Commissioner of Cen. Excise, Vs. M/S. Meghdev Enterprises

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-27-2001

Appellant : Commissioner of Cen. Excise,

Respondent : M/S. Meghdev Enterprises

Judgement :

1. The respondents herein are engaged in the manufacture of decorative and industrial laminated sheets. On collection of intelligence by Directorate of Anti-Evasion as well as the Central Excise Officers, it was found that the assessable value declared by the assessee of their product was lower than the value recommended by the Indian Laminate Manufacture's Association and that the laminated sheets of first quality were being cleared by categorising them as second grade or third grade or scrap. It was further revealed that the assessee was manipulating the production of laminated sheets by showing incorrect ratio of raw material consumption and clearing unaccounted production of laminated sheets without payment of appropriate duty. Therefore, a show cause notice dated 6.2.89 proposing recovery of duty at the appropriate rate on a particular quantity of laminated sheets and decorative laminated sheets and, proposing imposition of penalty was issued to the respondent company. The notice also proposed confiscation as well as penal action against the Directors and Partners. Against the adjudication order passed initially, appeals were filed before the Tribunal which by order No. 223-239/96-C dated 15.04.1996 remanded the case, to the Commissioner for fresh adjudication after giving full opportunity to the assessee to defend themselves and observing the principles of natural justice. On remand, the

present adjudication order has been passed confirming the duty demand of Rs.22,62,847/- and a further duty demand of Rs. 70,86,954/-. The appeal of the Revenue relates to the fact that while in the earlier order which was set aside by the Tribunal penalty was imposed upon the respondents, in the present case the Commissioner has erred in non imposition of penalty against the respondents.

2. We have heard both sides. We find that the assessee/respondents have filed appeal NO. E/2777-R/99-Bom which was disposed of by the Tribunal vide Final Order No. C-1/2498-2503/WZB/2000 dated 26.7.2000 along with appeals filed by M/s. Jay Enterprises and M/s. Jay Laminart Ltd. and appeals of the Revenue against M/s. Jay Enterprises and M/s. Lay Laminart Ltd. All the appeals were disposed of together in view of the fact that issue were identical. The Tribunal has set aside the duty demand in paragraph 21 of its order. Since the demand for duty itself has been set aside in the appeal of the assessees as stated above, there is not merit in the department's appeal regarding imposition of penalty upon the assessee. We, therefore, dismiss the appeal.