The Commissioner of Central Vs. Flameproof Equipments Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-16-2004

Reported in : (2004)(168)ELT329Tri(Mum.)bai

Judge : M T K.D.

Appellant : The Commissioner of Central

Respondent : Flameproof Equipments Pvt. Ltd.

Judgement :
1. This is a Revenue appeal directed against the order-in-appeal whereunder the respondents' appeal against the order-in-original was allowed. In the order-in-original, duty of Rs. 55,370/- was confirmed against the respondents along with imposition of penalty of equivalent amount. Besides, a penalty of Rs. 30,000/- was also imposed on the company and Rs. 25,000/- on the Managing Director.

2. The facts in brief are that the respondents are engaged in the manufacture of electrical machines and apparatus, such as flame proof/weather proof/fire safely/dust proof equipments. They cleared the said goods in question under delivery challans without payment of Central Excise duty and without accounting the same in RG-1 register.

The respondent's defence was that, the said goods were the replacement of damaged goods and hence they did not account them in RG-1 register.

This defence was not accepted by the original authority though the Commissioner (Appeals) accepted the version holding that, the department has not brought on record any evidence to prove that the appellants have manufactured the said excisable goods and cleared the same with an intent to evade payment of Central Excise duty.

4. The dispute relates to liability to duty in respect of replacement of damaged goods with the goods manufactured by the respondents by using bought out items, and clearance of such replacement goods without following the Central Excise procedures. The duty demand of Rs. 55,370/- has been paid before the issue of show cause notice, a fact already mentioned in the order-in-original. The Managing Director himself had admitted that such replacements were made out of the bought out items and partly out of parts manufactured by them, and cleared as short supply/replacement/samples, etc. without payment of duty. Since these parts have been cleared outside the factory even though as replacement for the equipment supplied previously, the duty liability accrues on the said goods. The case law viz., CEGAT judgment reported in 1988 (34) ELT 662 (T) in the case of Diamond Clock Manufacturing Co.

v. CCE Pune, is not relevant to the facts of the case. Therefore, the findings arrived at by the Commissioner (Appeals) is not justified and the said order is required to be set aside. However, I notice that the penalties imposed on the respondents by the original authority are excessive. Accordingly, these are reduced as under :- Penalty imposed under 11AC is reduced to Rs. 10,000/-and consequently penalty imposed under other rules is set aside.

5. Since a single appeal has been filed, the order of the Commissioner (Appeals) in respect of the Managing Director of the respondents company becomes final. Consequently, the revenue's appeal is partly allowed in above terms.