Lml Ltd. Vs. Collector of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-11-2000

Reported in : (2000)(122)ELT373TriDel

Appellant : Lml Ltd.

Respondent : Collector of C. Ex.

Judgement :
1. Today these two appeals are posted for hearing Stay Applications.

For the reasons recorded below, the recovery of penalties imposed by the Adjudicating Authority, are stayed and both the appeals are taken up for final hearing with the consent of both the sides.

2. Shri R. Santanam, Ld. Advocate, submitted that M/s. LML Ltd. manufactured certain electronic components which were supplied to their scooter unit; that they had classified these goods as Motor Vehicle Parts under heading 87.14 of the Schedule to the Central Excise Tariff Act right from the commencement of production; that they had filed classification lists effective from 21.03.1990 which was approved by the department; that again they filed the revised classification lists effective from 02.03.1992; that they had also filed classification declaration under Rule 173B of the Central Excise Rules on 09.03.1998; that the Adjudicating Authority has classified these goods under Chapter 85 of Central Excise Tariff, confirmed demand for differential duty and imposed penalty under the Adjudication Order Nos. 44/99 and 46/99 both dated 13.09.1999; that on appeal filed by them

the Commissioner (Appeals), under the impugned Order, has remanded the matter to the Adjudicating Authority for re-calculating the demands after allowing the abatement of excise duty from the sale price; that, however, Commissioner (Appeals) has upheld the imposition of penalty holding that the Appellants have themselves revised approved classification of products to avoid the duty and they have accepted the proposal made in the show cause notice regarding classification. The Ld. Advocate submitted that in Appeal No. E/2477/2000-B, show cause notice dated 24.06.1998 was issued for changing the classification of the goods and there was no proposal, in the show cause notice for imposing any penalty and as such imposition of penalty by the Adjudicating authority under Order No. 46/99 and its confirmation by the Commissioner (Appeals) is beyond the scope of the show cause notice. He further mentioned that in Appeal No. E/2476/2000-B, no doubt there was a proposal, in the show cause notice for imposition of penalty, the penalty is not imposable as they have not concealed from Department in any form any information; that they have classified the product as per their understanding and if department has classified the product differently, it does not mean that there was any misdeclaration on their part; that they had classified them as Motor Vehicle parts as the entire products were used by them in their Scooter Unit as components of two wheelers manufactured by them.

3. Shri Ashok Kumar, Ld DR, submitted that as they had made a mis-declaration in the classification lists with a view to pay the duty at the lesser rate, the penalty has been rightly imposed on them.

4. We have considered the submissions of both the sides. The Appellants have claimed the goods manufactured by them as Motor Vehicle parts whereas the Department has classified them as electrical components/parts. It has not been denied by the Revenue that in the past their classification lists classifying the impugned products under Heading 87.14 were approved. In the classification list effective from 21.03.1990, the Assistant Collector while approving the classification list, only changed the classification of a few product. It is also not the case of the Department that the goods declared by them in their classification lists were found to be different. In view of these facts merely because the Appellants have classified the product as Motor Vehicle Parts, it cannot be alleged that there

was intentional misdeclaration by them so as to attract the penalty provisions. The penalty in respect of Adjudication Order No. 46/99, in addition, was beyond the scope of show cause notice as there was no mention of invoking the penalty provision in the show cause notice. We, therefore, set aside the penalty imposed by the Adjudicating Authority and confirmed by the Commissioner (Appeals) and allow both the appeals.