Sigma Corporation (i) Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-16-2004

Reported in : (2004)(165)ELT168TriDel

Judge : P Chacko

Appellant : Sigma Corporation (i) Ltd.

Respondent : Cce

Judgement :

1. The appellants are exporter of Auto Parts Under DEPB Scheme. They had exported certain consignments of Auto Parts during September, 1997 to September, 2002. The stuffing of goods in containers for the export was done in their factory itself under supervision of Central Excise Officer having jurisdiction over the factory. Section 36 of the Customs Act read with Customs (Fees for Rendering Services by Customs Officers) Regulation, 1998 laid down inter alia that where export-related works such as stuffing, loading, etc., were undertaken under the supervision of Customs Officer beyond the customs area or beyond normal working hours of Customs, the prescribed fee (Merchant Over Time changes) shall be paid for the supervision rendered by the Customs Officer in respect of such works. In respect of the stuffing work done by the appellants in their factory under the supervision of the jurisdictional Central Excise Range Officer, the Dy. Commissioner of Central Excise issued a letter directing the party to pay MOT charges of over Rs. 7 Lakhs covering the aforesaid period. That direction was issued without giving the party any opportunity of being heard.

Aggrieved, the party approached the Commissioner (Appeals), who, in the impugned order, sustained the demand of MOT charges to the extent of Rs. 3,37,900/-.

The present appeal is against this demand.

3. It is not in dispute that the appellants are liable to pay MOT charges if the conditions for the levy exists. In the instant case, admittedly, the stuffing of goods had taken place in the appellants' factory coming within the jurisdiction of the Central Excise Range officer who supervised the work. The work of stuffing admittedly a Customs work which, being a part of loading of the goods, was covered by the aforesaid provisions of law. The Central Excise Superintendent attending to the Customs work acted as a Customs officer. However, he was supervising the work in his normal place of work only. As per the aforesaid regulation as clarified in CBEC's Customs Manual (Chapter 13), if the service is rendered by the Customs officer at a place which is not his normal place of work or at a place beyond the Customs area, overtime charge is levied even if the service is during the normal working hours. In the instant case, the service of supervision of stuffing or goods in container was rendered by the officer within his Range only i.e., within his normal place of work. As regard the time of work, it appears, the party had specifically pleaded before the Commissioner (Appeals) that the work was carried out on working days during working hours only. This pleading has not been rebutted by the lower appellate authority. Hence it has to be held that the stuffing work was carried out during the working hours on working days only.

None of the conditions for levy of MOT charges was satisfied in this case.