Whirlpool of India Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-12-2002

Reported in : (2003)(110)LC104Tri(Delhi)

Judge : K Usha, N T C.N.B.

Appellant : Whirlpool of India Ltd.

Respondent : Cce

Judgement :

1. The appellants M/s Whirpool of India Ltd. is a manufacturer of refrigerator. The appellant also manufacturers certain plastic parts required for the manufacture of refrigerators in one of its Units.

These are mostly transferred to its manufacturing division for using in such manufacture. Some parts are also sold in the replacement market. A Show-cause Notice dated 3.11.2000 was issued alleging that during the period October 1995 to June 1998 there was a short-levy of central excise duty of Rs. 31,60,581/- in the plastic parts division on account of non-inclusion of the cost attributable to moulds and dies while computing the cost of production of these plastic parts. Even prior to issue of Show-cause Notice, on 11.4.2000, M/s. Whirpool of India Ltd. deposited the duty amount. Subsequently, on 20.9.2002, the impugned order was passed confirming the duty demand, imposing penalty of an equal amount under Section 11AC of the Central Excise Act and demanding payment of interest Section 11AB of the same Act. The present appeal is directed against that order of adjudication.

2. It is the submission of the appellants that additional duty paid on the plastic parts on 11.4.2000 in the plastic parts division was mostly available as modvat credit in the refrigerator unit of the appellants and that in such a situation there was no justification for imposition of penalty under Section 11 AC of the Central Excise Act. It is also pointed out that most of the demand related to the period prior to coming into force of Section 11AC and Section 11AB w.e.f. 28.9.1996.

3. The learned DR has pointed out that the appellant was discharging duty on the plastic parts based on assessable value computed on the cost of production. Learned DR has submitted that since it is not in dispute that cost attributable to moulds and dies had not been included while working out the cost of production, the duty demand is entirely legal and correct inasmuch as it is settled law that the cost of moulds and dies, which are in the nature of indirect costs, are to form part of value of the plastic parts in question. He has also pointed out that part of the duty demand being for the period subsequent to 28.9.1996, the demand of interest and imposition of penalty have been correctly made.

4. It is clear from the records and submissions of both sides that the bulk of plastic parts in question have been utilized for further manufacture by the appellant itself and duty paid on plastic in one division was available as modvat credit in the other division. The appellant has also deposited the duty amount even prior to the issue of Show-cause Notice. It is also seen that provisions of Section 11AC and Section 11AB are not attracted to the period prior to 28.9.1996. In such a situation, we consider the Appellant's prayer for setting aside the penalty to be just. Accordingly, penalty imposed under the impugned order is set aside. However, the demand for interest in respect of duty due for the period subsequent to 28.9.1996 is confirmed. Since the appellants have already deposited the duty amount on 11.4.2000, they shall be entitled to take credit of duty which is attributable to the parts which have been transferred to refrigeration division for use in the manufacture of refrigerators.