Electro Appliances Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-10-2004

Reported in : (2004)(173)ELT63Tri(Mum.)bai

Judge : S T C.

Appellant : Electro Appliances

Respondent : Commissioner of Central Excise

Judgement :

1. Heard both sides. It has been alleged by the department that there was a shortage of 1,10,011 pieces of piezo in respect of which a duty demand of Rs. 74,490/- has been confirmed by the adjudicating Commissioner and a penalty of Rs. 10,000/- has been imposed. It is contended on behalf of the appellants that they were receiving duty paid and non duty paid piezo for use in the manufacture of gas lighters. On the day of stock taking on 12-12-1991, there were 33,480 pieces of duty paid piezo and 2725 pieces of non duty paid piezo in stock. No physical shortage was noticed during the stock taking.

However, the show cause notice cum demand notice has been issued on the basis of : - (i) total receipt of both categories of piezo during the period 1988 to 1991, (ii) quantity issued for manufacture and (iii) quantity of gas lighters manufactured. The appellants have explained that the shortage has arisen due to natural breakage in the course of manufacture while fitting piezos by hammering in the lighters and the percentage is about 6.39 over the entire period. They have also contended that the broken piezos are lying in the factory premises.

They had even requested the Commissioner to depute an officer to verify the stock of broken piezos vide their reply to the show cause notice dated 12-11-1993. However, there is no effort made by the department to verify the stock of the broken piezos or to verify whether the percentage of breakage is normal or abnormal. The appellants also claim that the duty credit is not required to be reversed on account of normal breakage occurring in the course of manufacture.

2. After hearing both sides and perusal of the case records, I find that the demand has been made merely on the basis of calculations made without allowing for any breakage or without verifying the broken piezos lying in the stock in the premises of the appellants. As such, the demand is not sustainable. Accordingly, the impugned order is set aside and the appeal is allowed.