Calcom Vision Ltd. Vs. Commissioner of Central Excise,

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SooperKanoon Citation : sooperkanoon.com/27836

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-15-2002

Reported in : (2002)(142)ELT383TriDel

Judge : S Kang, a T V.K.

Appellant : Calcom Vision Ltd.

Respondent : Commissioner of Central Excise,

Judgement :

1. The issue involved in this appeal, filed by M/s. Calcom Vission Ltd., is whether in the facts and circumstances of the matter the facility to pay Central Excise duty on fortnightly basis under Rule 8(1) of the Central Excise (2) Rules, 2001 should be suspended for a period of 2 months? 2. Shri V. Lakshmikumaran, learned Advocate, along with Shri B.L.

Narsimhan, learned Advocate, submitted that the Appellants manufacture Colour/Black & White television receivers; that Colour T.V. sets are cleared on payment of duty in terms of Section 4A of the Central Excise Act; that the value for the Black & White T.V. sets is determined in terms of purchase orders received from the customer; that the duty payment is discharged by them on fortnightly basis as provided under Rule 8(1) of the Central Excise Rules, 2001; that while conducting the audit of their records the Central Excise Officers noted that in respect of some of the clearances of Black & White T.V. sets made to BPL Ltd. the value adopted in the invoice was less than value quoted in the purchase order, that since the duty liability was very meager (only Rs. 1,807) they debited the same in the CENVAT account on 31-12-2001; that subsequently the Deputy Commissioner directed them to pay interest and also forfeited the facility of payment of duty on fortnightly basis for a period of 2 months under the Adjudication Order dated 5-2-2002; that the Commissioner (Appeals) also under the impugned Order has rejected their appeal holding that the Appellants had defaulted in payment of duty and had not suo moto debited the said amount and contravened provisions of Rule 8(4)(i) of the Central Excise Rules. The learned Advocate, further, submitted that Sub-rule (4) of Rule 8 is applicable only in a situation when there is a default by the assessee in payment of any one of the instalments of the duty and the duty liability is discharged beyond the period of 30 days from the date on which the instalment is due in a financial year, that thus the crucial requirement for the application of this Sub-rule is that there should be a default in payment of anyone of instalment as prescribed in Rule 8 and the defaulted payment should not have been made within 30 days from the date on which the instalment is due; that crucial requirement is not satisfied in the present matter inasmuch as there has been no default of payment of anyone instalment by them; that they had paid the Central Excise duty on the goods removed on or before the due dates by a debit in the CENVAT account and payment through PLA, and, therefore, the question of forfeiting the facility to pay the duty in instalment does not arise. The learned Advocate also mentioned that the default in instalment means the default in payment of the full amount of the instalment and not as interpreted by the Revenue; that what was correctly payable by the assesses has been correctly paid by the due date; that in terms of provisions of Section 4 of the Central Excise Act the value of excisable goods for the purpose of charging duty would in a case whether the goods are sold by the assessee for delivery at the time and place of removal will be transaction value; that therefore, price charged in the invoice would be the transaction value; that the price indicated in the purchase order or in any other documents would thus be of no relevance; that they had not recovered any amount from the customers in addition to the price indicated in the invoice; that though they have paid the duty amount of Rs. 1807/- they are not required to pay the same. Finally, he submitted that Rule 8(3) of the Central Excise Rules is not in substitution of Section 11A of the Central Excise

Act; that any non-levy or short levy has to be demanded under Section 11A only and that cannot be the basis for forfeiting the facility of payment of duty on fortnightly basis; that Sub-rule (3) & (4) of Rule 8 will be applicable only if the amount of duty shown in the invoices is not debited by any assessee by due dates.

3. Opposing the prayer Shri R.D. Negi, learned SDR, submitted that the transaction value for the sale of the Black & White T.V. is the price indicated in the purchase order and not the price indicated in the invoice; that it was only while conducting the audit of the records of the Appellants the Central Excise Officers detected the difference in the price mentioned in the invoice and transaction value as shown in the purchase order, that they had paid the differential duty on being pointed out; that accordingly the duty payable was not paid by them as per Rule 8(1) of Central Excise Rules, and hence, the facility has been rightly forfeited by the Department. He, further, emphasized that the defaults in payment of duty means the correct amount of duty and not any amount of duty and as in this case the correct amount of duty has not been debited the consequence as mentioned in Rule 8(4) has to be suffered by the Appellants.

4. We have considered the submissions of both the sides. As per Rule 2(e) of the Central Excise Rules 2001, duty means the duty payable under Section 3 of the Central Excise Act. Rule 4 provides that every person who produces or manufacture any excisable goods, or who stores such goods in a warehouse shall pay the duty leviable on such goods in the manner provided in Rule

8. Rule 8 provides that the duty on the goods removed during the first fortnight of the month shall be paid by the 20th of that month and the duty on goods removed during the second fortnight of the month shall be paid by 5th of the following month provided that in the case of goods removed during the second fortnight of the month of March the duty shall be obtained by the 31st day of March. Sub-rule

(3) of Rule 8 provides that if the assessee fails to pay the amount of duty by due date, he shall be liable to pay outstanding amount along with interest on the outstanding amount for the period starting with the first day after due date till the date of actual payment of the outstanding amount. Sub-rule

(4) reads as under :-"(4) If the assessee default, - (i) in payment of any one instalment and the same is discharged beyond a period of thirty days from the date on which the instalment was due in a financial year, or (ii) in payment of instalment by the due date for the third lime in a financial year, whether in succession or otherwise, then, the assessee shall forefeit the facility to pay the dues in instalments under this rule for a period of two months, starting from the date of communication of the order passed by the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, in this regard or till such date on which all dues are paid, whichever is later, and during this period the assessee shall be required to pay excise duty for each consignment by debit to the account current and in the event of any failure, it shall be deemed that such goods have been cleared without payment of duty arid the consequences and penalties as provided in these rules shall follow."

5. As far as the present matter before us is concerned the issue does not involve, whether the differential duty of Rs. 1807/- was payable by the Appellants or not. It is, further, not in dispute that the price mentioned in the purchase order was higher then the price which was mentioned in the invoice and on the basis of which Central Excise duty was debited in the manner provided under Rule 8(1). We find substance in the submissions of the learned SDR that the payment of duty has to be the correct payment of duty and not only the amount shown in the invoice issued during a particular fortnight. As in the present matter duty which was payable under the Act read with Section 4 of the Central Excise Act was not debited fully the mischief of Sub-rule

(4) of Rule 8 of Central Excise Rules, 2001 will be applicable and the facility of making the payment on fortnightly basis can be forfeited by the Revenue. However, taking into consideration the facts and circumstances of the case and the amount of duty involved we are of the view that the forfeiting the facility of paying the duty on fortnight basis for a period of two months is quite harsh. As observed by the Tribunal in the case of Escorts JCB Ltd. v. CCE, New Delhi, - 2000

(118) E.L.T. 650 (Tri.) the limit fixed under Sub-rule

(4) of Rule 8 is maximum period for which the facility can be forfeited and is not mandatory that in all such cases the facility should be forfeited for the maximum period.

We, accordingly, hold that the forfeiture of the facility for one month is sufficient in the present matter. We order accordingly.