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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-22-2002

Reported in : (2002)(143)ELT543Tri(Mum.)bai

Judge : J Balasundaram, J T J.H.

Appellant : Asha Pavro Electronics Pvt. Ltd.

Respondent : Commr. of C. Ex., Mumbai-iii

Judgement :

1. The appeal arises out of the order of the Additional Collector of Central Excise, Mumbai confirming the duty demand of Rs. 19,469.77 by applying the extended period of limitation against the appellant and imposing penalty of Rs. 20,000/- on the appellant.

2. The appellants are holders of A4 licences to whom a show cause notice was issued on 1-2-1984 alleging that during the period 1-4-1983 to 14-12-1983 they manufactured and cleared excisable goods falling under Item 68 of the erstwhile Central Excise Tariff namely, push button switches, toggle switches, cut leads, multi turn dials and key board switches without payment of duty even after exceeding the clearance value of Rs. 40 lakhs. The as-sessee's contention that the demand was barred by limitation for the period up to the end of July, 1983, that no duty can be demanded on cut leads since the activity carried out, i.e., of merely cutting of running lengths of wires into shorter length did not amount to manufacture and that the remaining items were not manufactured by them but

were bought out items; that there was a calculation mistake of Rs. 5,581/-, and that no penalty was warranted due to the bona fide belief in the mind of the appellant, was rejected by the adjudicating authority resulting in the demand confirmation and imposition of penalty. Hence this appeal.

4. We accept the contention of the Counsel for the appellant that the longer period of limitation is not attracted in this case for the reason that the reading of the show cause notice makes it amply clear that neither the proviso to Section 11A of the Central Excise Act is being invoked against them nor is there any whisper in the show cause notice of the ingredient of the proviso. We, therefore, hold that the demand for the period up to 31-7-1983 is barred by limitation.

5. Coming to the duty demand for the normal period of six months we see substance in the contention of the appellant that the activity carried out by them of cutting of longer length of leads into shorter lengths does not amount to manufacture in the light of the Tribunal's decision in the case of CCE v. Kohli Auto Pvt. Ltd. - 1999 (109) E.L.T. 433. We, therefore, set aside the demand for duty of Rs. 2,142,90 which is the duty that was payable within the six months period on cut leads.

6. We are now left to consider the sustainability of the duty demand on the remaining four items. We find that the Commissioner has held that the value of different items which form part of the finished goods is includ-ible and we accept this finding as reflecting the correct legal position. We, therefore, hold that the duty demand of Rs. 7,563.70 being the duty on the four items within the normal period of limitation is sustainable.

7. We are unable to accept the contention of the appellant that the duty demand has been wrongly calculated and that there is an error of Rs. 5,581.35, in the absence of any specific finding on this point by the Commissioner. Since this would be required to be re-verified and doing so at this late stage would serve no purpose, we reject the contention of the appellant for deduction of the amount of Rs. 5,581.35.

8. The penalty imposed upon the appellant is set aside in view of the fact that we have already held that the extended period of limitation is not available to the department in this case and also for the reason that the appellants were under a bona fide belief at the relevant point of time. In the result while we uphold the demand of duty of Rs. 7,563.70, set aside the balance duty demand and the penalty imposed.

10. The appellant has deposited the entire duty demand confirmed against them and this has been noted in the stay order passed by the Tribunal. We, therefore, direct consequential relief to the appellants.

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