

Opal Auto Industries Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-06-2002

Reported in : (2003)(156)ELT434TriDel

Judge : S Kang, a T V.K.

Appellant : Opal Auto Industries

Respondent : Commissioner of C. Ex.

Judgement :

1. Appellants filed this appeal against the adjudication order passed by the Commissioner of Central Excise.

3. Brief facts of the case are that appellants are engaged in the manufacture of diesel engines, generating set and pump sets. The unit of the appellants was visited by the officers of the revenue department on 1-12-99. During verification of the records, it was found that 1340 pcs. of crank shafts of different varieties and 135 pcs. of diesel engine sets were found in excess than the recorded balance in their R.G. I register. The goods were taken into possession. During verification, it was also found that the appellants were clearing the goods with the brand name of 'OPEX' belonging to M/s. Opal Engg. Corpn.

and were availing the benefit of small scale exemption notification.

Show cause notice was issued to the appellant's for confiscation of the goods found in excess and also for demanding duty in respect of branded goods by

denying the benefit of small scale exemption notification. A proposal was also made in the show cause notice regarding imposition of penalty. The adjudicating authority confiscated the goods and ordered redemption of the goods on payment of redemption fine of Rs. 2.27 lakh.

Duty was confirmed and penalty of Rs. 16 lakh was imposed on the appellants.

4. The contention of the appellants is that the brand name 'OPEX' was used for the goods supplied to M/s. Opal Engg. Corpn. and the appellants were also clearing the goods without the brand name of 'OPEX'. But the revenue presumed that all the goods were cleared to M/s. Opal Engg. Corpn. with their brand name. Appellants relied upon the statement of Shri O.P. Uppal, partner of the appellant firm, in which he mentioned that they were clearing diesel engines with the brand name 'OPEX'. The contention of the appellants is that Shri O.P.Uppal never admitted that diesel generating sets were cleared with the brand name 'OPEX'. In these circumstances, the contention of the appellants is that they were entitled for the benefit of small scale exemption notification in respect of clearance of generating sets.

5. Appellants also claimed the benefit of Modvat credit in respect of inputs used in the manufacture of their final product in case the demand is confirmed. The contention of the appellants is also that their price is to be treated as duty-cum-price, therefore, they are entitled for the abatement of duty for calculating the assessable value of the goods for the purpose of central excise duty and relied upon the decision of the Hon'ble Supreme Court in the case of C.C.E. v. Maruti Udyog Ltd. reported in 2002 (141) E.L.T. 3.

6. The contention of the revenue is that the appellants admitted the fact that they were clearing the goods with the brand name, therefore, they are not entitled for the benefit of small scale exemption notification.

7. In this case the appellants were clearing the goods with the brand name 'OPEX' which belonged to M/s. Opal Engg. Corpn., therefore, they are not entitled for the benefit of small scale exemption notification in respect of the goods cleared with the brand name. In his statement, Shri O.P. Uppal, partner of appellant firm,

mentioned that diesel engines were cleared with the brand name 'OPEX'. In respect of generating sets, the contention of the appellants is that they were not clearing the goods with the brand name 'OPEX', which requires verification. Therefore, the matter regarding demand of duty in respect of generating sets is remanded to the adjudicating authority.

8. Appellants are entitled for the benefit of Modvat credit in respect of the inputs used in the manufacture of final product on production of duty-paying documents in respect of the goods on which the duty is confirmed. Appellants are also entitled for the abatement of duty element from the price to arrive at the assessable value for central excise duty subsequent to the decision of the Hon'ble Supreme Court in the case of Maruti Udyog Ltd. (supra).

9. Taking into consideration the facts and circumstances of the case, in respect of redemption fine, we find that the redemption fine of Rs. 75,000/- will meet ends of justice, therefore, the redemption fine is reduced to Rs. 75,000/-, otherwise the impugned order is upheld. The appeal is disposed of as indicated above.

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