Micro Forge (i) P. Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-25-2004

Reported in : (2004)(169)ELT251Tri(Mum.)bai

Judge : M T K.D.

Appellant : Micro Forge (i) P. Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The instant appeal of the appellants is directed against the order of the Commissioner (Appeal) whereunder their appeal against the order-in-original was rejected. In the order-in-original the adjudicating authority confirmed the duty demand of Rs. 3,31,921/- against the appellants, besides imposing penalties and ordering recovery of interest.

2. The brief facts of the case are that consequent to stock taking conducted by the visiting Central Excise officers shortage of 127.662 MT of finished goods was noticed. The aforementioned duty was confirmed after discarding the explanations submitted by the appellants. The appellants had challenged the very fact that there was any shortage. It has come on record that weighment of the actual stock of finished goods was not carried out and instead the officers had resorted to an empirical method of ascertaining the weight by taking the weight of a single forging of each type and multiplying the same by the number of pieces of relevant items (unit). The unit weight was taken on the basis of weight declared by Shri A.N.

Sinha, the works Manager. There were 31 varieties of forged articles in balance.

3. The departmental authorities are claming correctness of the weight of available stock recorded in the Panchnama, whereas the appellants plead that in the absence of actual weighment having been conducted, the shortage is theoretical and presumptive. The department is further relying on the fact that the panchnama has been signed, by three persons of the appellants factory and therefore the position of shortage as recorded in the Panchnama can not be disputed.

5. It is an admitted fact that the stock position was arrived at on the basis of an estimation. The opinion of Shri A.N. Sinha, works manager was taken on the spot regarding the fluctuation in the weight of individual varieties of the forgings. There were in all 31 varieties in stock. In this connection I must mention that unless the department is in a position to clearly demonstrate the fact of shortage through actual physical weighment of the entire stock, the allegation of shortage of stock and consequent illicit removal of finished goods cannot be sustained. The method of stock taking adopted by the authorities at best can lead to a suspicion of shortage, but cannot be a substitute for the proof of shortage.

6. Accordingly I hold that the charges levelled against the appellants cannot be sustained. Therefore I allow the appeal and consequently set aside the orders passed by the lower authorities.