The Commissioner of Central Vs. Om Electronic System

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-25-2004

Judge : M T K.D.

Appellant : The Commissioner of Central

Respondent : Om Electronic System

Judgement :

1. The instant revenue appeal from the Commissioner is directed against the impugned order-in-appeal passed by the Commissioner (Appeal).

2. The duty involved is Rs. 14,439/-. Vide the impugned order the Commissioner (Appeals) has set aside the demand for the said amount as well as the penalties imposed on both on the firm and on the individual directors.

3. Since only one appeal has been filed by the revenue, the same is considered to be an appeal against the firm and, therefore, the order passed against the individual director has become final.

4. The dispute so far as it relates to duty of Rs. 14,439/- is concerned, the same relates to the excisable goods, viz., telephone instruments and consoles installed and used in the 1^st and 2^nd floors of the D.C. Textile Mills Compound, having office/factory of the appellants M/s. OM Electronics Systems, which were allegedly used without payment of duty and without following proper Central Excise procedures.

5. The Commissioner (Appeals) in his findings has recorded that this hardly makes out a case against the respondents, in as much as, after being pointed out that it was irregular to use the telephone instruments in their own factory without payment of duty, they readily paid the duty. The same telephone instruments was in the same factory premises and in actual use so it cannot be said to be just and fair to the appellant, that their intention was to clandestinely remove the said telephone pieces or to evade duty.

6. The revenue appeal is directed against the said findings. It is stated that, the Commissioner (Appeals) has not confirmed the duty of Rs. 14,439/- as contained in Annexure-B to the show cause notice.

8. On going through the Annexure-B to the show cause notice, it is apparent that the demand of Rs. 14,439/- refers to the allegations that the telephone instruments were used within the office premises without payment of duty. The payment of Rs. 15,000/- refers to the allegations.

Therefore, there is no question of re-confirmation of any, this duty demand which stands paid through deposit of Rs. 15,000/-. The Commissioner (Appeals) has nowhere stated in his order that the said amount of Rs. 14,439/- is not to be paid. On the contrary, he has taken a view that, since this amount has been realised, no penalty is imposable. The grievance of revenue against this order is not acceptable. It is not necessary that, for each and every contravention a penalty should be imposed. The Commissioner (Appeals) has in his order observed that a unit which is paying annually a revenue of Rs. 2 crores, could be knowingly indulging in the infringement of a smaller amount as alleged in the show cause notice.

9. Considering these aspects, I hold that the revenue's appeal has no merits, and the same is rejected.