Commissioner of Central Excise Vs. Maniar and Co.

Commissioner of Central Excise Vs. Maniar and Co.

SooperKanoon Citation : sooperkanoon.com/35587

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-10-2004

Judge : S T S.S., T Anjaneyulu

Appellant : Commissioner of Central Excise

Respondent : Maniar and Co.

Judgement :

1. M/s Maniar & Company (Respondents) are engaged in the manufacture of goods under chapter No. 87 and filed classification lists for body building on chassis under heading 8701.00, 8705.00 & 8707.00 & Reservoir Tanks under 7309.00 & tractors etc under 8716.00 claiming exemption under notification 162/86 dated 1.3.86 & 175/86. A proceeding was launched which resulted in an order by the Additional Commissioner who held:- (i) duty collected, representing Central Excise duty to the tune of Rs. 49,267/-; Rs. 91,228/- & Rs. 10,293/- as per Annexure A-1, A-2, was not deposited as per Section 11D should be recovered (ii) demand of duty confirmed, as per Annexure B to the notice, amounts to Rs. 1,63,409/-, for having mis-declared the goods and availing of notification No. 175/86 which was not entitled.

(iii) demand of duty, as per Annexure-B1 to the notice amounting to Rs.58,362/- by showing resale bills for which no purchase bills were produced and were in fact goods manufactured.

(iv) demand of duty, as per Annexure C, amounting to Rs. 8,94,394/-, on "Water Tankers" coming into existence during the course of building of Fire Fighting Vehicles, Spraying Lorries, exempted under 162/86.

(v) Penalties imposed under Rule 173Q on the form and on authorised signature and on form and posters for having cleared 'water tankers' clandestined.

(i) Recoveries under Section 11D pertain to the period 19.04.90 to 3.9.91 when there was no making provided for recovery.

(ii) The demand of Rs. 1,63,409/- on the grounds of mis- declaration or suppression of value would be reduced to Rs. 31,330/- by granting the clearance under 175/86.

(iii) As regards the demand of Rs. 58,362/-, on alleged suppression of production and clearance on resale bills, he set aside the demand as he found the same to be based on assumption and presumption.

(iv) As regards the demand of Rs. 8,94,394/- on water tanker as intermediate goods he found the statement of Shri Shaft A. Maniar to be reliable and was not disputed and therefore he came to the conclusion that the water tankers do not come into existence separately in an identifiably form and no market for such water tanker independently existed. Therefore demand was not upheld. (v) Penalties were set aside on the grounds that no demand remained to be paid. As regards penalties under Rule 209A he found no justification was given by the adjudicator to arrive at the same.

Therefore he set it aside.

(a) Tribunal in the case of Siddeshwer SSK Ltd. (1997 (92) ELT 616 (T-WRB) has held that Section 11D does not have retrospective effect and the Section is applicable to collections made after it came into force. Under Sub-section (2) now (4) of Section 11 D, the amount collected is to be adjusted with the excise duty payable on finalisation of assessment and surplus has to be refunded to consumer Welfare Fund or the person who has borne the incidence. The issue of determination of Section 11D recovery, has to be, therefore to be set aside and remitted to be determined as per law and Madras High Court decision in case of M/s Gem Cables & Conductors Ltd. 1994 (72) ELT 848 (MAD) as pleaded by Revenue.

(b) There is force in the argument that the Demands raised on "Water Tankers" coming at intermediate stage can not be upheld. The Ld.

Advocate took us though paragraph of the show cause notice which says that the water tanker is fitted on Spraying Lorry. Sweeper Lorry, Vacuum Emptier. It may be built separately and then mounted on the chassis or it may be built directly on the chassis. The reliance placed by the Commissioner (Appeals) on the uncontroverted & relied upon statement of Shafi Maniar that Water Tanks are built on the chassis of the vehicle and do not come into existence in an identifiable form is not challenged and this is a relied upon statement by both sides. These materials reinforce the reason to set aside the demand. We also rely on the findings of the tribunal that prior to 1.3.2001, body built on chassis was classifiable under 8707 (See Kamal Auto Industries 2003 (162) ELT 1122 affirmed by S.C. as reported 2000 (121) ELT A70). Therefore Water Tanker bodies built on chassis would be covered under notification No. 175/86 being under heading 8707. Water Tanks being captively consumed would be exempt vide Explanatory-III of that notification. (See SC in Universal Electrical Industries (2003 (153) ELT 266 SC). Therefore demands made on Rs. 8,94,394/- can not be upheld. (c) Since we are remitting the matter on recovery and quantum thereof under Section 11D to the Original authority we would also leave the re-determinination of demands on account of notification No. 175/86 eligibility and trading goods open for the appellants to be heard and re-determined. Penalties if any Will have to be re-determined keeping is waived the duty, if any, determined.

5. Orders of the Commissioner of Central Excise (Appeals) as regards setting aside demand of order duty of Rs. 8,94,394/-duty confirmed.