AllwIn Forgings Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-22-2003

Reported in : (2003)(89)ECC802

Judge : A T V.K., P Bajaj

Appellant : AllwIn Forgings

Respondent : Commissioner of Central Excise

Judgement :

1. In this appeal the appellants have challenged the correctness of the impugned Order-in-Original dated 19.9.2002 vide which the Commissioner had confirmed the duty demand of Rs. 22,84,468 with equal amount of penalty payable and interest against them.

2. The appellants are engaged in the manufacture of excisable goods such as spanners, wrecking bars, etc. On the scrutiny of their RT-12 return during the quarters ending December 99 and March 2000, it revealed that they had cleared excisable goods valued at Rs. 1,42,77,923 for export without following the export procedure as detailed in Rules 13, 14 and Chapter IX of the Central Excise Rules inasmuch as they did not execute the bond in proper form, failed to file AR-4 application before the clearances for the export and had not even submitted AR-4 for proof of export duly endorsed by the Customs authorities. They were accordingly issued show cause notice for the recovery of the above referred duty amount. Penalty was also proposed in that notice. They contested the correctness

of that notice by alleging that being an SSI Unit and the value of their clearances for home consumption being within the exemption limit, they were exempt from following AR-4 procedure in view of the Board's Circular No.21/46/96-CX dated 20.5.96. But the adjudicating authority did not accept their version and passed the impugned order.

3. We have heard both sides. We find that the appellants have taken a specific plea that they are SSI Unit and the value of their clearances for home consumption were within the exemption limit and as such they were exempt from following AR-4 procedure in view of the Board's Circular dated 20.5.96 referred above. But neither findings regarding the SSI status of the appellants nor as to whether their clearances for home consumption were within the exemption limit or not had been recorded. The adjudicating authority by referring to Rule 9(1) of the Rules and the Board's Circular referred to above, had opined that the appellants did not follow the AR-4 procedure. The authority has also in the concluding para of the impugned order observed that no proof regarding the export of the goods had been submitted before the Deputy Commissioner, the competent authority, by the appellants. But it appears that no proper opportunity for proving this fact was afforded to the appellants. The learned Counsel has requested during the course of the arguments that the matter may be sent back and the appellants will be able to furnish proof and the correlation of the goods exported by them and would also furnish evidence to show that their clearances for home consumption had not exceeded the exemption limit. In our view, this request of the learned Counsel deserves to be acceded to as if they are able to prove the above detailed facts, they would be prima-facie entitled to the benefit of the Board's Circular dated 20.5.96 vide which the manufacturer is not required to follow AR-4 procedure if he had been able to prove that his clearances for home consumption had not exceeded the exemption limit. An opportunity in the interests of justice deserves to be afforded to the appellants for substantiating their version as unfolded by them in their reply to the show cause notice.

4. In view of the discussion made above, the impugned order of the adjudicating authority is set aside and the matter is sent back to the adjudicating authority for fresh decision after affording an opportunity of hearing to the appellants for

adducing evidence if any they wish to submit, for substantiating their defence to the show cause notice. The appeal of the appellants accordingly stands disposed of by way of remand.