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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-21-2004

Reported in : (2004)(96)ECC346

Judge : A T V.K., P Bajaj

Appellant : Samtel Colour Ltd. and anr.

Respondent : Commissioner of Central Excise

Judgement :

1 The above captioned appeals have been directed against the common impugned Order-in-Appeal dated 22.5.2003 vide which the Commissioner (Appeals) has affirmed the Order-in-Original of the adjudicating authority who confirmed the duty demand of Rs. 10,866 with penalty of Rs. 10,000 on the company appellant No. 1 and also penalty of Rs. 10,000 on its Deputy Manager, appellant No. 2.

2. The learned Counsel has contended that there is no evidence on the record to prove that the appellants supplied new colour picture tubes (in short CPTs) to M/s. Dixon Utilities Exports Ltd. instead of replacing the defective ones and that the duty liability has been wrongly affirmed. Therefore, the impugned order deserves to be set aside. He has also referred to the earlier order vide which proceedings were dropped against the appellants which was initiated on these very grounds, by the Tribunal by setting aside the adjudication order against them on 28.10.2003. On the other hand, the learned JDR has reiterated the correctness of the

impugned order.

3. We have heard both the sides and gone through the record. From the record, we find that the appellants supplied CPTs in the manufacture of which they are engaged, to M/s. Dixon Utilities Exports Ltd., the company who manufactures colour TV sets. The plea of the Department is that they had supplied during the period in dispute new CPTs to the said company without payment of duty of Rs. 10,866 involved thereon.

But no tangible evidence has been adduced by the Department to substantiate these allegations. Rather from the record it is evident that the appellants only replaced the defective CPTs which were sent back to them under a mutual understanding by M/s. Dixon Utilities Exports under the cover of Rule 57F(4) Challans. Those CPTs were duly entered by the appellants with full details in their record and after removing the defects found in those CPTs, the same were sent back to M/s. Dixon Utilities Exports Ltd. again under the same 57F(4) challans alongwith the copy of the inspection note. No material has been brought on record by the Department to falsify this evidence of the appellants.

We also find that M/s. Dixon Utilities Exports Ltd. were also served with the show cause notice for denying them modvat credit availed by them on these CPTs supplied to them by the appellants. But the Commissioner (Appeals) through order dated 26.12.2003 dropped the proceedings against them by reversing the order-in-original of the adjudicating authority, after recording the findings that no new CPTs in place of defective ones were supplied by the appellants to M/s.

Dixon Utilities Exports Ltd. Rather the same CPTs were received back by them after removal of the defects from the appellants. The perusal of another Final Order of the Tribunal dated 28.10.2003 placed on record also shows that the appellants supplied the CPTs to M/s. Samsang India.

Electronics Ltd. and on these very allegations that they replaced the defective CPTs with new ones, the appellants were sought to be charged with duty in respect thereof. But the Tribunal set aside the order of the adjudicating authority by holding that there was no proof to substantiate this ground. In the present case also, for want of any tangible evidence to prove that the appellants supplied new CPTs in lieu of defective ones, the duty demand cannot be sustained against them.

4. Consequently, the impugned order is set aside and the appeals of the appellants are allowed with consequential relief if any permissible under the law.