Commissioner of Central Excise Vs. H and R Johnson (i) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-04-2004

Reported in : (2004)(167)ELT157Tri(Mum.)bai

Judge : M T K.D.

Appellant : Commissioner of Central Excise

Respondent : H and R Johnson (i) Ltd.

Judgement :
1. Heard both sides. The issue relates to assessment of ceramic tiles, in terms of provisions contained in Section 4A of the Central Excise Act based on the Maximum Retail Price (MRP). The show cause notice proposed recovery of differential duty on the various quantities of tiles cleared by the appellants indicating the following details.

Sr.No.*Diffcrence in MR1'(Col 4 Col 5) Differential value Cartons bearing MRP higher than shown on Excise Invoice 30 Cartons bearing MRP marked with rubber stamp 166 Cartons not bearing any MRP 184 Cartons bearing t o MRP one printed other with rubber stamp 170 256.00 prinled 288.00 stamped 288.00 Total Differential Duty * as all the goods are of same class as is clear from the excise invoice and delivery challan. the maximum MRP of Rs. 3287- has been taken for arriving at differential duty.

2. The adjudicating authority confirmed the demand, and also ordered confiscation of goods valued at Rs. 158,400 with an option to redeem the same on payment of redemption fine Rs. 39,600/-. Penalty of 2750 was imposed on the appellant under Section 11 AC.3. The Commissioner (Appeals) set aside the said order. Hence the instant appeal from the revenue.

4. I note that so far as the issue at serial No. 1(a) is concerned. I find that the demand has been correctly confirmed since the MRP indicated on the carton is material for assessing the duty under Section 4A.5. So far as the issue relating to the listed at serial No. 1(b) is concerned, MRP marked with rubber stamp does not invalidate the declaration of MRP. Therefore the demand cannot be sustained. So far as the issue listed at No. 2 is concerned, the demand cannot be sustained, for the reason that when there is no MRP indicated on the cartons, then the assessment cannot be sustained under Section 4A. There is no proposal to make assessment under Section 4.

6. So far as the issue at Sr. No. 3, relating to carton bearing 2 MRPs one preprinted and the other affixed with the rubber stamp without erasing or blackening the earlier MRP is concerned, the respondent invited my attention to the order of this Tribunal E/2081/01 in CCE v.Nitco Tiles.

7. However on closer scrutiny of the said order 1 note that the facts are not identical. In the Nitco case (supra) the printed MRP was completely covered by sticker showing the lower MRP. In this case, the two MRPs are visible, therefore, the higher among the two MRP would be applicable as proposed in the show cause notice. Accordingly, the department's appeal succeeds with relation to issues at sr. No. 1(a) and sr. No. 3. While in respect of remaining issue the same is required to be rejected.

8. Accordingly, the revenue's appeal is allowed to the extent of confirmation of duty of Rs. 150 + 850 = Rs. 1000/-, and the impugned order of the Commissioner (Appeals) is set aside to this extent. The appeal for the balance amount of duty is rejected. Since the amount involved are very in significant the imposition of penalty is not warranted. Hence penalty imposed is set aside.

9. The revenue's appeal disposed of as above.

(Operative part pronounced in Court)