Elecon Engineering Co. Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-14-2002

Reported in : (2002)LC509Tri(Mum.)bai

Judge : J Balasundaram, S T S.S.

Appellant : Elecon Engineering Co.

Respondent : Commissioner of C. Ex.

Judgement :

1. The appellant is engaged in the business of manufacture of material handling equipments/systems such as a coal handling conveyors, travel scraper machines, rotary wagon tipplers, etc. Considering the size of these equipments; the goods are removed in knocked down conditions for assembly at the customers premises. The customers of the appellant are State Electricity Board's, Power Plants, coal mines, railways and other core sector industries. The factory of the appellant is spread over several acres of land and comprises of different workshops. The equipments manufactured by the appellant undergo several stages of manufacture in different workshops. Pursuant to visit by the preventive officers on 26-6-1994 seizure of goods worth Rs. 88,73,082/- was made.

The details of the goods seized are as follows :(i) Goods found loaded on trucks ready Rs. 1,13,745/-for removal.(ii) Scrap found in the scrap yard Rs. 23,370/- and Rs. 50,000/-(iii) Goods found all over the factory Rs. 86,85,467/-packed and ready for despatch In the show cause issued, no demand of duty was made through confiscation of the goods seized and penalty under Rule 173Q was proposed.

2. The Commissioner, vide his order impugned before us, after considering the submissions made, concluded that they had not made any entries of production and despatch/clearances between 23-6-1994 and 26-6-1994 though the transaction had taken place on the said days was accepted. It was also noticed by him, that the goods found loaded in the Truck which was found ready for despatch condition and seized on the date of the visit of the officer, were transferred under SDM Nos.

41748, 41749 and 42453, all dated 5-4-1994 and 9-5-1994 respectively.

It was also noticed that no entry of production in respect of these goods was made in the RG1 register maintained. No documents viz.

Central Excise Invoices under Rule 52A were prepared in respect of the said consignment, though the truck was found ready for leaving the factory gate. Therefore, he concluded that the unit was engaged in the manufacture and clearance of excisable goods without accounting for the same in their statutory record and such clearances were made without payment of duty thereon. He, therefore, held that the goods seized were liable for confiscation under the provision of the Central Excise Act and the rules. He did not accept party's contention of the goods being not liable for seizure, after relying upon the case law as held in or as in the case of M/s. Snack Foods Pvt. Ltd., 1987 (31) E.L.T. 231 and various other decisions of the Tribunal, that statutory records prescribed, inter alia, are for the prevention of clandestine removals and he concluded that from the facts and evidence and records in this case, the defence explanation could not be sustained and the goods under question were liable for confiscation, since they were allowed to be provisionally cleared on execution of a bond and were not produced, therefore, he found the Bond to be fully enforceable. However ordered enforcement by appropriation of security amount of Rs. 5 lakhs towards the confiscation liability arrived at by him. He also imposed a penalty of Rs. 5 lakhs on the appellant-company under Rule 173Q(1) of the Central Excise Rules and did not find reason to invoke to provision of Rule 173Q(2).

3. We have heard learned Advocate for the appellants, who relies upon the Larger Bench decision in the case of Bhillai Conductors (P) Ltd. v.Commissioner [2000 (125) E.L.T. 781 = 2000 (91) E.C.R. 569] and decision in 2002 (140) E.L.T. 298 = 2002 (48) R.L.T. 545], to submit that mere non-accountal of the goods in the RG1, should not render the goods, found fully packed and also in the truck, liable for confiscation, he also submitted for the goods found at various places in the factory premises were not in fully manufactured condition. He laid stress on the company's procedure on prior inspection and maintenance of private records viz. SDM Cards and the fact of entries in RG1 were being made after the goods were inspected on such SDM cards. However or being pointed out to show from the Order-in-Original and the reply where the private records and SDM cards for the goods in question were produced before the adjudicator, he fairly conceded that SDM cards were only found for the goods in the Trade and not seized elsewhere. Learned Advocate also laid stress on the point since no duty was determined, there was no question of imposing any penalty under Rule 173Q.4. Learned Departmental Representative on the other hand took us through the adjudication order and pointed out that there is no evidence adduced at the hearing or any other place regarding goods under seizure to require inspection and certification of fully manufactured condition. He submitted, that this was not an isolated case of non-accounted of goods in the RG1, but was a case indicating deliberate design resulting in continuous non-maintenance of the statutory records, for which the penalty imposed under Rule 173Q(1) was justified. When read with foiled attempt to remove goods without payment of duty. Our attention was specifically drawn to the Collectors finding that the goods found in the truck, even though had SDM cards, made on very early dates, yet they were not entered in the RG1. The goods would have been removed without discharge of duty thereon as a truck was ready to go, since no duty debit and clearance document were made for these goods. The loading on the truck should be undertaken, only after the payment of duty. The D.R. laid stress on the concept of Self-Removal Procedure (S.R.P.) and general trust reposed in the assessees and breach of this trust by them should call for a heavy penalty under Rule 173Q. He mentioned that statutory records and the prescribed method of keeping them correctly are the corner stones of the Self-Removal System.

(a) In the present case, before us, the Commissioner has come to very clear cut finding that the goods loaded on the truck were ready for removal from the factory premises. Even though the SDM cards, as per the appellants own admission, were made on dated 5-4-1994 and 9-5-1994. The goods covered by them were not entered in the RG1 till the drawing of panchnama on 26/27-6-1994 when the truck was, also intercepted. The only explanation coming forth from the Manager of the appellant-company for non-entry of the production of the goods loaded on the said truck in the RG1 register is 'clerical mistake'.

Such clerical mistakes cannot be and meet the requirements of an explanation, grave responsibility is cast on the discharge of the trust reposed under the S.R.P. (Self-Removal Procedure) on the appellants. From this conduct and discharge herein it will be safe to conclude, that mens rea to evade, in this case of non-accountal exist. Therefore, following the finding in Bhillai Conductors, 2000 (81) ECR 569 relied by the appellants, wherein it was held - "...I am of the view that goods are neither liable for confiscation and consequently no penalty can be imposed under Rule 173Q in the absence of any evidence to show that there was any intention to evade payment of duty."...

(b) We find redemption fine of Rs. 5 lakhs as arrived at is in excess; keeping in view that the goods which were loaded on the truck and were liable for confiscation as intended to be removed without payment of duty are valued at Rs. 1,13,745/- only. We would, therefore, while upholding liability for confiscation, reduce quantum of the redemption fine to Rs. 1 lakh in the facts of this case. As find for the case law relied upon by the learned Advocate does not help the case of the appellants in the facts in this case.

Therefore no interference in the penalty imposed is called.

6. In view of our findings, the appeal is partially allowed, by confirming the penalty under Rule 173Q(1) of Rs. 5 lakhs and in addition by reducing the redemption fine to Rs. 1 lakh only.