture of any other commodity until the excise duty leviable thereon has been paid at such place. Rule 49 of Central Excise Rules provides that the duty is chargeable on removal of the goods. Similarly, Rule 173F provides that an assessee will determine his liability for the duty due on the excisable goods and shall not remove such goods unless he has paid the duty so determined. It is, thus, apparent from all these provisions that duty liability has to be discharged by the unit in which these are manufactured and before they are removed from therein. As the Respondents have not paid the duty they are liable to pay the same and the fact that their another unit has discharged the liability is not enough for the purpose of payment of duty under the Act and Rules. We, therefore, set aside the impugned order and confirm the demand of duty on the impugned goods. However, taking into consideration all the facts and circumstances we are of the view that though the penalty is imposable on the Respondents, the quantum needs to be reduced. We, therefore, reduce the penalty of Rs. 50,000/- imposed under Rule 173Q to Rs. 5,000/- only. As the penalty has been confirmed under Rule 173Q the other penalty imposed under Rule 9(2) and 226 are set aside. The appeal is disposed of in the above terms. The cross objection filed by the Respondents are also disposed of in the above terms.