**Commissioner of Central Excise Vs. Powerica Ltd.**

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**SooperKanoon Citation** : sooperkanoon.com/28774

**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Aug-23-2002

**Reported in** : (2003)(152)ELT87Tri(Mum.)bai

**Judge** : J T J.H.

**Appellant** : Commissioner of Central Excise

**Respondent** : Powerica Ltd.

**Judgement** :

1. This appeal by Revenue was argued by Shri Parulekar. The respondents were represented by V.S. Sejpal, Advocate, The respondents manufactured Diesel Generating Sets. On a visit, it was found that certain sets apparently in fully manufactured condition, had not been entered in the RG-1 register. These goods were confiscated but were allowed redemption on payment of fine. A penalty was also imposed on the assessees. Duty paid at the time of provisional release of the goods was confirmed.

2. The assessees filed an appeal. The Commissioner (Appeals) referring to existing orders as reproduced in a private publication, held that in a number of commodities, "RG1 stage" would reach only after quality control inspection and testing. Accepting the assessees claim that these goods were still to undergo the test, he ruled that in the case of these machines, time for the entry in the register has yet not come.

Against this order, the present appeal has been filed.

3. Reliance is placed on Tribunal's order reproduced in [1987 (27) E.L.T. 319 (Tribunal)] [Shiva Paper Mills Ltd. v. Collector of Central Excise], indicating the RG1 stage of paper and paperboard. The judgment in the case of D.S. Screen Pvt. Ltd. is also cited where the plea that wires and cables would not reach the RG. 1 stage until completion of inspection had not been accepted by the Tribunal. The justification for imposition of penalty, etc., in such cases was made citing the case of Ganga Rubber Industries v. Collector of Central Excise [1989 (39) E.L.T. 650 (Tribunal)].

4. I have carefully considered the submissions. The goods are required to be entered in statutory register as soon as they are fully manufactured. The stage of manufacture and therefore excisability has been a hotly contested issue between the assessees and the department.

Earlier the department would issue supplements to the Basic Manual for each commodity, where the RG-1 stage of each commodity would be set out. Such stages were discussed at all fora including in the meetings of All India Advisory Commodity on Excise and Customs Plethora of Boards instruction existed on this point as also judgments by the Tribunal.

5. Apart from the difference in the opinion on this issue between the assessee and the department, the point was also relevant as to of the stage at which the Customer accepts the goods. Where the goods are to be sold under ISI markings, then the goods are expected to pass those parameters and unless it is shown that these goods do so, they cannot become marketable.

6. There was a time when physical completion of goods was considered sufficient for duty to be attracted. At a later date the Supreme Court introduced the concept of marketability. Thus even when the goods are completely manufactured but where they cannot be marketed duty cannot be attracted.

7. Even at the earlier stages there were two sets of registers. One was the RG. 1 and the second was the EB 4 which listed goods which had become marketable.

8. What needs to be kept in mind at all times in dealing with the issue of RG.1 stage is the acceptability of the product of the assessee by his buyers. There cannot be a general or a rigorous stand on this aspect. Even in the case of the same goods produced by different manufacturers what should be screened by the Revenue is whether in not making the entry, there was any desire, purpose or attempt to aid or make possible clandestine removal of such goods. The proceedings on hand do not even in at any stage envisage that situation.

9. On this analysis I find that the impugned orders sustain. The appeal lacks merit and is dismissed.

10. The subsidiary claim of the Revenue is that the Commissioner had erred in finding fault with the Dy. Commissioner where the latter had confirmed the duty already deposited. I find that the confirmation of the duty made by the Dy. Commissioner was correct in law. He was required to show adjustment of the duty paid which he had done. The Commissioner's remarks on that aspect are not correct and are ordered to be removed from the record.