

Commissioner of Central Excise Vs. Mayank Electro Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-19-2004

Judge : A Wadhwa

Appellant : Commissioner of Central Excise

Respondent : Mayank Electro Ltd.

Judgement :

1. The present appeal of the Revenue is against the order of the Commissioner (Appeals) vide which he has set aside the order of the Deputy Commissioner imposing penalties upon the respondents on the ground that they cleared the goods on 14/03/1995 after 6.00 p.m. and has thus violated the pre-budget date declaration. The Commissioner (Appeals) while disposing of the appeal has held as under:- "I have considered the matter and I find that the adjudicator has found that the panchnama indicates the tempo to be intercepted 100/150 feet from the factory at 21.15 hrs. on 14.3.95 and the driver produced 8 invoices all dtd. 14.3.95 which showed the tempo No. as MH-04-4420 and time of removal as 16.00 hrs. He also relied on statement of Shri Navalsingh Nansingh which admitted that the tempo was loaded on or before 17.00 hrs. and left at about 9.00 p.m.

from Bombay and the loading took place between 17.30 to 21.00 hrs.

The labourer has admitted to have loaded the goods at about 17.00 hrs. I also find that while invoice No. 433, 435, 437, 438, 440, 442, 448, 449 all dated 14.3.95 were brought on record on 14.3.95, and invoice No. 429, 446, 434, 441 all dtd.

14.3.95 were brought on record on 27.3.95 by the appellant stating that at the time of seizure the driver of the tempo have not handed over the said invoices which were in the tempo. Since, the invoices produced on 27.3.95 are covered seriatim in the invoices recovered on 14.3.95. I am not able to accept the adjudicator plea that these invoices were not produced on the spot and therefore are tainted. I find that if these invoices were not present in the tempo, then the panchnama should have recorded that the goods are in excess of the invoices produced and such an allegation is not coming forth in the findings or in the SCN issued. The gravement of the charge established is that the removal has been made after 6.00 p.m. on 14.3.95 which is not established when I find that the labourer had admitted to have loaded the tempo at about 17.00 hrs. on 14.3.95. The factory is as per the ground plan approved and in the paper book situated on the first floor, some time to be taken to bring the goods to the ground floor and load in to the tempo which would explained the elapse of time from 16.00 hrs, the time of removal shown on the invoices and the statement of the labourer who loaded the tempo. Therefore I can not find any removal in contravention of Rule 224 and the Collector's Trade Notice. If at all there is contravention, it is of not amending the tempo No. but then that is no finding of that kind before me. Therefore, I can not support the OIO. I have also found the theory of transfer of tempo to be corroborated by the statement of the person incharge of tempo No. MHS 3581. When the goods are transfer midway after removal the second tempo owner will not insist on verifying all the facts on the said invoices, and in this view of the matter I can not find any reason for the tempo liable for confiscation. Therefore the order is set aside as do not find any cause for confiscation and or imposition of penalties." 2. After going through the above reasoning of the Appellate Authority and the memorandum of appeal filed by the Revenue, I do not find any reasons to take a different view. It has been explained to me by the advocate appearing for the appellants that the goods were in fact cleared at 16.00 hrs. and were loaded in the truck. The factory is situated in the first floor and the truck which was standing in the compound belonging to No. of units developed some technical fault and the goods loaded in the said truck were subsequently re-loaded in the other truck. As such, it is not that the goods were cleared from the factory gate after 18.00 hrs. on the pre-budget date but they were clean at 16.00 hrs. as it evident from the statement of the various persons.

Statement of the Driver that the goods were loaded in the truck after he reached the factory at 17.00 hrs. relates to the reloading of the goods. He also points out that the invoices show the time of removal as 16.00 hrs. and there is nothing on record to rebut the above fact.

3. I agree with the learned advocate for the respondents and do not find any merit in the Revenue's appeal. The same is accordingly rejected.

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