

Mac Designers Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-21-2000

Reported in : (2000)(71)ECC864

Judge : R T Lajja, P Bajaj

Appellant : Mac Designers

Respondent : Commissioner of Central Excise

Judgement :

1. This appeal has been filed by the appellants M/s. Mac Designers against the Order-in-Original dated 23.3.98 passed by the Commissioner of Central Excise who had confirmed duty demand of Rs. 15,90,261 and imposed penalty of Rs. 2 lakhs on them. The Commissioner had also confirmed the duty demand of Rs. 26,63,825 alongwith penalty of Rs. 3 lakhs on M/s. Mac Venetian through this very order, but they are not party before us in the present appeal.

2. The facts giving rise to the present appeal may briefly be stated as under: 3. M/s. Mac Venetians are engaged in the manufacture of venetian blinds and vertical blinds classifiable under Chapters 76 and 66 respectively of the CETA. However, in the classification list effective from 7.12.89 they declared the vertical blinds being manufactured without the aid of power and claimed exemption from the whole of the duty under Notification No. 65/87 dated 1.3.87. This exemption was also accordingly claimed by them subsequently in the classification lists, but in order to ascertain as to whether the vertical blinds were being manufactured by

them with or without the aid of power, the Central Excise officers visited the factory premises of M/s. Mac Venetians and found that the manufacturing of vertical blinds was being done with the aid of power. The statement of Vinay Singla, partner of the firm was also recorded, who also disclosed that the present appellants were manufacturing furniture and for that purpose a power operated saw had been installed. But the appellants did not file any declaration in that regard. No record was also maintained by them. However, from the sales tax returns it revealed that the appellants has sold furniture of the value of 53,49,452 during the year 1992-93. But they did not pay any duty thereon. They were served with a show cause notice vide which the duty demand was raised.

4. The appellants contested the correctness of that Show Cause Notice and denied the sale of furniture at Rs. 53,49,452 during the period 1992-93 and also their liability to pay the duty amount thereon.

Similar, show cause notice was also issued to M/s. Mac Venetians vide which differential duty payable on the clearances of venatian blinds, amounting to Rs. 26,62,825 was demanded. That party also contested the correctness of the notice.

5. The Commissioner of Central Excise who adjudicated both the above-said notices one against the appellants and the other against their second concern M/s. Mac Venetians through the common impugned order confirmed the duty demand as well as imposed penalty, as detailed above, on both of them.

6. Being dissatisfied with the order of the Commissioner of Central Excise, the appellants have come up in appeal.

7. The learned Counsel has assailed the validity of the impugned order on the two grounds. Firstly that the impugned order against M/s. Mac Venetians had already been set aside by another Bench of the Tribunal and the case has been sent back for readjudication. Secondly, the duty had been confirmed on the appellants solely on the basis of the figures taken from the sales tax returns filed by them and no independent enquiry regarding the actual production or sale of the furniture was conducted by the Commissioner.

8. The learned JDR, on the other hand, while disputing both these grounds of the counsel, has argued that the figures shown in the sales tax returns by the appellants, had been rightly made the basis for confirmation of duty amount on them.

10. So far as the first grounds is concerned, the same has not been disputed before us by the learned JDR. Admittedly, this very impugned order vide which the duty demand of Rs. 26,63,325 was confirmed and penalty of Rs. 3 lakhs was imposed on M/s. Mac Venetian had already been set aside by another Bench of the Tribunal. Case against that concern had been sent back for fresh decision in accordance with law.

11. Regarding the second ground raised by the learned Counsel, there is also not much dispute. The figure of Rs. 53,49,452 as sale proceeds from the furniture on the basis of which the duty demand had been confirmed by the Commissioner of Central Excise, was taken from the sales tax return for the year 1992-93, filed by the appellants, but this return was never put to them for explaining the position. No independent enquiry was also conducted by the Commissioner as to whether the furniture of this value was actually manufactured and cleared during the period in question by the appellants or not. The appellants are not only engaged in the manufacture of furniture but they also carry on other activities such as interior decoration etc the plea taken by them is that the income showed by them in the income tax was not exclusively from the sale of furniture but also other marketable goods with which they are dealing. This aspect of the matter had not been gone into by, the Commissioner He even did not collect any evidence regarding purchase of the raw materials consumption of electricity and the number of labourers employed by the appellants in connection with the manufacture of furniture, during the disputed period. No presumption that whatever income was shown by them in the sales tax return for the year 1992-93 was the result of sale of furniture by the appellants, could be legally drawn by the Commissioner. He was duty bound to hold an independent enquiry regarding the actual manufacture and clearances of the furniture, made by the appellants during the period in question. For having not so done his impugned order cannot be legally sustained.

12. In the light of the discussion made above, both the grounds put forth by the counsel for setting aside the impugned order of the Commissioner deserves to be accepted and the case deserves to be sent back for fresh decision after affording full opportunity to the appellants to present their case. Consequently, the impugned order of the Commissioner is set aside and the appeal of the appellants stands accepted by way of remand. The case is sent back to the adjudicating authority for afresh decision in accordance with law.

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