

Union Metals Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-25-2004

Reported in : (2004)(172)ELT329TriDel

Judge : S Kang, a T V.K.

Appellant : Union Metals

Respondent : Commissioner of Central Excise

Judgement :

1. The issue involved in this appeal is whether M/s. Union Metals are clearing excisable goods manufactured by them bearing the brand name of another person.

2. Shri Vipin Garg, learned Advocate, submitted that the Appellants manufacture Footrest out of footrest pressure die casting received from LML; that the product manufactured by them does not bear any brand name; that the Footrest is supplied back in corrugated sheets which also admittedly does not bear any brand name; that plastic tape purchased from the manufacturer bearing the words 'LML' and 'PIAGGIO' is used to wrap corrugated sheet packet containing Footrest; that the Joint Commissioner under Order-in-Original No. 66/2001, dated 13-9-2001 has disallowed the benefit of small-scale exemption and confirmed the duty besides imposing equal amount of penalty on the ground that the goods have been removed bearing the brand name of another person; that the Commissioner (Appeals) has rejected their appeal under the impugned Order. The learned

Advocate, further, submitted that the Footrest supplied by them to M/s. LML is used by them as original equipment for the manufacture of two wheelers; that copies of form 3B obtained by LML from Trade Tax Department for procurement of scooter parts for captive use in their factory for availing concessional trade tax, clearly proves that LML have captively used the Footrest supplied by them as original equipment; that Clause (a) of Para 4 of Notification No. 9/99 clearly provides that the SSI exemption will be applicable even if the goods bearing the brand name are in the nature of components or parts of any machinery or equipment and are cleared for use as original equipment in the manufacture of machinery, etc. by following the procedure laid down in Chapter X of the Central Excise Rules, 1944; that the proviso to said clause also provides that a manufacturer whose aggregate value of clearances for home consumption of specified goods for use as original equipment does not exceed Rs. 50 lakhs in a financial year may submit a declaration regarding such use instead of following the procedure laid down in Chapter X; that the only default made by them was that they neither followed the procedure set out in Chapter X nor filed any declaration; that, however, this shortcoming is made good by submitting form 3B of Trade Tax Authority. He finally submitted that the department has also relied upon a letter from LML to the effect that they are unable to make one to one co-relation of the receipt of the impugned goods in their factory since such parts are cleared from LML towards sale of spare parts also; that if LML were at all serious to find out whether Footrests supplied by them were captively used or sold as spare parts they could have easily ascertained this fact from their RG 23A, Part I; that thus whatever mistake has been committed, has been committed on the part of LML for which they should not be saddled with the duty liability and penalty; that in any case penalty equivalent to the amount of duty is not warranted in the facts of the present matter as the entire exercise is duty neutral for the reason LML could have taken the Credit of the duty paid by them.

3. Countering the arguments Shri O.P. Arora, learned SDR, reiterated the findings as contained in the Order-in-Original and Order-in-Appeal.

4. We have considered the submissions of both the sides. Para 4 of the Notification No. 9/99-C.E. clearly provides that the exemption shall not apply to the

specific goods bearing the brand name or trade name, whether registered or not, of another person. In the present matter the Appellants have admittedly purchased plastic tape from the manufacturer M/s. Rishi Polypackers Pvt. Ltd. bearing the brand name 'LML' and TIAGGIO' which is used in the packing of the impugned goods manufactured by them and supplied to LML. The goods thus are clearly bearing the brand name of another person. The exception contained in Clause (a) to Para 4 of the Notification is not available to the Appellants as they have not proved that the impugned goods were used as original equipment since they have not followed the procedure set out in Chapter X of the Central Excise Rules, 1944. Form 3B of Trade Tax Authority submitted by them also does not prove that the impugned goods were used as original equipment as on inquiry M/s. L.M.L. has informed vide their letter dated 13-9-2000 that they are using branded goods in the manufacture of scooter and also clear the same as such to their spare parts Division to be sold to their dealers. In view of this the benefit of exemption notification No. 9/2000 C.E., is not available to the impugned goods. Accordingly we uphold the demand of duty. However, we agree with the learned Advocate that this is not a case which warrants imposition of penalty equivalent to the amount of duty. A penalty of Rs. 10,000/- will meet the ends of justice. We, therefore, reduce the penalty to Rs. 10,000/-. But for this modification the impugned Order is upheld.

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