SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Commissioner of C. Ex. Vs. Oceanic Cooling Towers (P) Ltd.

Commissioner of C. Ex. Vs. Oceanic Cooling Towers (P) Ltd.

SooperKanoon Citation : sooperkanoon.com/30962

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-21-2003

Reported in : (2003)(161)ELT631TriDel

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

Appellant : Commissioner of C. Ex.

Respondent : Oceanic Cooling Towers (P) Ltd.

Judgement :

1. The appeal is at the instance of the Revenue and the cross objection by the assessee. They are directed against the order passed by the Commissioner (Appeals) dated 7-3-2002. Respondent herein challenged before the Commissioner (Appeals) order dated 3-2-99 passed by the adjudicating authority. The Commissioner (Appeals) granted some of the prayers of the assessee, aggrieved by which the Revenue has come up in appeal. In the Cross Objection the contentions raised by the assessee were not accepted by the Commissioner (Appeals).

2. The Adjudicating Authority had held that the appellants were carrying on the activity of manufacturing cooling towers under the garb of trading/assembling activities since 1993 without declaring/obtaining proper registration and thus clandestinely manufactured and cleared excisable goods by suppression of facts. In the Order-in-Original it was held that the assessee had contravened the provisions of Central Excise Act, 1944 and Rules made thereunder with an intent

to evade payment of central excise duty amounting to Rs. 3,52,720/- on the value of cooling towers manufactured during 1996-97 and 1997-98. The adjudicating authority while confirming the duty demand as above confiscated the seized goods valued at Rs. 4,32,525 and imposed a penalty of Rs. 5,00,000. Later, by corrigendum dated 19-11-99 he gave option to redeem the seized goods and allowed the assessee to do so on payment of redemption fine of Rs. 1,00,000/-.

3. Before the Commissioner (Appeals) the assessee contended, among other things, that the turnover figure for the erection and commissioning of cooling tower is about 10% which is not includible in the assessable value in the light of the decision of the Supreme Court in Thermax Ltd. v. CCE - 1998 (99) E.L.T. 481 (S.C.). If it is so deducted, according to the assessee, the demand will come down to Rs. 34,860 as against Rs. 3,00,000 demanded for the year 1996-97. Regarding duty liability for the year 1997-98 it is contended that the assessee was availing Modvat credit and had debited the duty from the Modvat credit in their RG-23A Part II register. It was further contended that bought out items such as electric motor, valves, pumps which are supplied as trading items after purchasing from outside parties cannot be classified as part of cooling towers under Chapter sub-heading 8419.90 by virtue of provisions of Note 2 of Section XVI of the Schedule to the Central Excise Tariff Act, 1985. The assessee further submitted that confiscation of the raw material found in the factory premises is totally unsustainable in law and that the imposition of penalty of Rs. 5,00,000 is also unjustified.

4. Pursuant to direction given by the Commissioner (Appeals) the assessee filed a chart showing invoice/bill-wise details of the goods sold by them and contended that the value of sales of trading goods cannot be added to the assessable value. Commissioner (Appeals) took the view that it is not proper to include the value of the traded goods in the value of clearances of the goods manufactured. Commissioner (Appeals) further granted abatement on account of the expenditure incurred for erection/installation/ commissioning of cooling towers.

Thus the demand of duty for the year 1996-97 was reduced to Rs. 36,565/- and for the year 1997-98 to Rs. 40,473/-. The penalty of Rs. 5 Lakhs imposed under

Section 11AC was reduced to Rs. 77,038/-.

Confiscation of raw material was upheld and the redemption fine was reduced to Rs. 75,000/-.

5. In the appeal by the Revenue the challenge is against the reduction in the quantum of duty granted by the Commissioner (Appeals). It is contended that the Commissioner has erred in holding that the value of the traded goods shall not be part of the value of clearances of goods manufactured and that no deduction should have been granted. It is also contended that the Commissioner (Appeals) has erred in setting aside the Corrigendum dated 19-11-99 even though it allowed goods to be released on payment of reduced fine.

6. In the Cross Objection the assessee has challenged confiscation of the raw materials valued at Rs. 4,32,515/- and also the imposition of redemption fine. Challenge is also made against the imposition of penalty. It is contended that there was no intention on the part of the assessee to evade payment of duty on Cooling Towers assembled from duty paid accessories/components at site of the customers as they were entitled to avail concessional rate of duty under the SSI exemption notification with Modvat facility on inputs. A technical lapse in not following the procedure laid down would not warrant imposition of penalty under Section 11AC equal to the duty demanded. It is further contended in the cross objection filed by the assessee that the appellate authority has wrongly held that in the case of goods cleared under exemption invoice value is not the cum-duty price for the purpose of subsequent demand of duty by the Department.

7. We find no merit in the contentions raised by the Revenue in this appeal. Commissioner (Appeals) was fully justified in applying the ratio of M/s. Thermax Ltd. - 1998 (99) E.L.T. 481 (S.C.) in the facts of the case. The assessee had placed sufficient material before the Commissioner (Appeals) to come to such a conclusion. We therefore dismiss the appeal filed by the Revenue.

8. As far as the Cross Objection filed by the assessee is concerned, we find merit in the contention that there was no justification for confirming the confiscation of raw materials and imposition of redemption fine. On going through the Panchnama

it is clear that what was being confiscated was raw material and not semi-processed goods.

Therefore, the confiscation and imposition of redemption fine are to be set aside. The assessee is also justified in contending that in the case of goods cleared under exemption, invoice value is cum-duty price for the purpose of subsequent demand of duty. Learned Counsel on behalf of the assessee submits that the duty demand for the year 1996-97 has to be reduced on the above basis from Rs. 36,565/- to Rs. 34,824/-. We accept the above submission. We are also of the view that the penalty of Rs. 77,038/- imposed under Section 11AC is highly excessive in the facts of the case. We therefore reduce the penalty as Rs. 5,000/-. The cross objection filed by the assessee is thus allowed by setting aside the confiscation of raw material valued at Rs. 4,32,515/- and the redemption fine. The duty for the year 1996-97 is reduced from Rs. 36,565/- to Rs. 34,824/-and penalty from Rs. 77,038/- to Rs. 5,000/-.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com