Sharp Industries Ltd. Vs. C.C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-14-2004

Judge : S T S.S., T Anjaneyulu

Appellant : Sharp Industries Ltd.

Respondent : C.C. Ex.

Judgement :

a) Appellant is an assessee under Central Excise Act, 1944 availing Modvat and paying duty. They were issued a notice dated. 2.7.2003.

i) demanding duty on shortage of inputs involving credit of Rs. 48,627/- ii) On equalized freight not added in the assessable value, a duty demand of Rs. 2,12,568/- to be made.

iii) Duty demands made of Rs. 29,32,395/- on cylinder development charges recovered from customers and not added to assessment value.

iv) And Modvat Credit on inputs reversed to group companies, as inputs, on which credit was required to be reversed on value of 115% as per valuation rules and not equivalent to credit availed.

Recovery under this head was of Rs. 19,49,945/-.

b) During the investigation a sum of Rs. 22,10,740/- was deposited.

The original authority after hearing the assessee, dropped the demand of Rs. 19,49,545/- on inputs transferred to group companies and confirmed the remaining demands amounting to Rs. 31,07,419/- imposed a penalty of equivalent amount and ordered recovery with interest. Hence this appeal.

c) The appellant sought copies of documents and the return of unrelied upon documents including 26 invoice books, print out of floppies to make an effective defence. The same was not supplied.

The demands on Cylinder Development Charges are submitted to have been made on basis of Debit Notes which are said to pertain to another unit and not the Aurangabad unit (the appellant herein).

There is no verification possible of this fact and for that purpose the matter is required to be remitted back to the original authority to re-hear the assessee after supply of the relevant ledgers / print out and other documents, as sought by them and then proceed to re-determine the issues herein, including the duty on freight Cylinder development charges. Modvat Credit recovery of Rs. 48,627/- is not contested.

d) While re-determining the duty demands and thereafter penalty if any, the adjudicator would be bound by the decision of the Larger Bench in the case of Machine Montel (2004 (114) ELR 894 LB as far as penalty imposed is concerned and the facts of deposit already made during the investigations.