Samcor Glass Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-20-2002

Reported in : (2002)(81)ECC771

Judge : S T G.R., P Bajaj

Appellant : Samcor Glass Ltd.

Respondent : Cce

Judgement :

1. This appeal has been filed by the appellants against the impugned Order-in-appeal passed by the Commissioner (Appeals) dated 24.8.2001 vide he had affirmed the Order-in-original of the Additional Commissioner confirming the duty and imposing penalty on the apppellants, as detailed therein.

2. The appellants are engaged in the manufacture of monochrome glass panels, funnels and shells falling under chapter heading 7008.20 of the CETA. They are using cerium oxide and pumice powder etc. They are also carrying out job work activity. They imported raw materials at concessional rate of duty under the provisions of Notification No.64/95-Cus. date 16.3.95 as amended by Notification No. 13/97-Cus. dated 1.3.97. But they instead of using that material in the manufacture of the final product, cleared the same as such. Having done so, they were served with show cause notice for payment of differential duty for which they had availed concession under the abovesaid notification.

They contested the show cause notice by denying the allegations, but the Additional Commissioner who adjudicated the show cause notice, came to the conclusion that the appellants did not utilise the imported raw materials for the specified purpose and were liable to pay differential duty. He confirmed the differential customs duty of Rs. 2,56,060, differential countervailing duties of Rs. 33,144, differential Special Additional Duty of Rs. 3,080 under proviso to Section 28(1) of the Customs Act, 1962, and also imposed penalty of Rs. 2,92,284 under Section 114A of the Customs Act. He further imposed penalty of Rs. 10,00,000 under Section 117 of the Customs Act. Besides that the Additional Commissioner further confirmed Central Excise duty of Rs. 1,58,821 under Rule 9(2) of the Central Excise Rules and imposed penalty of equal amount under Section 11AC of the Act and penalty of Rs. 10,000 under Rules 9(2), 52A, 173Q(1) and 226 of the Central Excise Rules against the appellants. This order of the Additional Commissioner had been confirmed by the Commissioner (Appeals) through the impugned order.

4. So far as the confirmation of differential customs duty, countervailing duty, Special Additional Duty under the Customs Act and Central Excise duty under the Central Excise Act, as detailed in the Order-in-original of the Additional Commissioner and confirmed by the Commissioner (Appeals) is concerned, the same has not been challenged before us on any legal ground. The Additional Commissioner has recorded the specific findings in the Order-in-original that the appellants misused the benefit of Notification No. 64/95-Cus. dated 16.3.95 as amended by Notification No. 13/97-Cus. dated 1.3.97 as they did not utilise the imported raw materials in respect of which they availed the concessional duty, for the specified purpose i.e. for the manufacture of final products and as such, were liable to pay differential duty.

The learned Counsel has not been able to assail these findings on any material ground before us. These findings of the Additional Commissioner had been endorsed by the Commissioner (Appeals) also. We also do not find any material on record for disagreeing with these findings for want of any reliable evidence to contradict the same.

Therefore, the appellants have been rightly called upon to pay differential customs duty, countervailing duty, Special Additional Duty under the Customs Act and the Central Excise duty under the Central Excise Act, as detailed in the Order-in-original of the Additional Commissioner. The impugned order of the Commissioner (Appeals) upholding the order of the Additional Commissioner in that regard is therefore, affirmed.

5. However, keeping in view the facts and the circumstance of the case, penalty of Rs. 2,92,284 under Section 114A of the Customs Act as well as of Rs. 1,58,821 under Section 11AC of the Central Excise Act, imposed on the appellants, is reduced to Rs. 50,000 each under the Customs Act as well as Central Excise Act. The other penalty of Rs. 10,000 imposed under Section 117 of the Customs Act and under Rule 9(2) etc. of the Central Excise Rules, is set aside against the appellants.

6. The appeal of the appellants accordingly stands disposed of in these terms.