Philips India Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-17-2003

Reported in : (2003)(156)ELT432Tri(Mum.)bai

Judge : S T Gowri, P Bajaj

Appellant : Philips India Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The appeal is taken up for disposal with consent, after waiving deposit.

2. The order of the Commissioner (Appeals) impugned in this appeal confirms the demand for Rs. 10,82,004/- and equivalent amount of penalty imposed on the appellant by the order of the Additional Commissioner which was impugned before him.

3. Counsel for the appellant does not dispute the validity of the demand, which represents the duty payable on capital goods that the appellant received in its factory and consequently sold to Punjab Anand Lamp Industries Ltd., Mohali. He does not dispute that the duty payable on the goods at the time of removal the duty ought to have been paid by the appellant on these goods, as if they were manufactured as provided in Sub-rule (1) of Rule 57S. He attributes the failure to human failure. He further contends that penalty should not have been imposed under Section 11AC of the Act for the reason that it was not in force when the

action in question was carried out. He next contends that in any event, the penalty has been imposed under this section read with Rule 173Q and in the absence of apportionment penalty between these two, it cannot be sustained, citing for the purpose the decision of the Tribunal in Arti Textiles v. CCE -2002 (144) E.L.T. 207.

4. The goods that were removed consist of 11 items of capital goods.

Counsel for the appellant is not able to tell us in reply to our question as to what exactly was the "human errors", as a result of which there was a failure to pay duty; all that he could say was that some officers of the company were transferred. This is far too vague a statement on which it can be accepted that there was a bona fide failure on the part of the company to pay the duty. It is in other words nothing other than just a claim unsupported by any basis whatsoever.

5. The adjudicating authority records that the goods were removed from the factory in August, 1997. Therefore the contention that Section 11AC was not in force is not acceptable. It came on the statute book sometime in September, 1996.

6. We are not able to accept the last contention of the counsel for the appellant. The learned single member of the bench at Chennai Tribunal in his decision in Arti Textiles had relied upon the decision of a bench in Delhi in Punjab Recorders Ltd. v. CCE - 2001 (132) E.L.T. 41.

The appeal was against penalty imposed under Rule 173Q read with Section 11AC. The bench noted that Rule 173Q was not in force at the time when the act in respect of which penalty was imposed took place.

Therefore, in the absence of apportionment, the penalty was not legally sustainable. In the case before us, this situation does not exist. Both Section 11AC and Rule 173Q were in force and penalty could have been imposed under either provisions. The question of any apportionment of penalty therefore does not arise. We therefore find no cause for interference.