

A.C. Enterprises Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-11-2004

Reported in : (2004)(96)ECC158

Judge : S Kang, a T V.K.

Appellant : A.C. Enterprises

Respondent : Cce

Judgement :

1. The appellants made a request for adjournment. We find that the case was adjourned many times at the request of the appellants and the appeal is pending since 1989, therefore, the request for adjournment is declined. Heard the learned SDR and perused the appeal papers.

2. The appellants filed this appeal against the adjudication order whereby the duty of Rs. 12,92,482.61 was confirmed in respect of 203 air-conditioners which were cleared without payment of duty. 5 air-conditioners were also ordered to be confiscated and allowed to be released on payment of redemption fine of Rs. 20,000. A penalty of Rs. 10 lakhs was imposed on the appellants. The demand was confirmed on the ground that the appellants manufactured and cleared air-conditioners without payment of duty. The contention of the appellants in the appeal memo is that the allegation of fraud, misdeclaration of facts cannot be alleged against the appellants. Mere inaction or failure on the part of the appellants to pay duty does not mean that there has been a fraud or

misdeclaration of facts with intent to evade payment of duty. The contention of the appellants in the appeal memo is that there is no evidence on record that the appellants had actually manufactured the air-conditioners alleged to have been clandestinely cleared without payment of duty.

3. The contention of the Revenue is that at the time of visit by the excise officers, the records lying in the factory were taken into possession and scrutiny of the records show that the appellants filed declaration for availing small scale exemption notification. The examination of the records show that the appellants cleared the air-conditioners to various customers without payment of duty and wrongly availed the benefit of small scale exemption as the total clearances of the goods exceeds the limit of value prescribed under the small scale exemption notification for the year 1982-83. Therefore, they are not entitled to the benefit of Notification No. 64/83 dated 1.3.83 for the subsequent year. The contention of the Revenue is that in these circumstances the demand was rightly confirmed.

4. We find that the appellants were availing the SSI exemption and remained in the value of clearance prescribed under SSI exemption notification. The appellants cleared air-conditioners without entering in the statutory and without payment of duty. Enquiries made from various customers such as Jai Packagers, Baroda, Dr. Jagdishbhai Patel.

Smt. Tejal G. Panthaki and M/s. Blue Star Limited proved that the appellants are clearing the new air-conditioners and the same were not entered in their statutory records. The adjudicating authority in the adjudication order even taken into consideration the clearance by each invoice which were verified by the customers to conclude that the appellants cleared the air-conditioners without payment of duty and without entering the goods in their statutory records which exceeds the limit prescribed under the SSI exemption notification. In these circumstances, we find no infirmity in the impugned order regarding demand of duty. However, taking into consideration the facts and circumstances of the case, the penalty is reduced to Rs. 6 lakhs otherwise the impugned order is upheld.