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RollwIn Engineering Company Vs. Commissioner of Customs and

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-09-2003

Reported in : (2004)(175)ELT678Tri(Mum.)bai

Judge : A Wadhwa, S T S.S.

Appellant : RollwIn Engineering Company

Respondent : Commissioner of Customs and

Judgement :

1. Vide the impugned Order, the Commissioner of Central Excise and Central Excise, Rajkot has confirmed the demand of duty of Rs. 58,26,784.00 (Rupees fifty-eight lakh twenty-six thousand seven hundred and eighty-four) against the appellants on the findings of clandestine maufacture and removal of their final products during the periods - from 1992-93 to 1996-97. In addition, he has imposed personal penalty of identical amount under the provisions of Section 11AC of the Central Excise Act, 1944 and penalty of Rs. 8.0 lakh (Rupees eight lakh) under the provisions of Rule 173Q of the Central Excise Rules, 1944. He has also confiscated the unaccounted goods with an option to the appellant company to redeem the same on payment of Rs. 2.50 lakh(Rupees two lakh fifty thousand).

2. As per facts on record, the appellants are engaged in the manufacture of Ball Bearings and Roller Bearings falling under Chapter 84 of the Central Excise Tariff Act, 1985. The appellant company's factory was visited by the Central Excise Officers on 17.10.96, who conducted various checks and verifications and found

unaccounted for raw materials & semi- finished excisable goods totally valued at Rs. 4,30,767.00. The same were seized by the Central Excise Officers. Apart from the above the Officers also took into their possession the various statutory records and non-statutory records. During the post-seizure investigations, the appellants' employees were interrogated. Shri .

N.N.Vora, Accounts Clerk of the appellant company, in his statement dated 17.10.96, admitted that their Daily Average Production was 350 pieces of bearings and the delivery documents were prepared as per the direction of Shri Pate], Proprietor of the appellant company; that 75$ of the total quantity manufactured by them was despatched without the cover of any sales bills.

3. Shri Hareshbhai Bhatt, Assembly Supervisor of the appellant company in his statement dated 17.10.96 deposed that their daily production of the bearings was around 250 pieces and the entire production was not being reflected in the statutory records.

4 . Shri Patel, prop. of the appellant company in his statement recorded on 17.10.96, corroborated the statements of Shri Vora and Shri Bhatt and stated that he was aware of the contravention of the Central Excise Rules by his company and the same was being done with an intention to remain within the exemption limit of Rs. 30.00 lakh.

5. The records seized from the appellants' company were scrutinised and it was seen that the actual production was much more than what was being reflected in their records.

6. On the above basis, the appellants were served with a show cause notice dated 11.4.97 proposing confiscation of the seized goods, confirmation of demand of duty and imposition of personal penalty. The said show cause notice was adjudicated by the Commissioner who confirmed the demand and imposed penalties as detailed above. Hence the present appeal.

7. Shri J.C.Patel, learned Advocate for the appellant company submits that the entire case of the Revenue rests on the statements of the appellant company's

employees, which statements were retracted by them by way of affidavits. Such affidavits have been rejected by the adjudicating authority as having been filed at a later date. He also submits that the appellants were engaged in the trading of the ball bearings also, which plea has not been considered by the adjudicating authority by observing that the same has been raised for the first time in the noticee's reply. Above all, it was the contention of the learned Advocate that the Commissioner has confirmed the demand by multiplying their clearance by four on the basis of statements of the employees that the clearances were in the ratio of 20:80. Drawing attention to the statements, he submits that it is in respect of some of the parties that the said employees have stated that the records were being made in the ratio of 20:80. As such, the Commissioner was not justified in multiplying the overall sales by four and then arriving at the sale figures for the purposes of duty.

8. Countering the arguments, Shri Khalwadekar, learned J.D.R. for the Revenue reiterated the reasonings adopted by the Commissioner.

9. We have considered the submissions made by both sides. We find that the Commissioner has mainly relied upon the statements of various employees of the appellant company read with the statements of the Proprietor, vide which he has accepted the charges of clandestine removal. The subsequent retractions are only mechanical and cannot be made the basis for holding the said statement as having been given under duress. Apart from the statements, there are other documentary evidences recovered by the Visiting Officers from the appellants' premises showing the sales of the ball bearings without bills and without reflecting the same in the statutory records. No doubt the charge of clandestine removal is a serious charge and Revenue is required to prove it by sufficient evidence. However, in the instant case, we find that the statements of the employees as also the the Proprietor taken together and the documents referred to by the Revenue, corroborate the charge of clandestine removal. As such, we do not find any justification in the learned Advocate's plea that the Revenue has not discharged the burden of establishing that the appellants have removed the final products surreptitiously.

10. However, we find force in the appellants' contention that the Commissioner has confirmed the demand by multiplying the sales by four as if the clearances to all the customers in all the cases, were reduced by the appellants to the extent of 1/4^th. The detailed examination of the statements of the various persons show that it is only in respect of some of the parties that they were indulging the clandestine removal and the clearances on record were to the extent of 20% and without record, it was 80%. As such, we are of the view that the learned Adjudicating Authority should have restricted the confirmation of demand of duties in respect of the clearances made to such parties as I mentioned in various statements of the employees or those clearances where the clandestine clearance is established by documentary evidence. For the said limited purposes, we set aside the impugned Order and remand the matter to the Commissioner for de-novo adjudication. The penalty quantum would also be adjudged by him afresh depending upon the quantification of duty liable to be paid by the appellants. The appeal is disposed of in above terms.

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