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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Jul-23-2004

Reported in : (2004)(97)ECC660

Judge : S Peeran, M T K.C.

Appellant : R.S. Electronics Ltd.

Respondent : Commissioner of Customs

Judgement :

1. A Show Cause Notice was issued to M/s R.S. Electronics Ltd. on the ground that concessional rate of duty under Notification No. 13/97-Cus dated 1.3.97 and Notification No. 25/99-Cus dated 28.2.99 is available only if the raw materials, namely "Stainless Steel 305 Strips", "Stainless Steel in Nickel Iron Cobalt Alloy form" imported by them are used in the manufacture of "Semi Conductor Devices; Electronic Valves and Tubes; Transistor Headers; Glass to Metal Seals; Lead Frames; Cast Alloy Permanent Magnets; Hybrid Micro Circuits; Gas Discharge Tubes", and not in the manufacture of "Parts of Electron Gun/Tube". They had mis-declared that the raw materials imported by them will be used in the manufacture of Electron Gun/Tubes whereas they used in the manufacture of metal parts of Electron Gun. Therefore, duty was demanded alongwith the interest and penalty was also proposed. The Commissioner of Central Excise, Bangalore in his Order-in-Original No.23/99 dated 29.10.99 adjudicated the said show cause notice and confirmed duty demand of Rs. 20,00,837 and imposed penalty of equivalent amount on the appellants. He also demanded interest on the amount of

duty confirmed.

2. S/Shri T. Rajeswara Sastry and M.S. Nagaraj, Advocates appeared for the appellants. Shri Sastry pleaded that the exemption available under Notification No. 13/97-Cus dated 1.3.97 up to 28.2.97 and under Notification No. 25/99-Cus dated 28.2.99 for import of raw materials at concessional rate of duty for manufacture of excisable goods was subject to the importer following the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996. According to these Rules, they obtained Registration Certificate from the Asst. Commissioner of Central Excise having jurisdiction over the factory of the manufacturer and executed Bond as prescribed under these Rules. Show Cause Notice has been issued to them under the provisions of Customs (IGCDMEG), Rules, 1996 on the ground that the raw materials were not used for the intended purpose.

The intended purpose of the imported raw material was for use in the manufacture of Electron Gun/Tubes. He pleaded that in the Registration Certificate and also in the Bond executed before the Asst. Commissioner of Central Excise, they have shown intended use for manufacture of 'Parts of Electron Gun/Tubes. The Annexure III is the form prescribed by the CBEC by Circular No. 46/96-Cus dated 30.8.96 for submission to the Asst. Commissioner of Central Excise by the manufacturer. They filed Annexure III-1/98-99 on 17.7.98 in respect of Bill of Entry No.048835 dated 18.7.98 and stated that the imported Stainless Steel 305 Strips were for use in the manufacture of Electron Gun parts/Tubes.

Thus, there was no mis-declaration in Annexure III. They also filed Annexure III-2/98-99 on 10.8.98 in respect of Bill of Entry No. 053621 dated 6.8.98 declaring the imported Nickel Iron Alloy Strip was for manufacture of Electronic Gun parts/tubes. Thus, there was no mis-declaration in Annexure-III. In the subsequent Annexure-III filed by them, the word "parts" has been omitted. He pleaded that there is no wilful mis-statement as alleged in the show cause notice, since the Registration Certificate and Bond executed before the Asst.

Commissioner of Central Excise clearly state that the imported goods were for manufacture of metal parts of Electron Guns/Tubes. A duty is cast on the Asst.

Commissioner of Central Excise to ensure that the imported goods are used for intended purpose. The intended purpose is specified in the Registration Certificate and also in the Bond executed and accepted by the Asst. Commissioner of the Central Excise. He pleaded that in case of Samtel Color Ltd. v. CCE, Meerut, 2000 (126) ELT 1256 (T), the Tribunal has held that issue of Registration Certificate under Rule 3 of the Customs (IGCDMEG), Rules, 1996 is a mandatory requirement for availing the benefit of concessional rate of duty at the time of importation. Rule 8 of the said Rules is attracted if the imported goods are not used for the intended purpose. When the imported goods are not used as per the Registration Certificate, the Asst. Commissioner of Central Excise having jurisdiction over his factory shall have jurisdiction to issue notice for recovery of differential duty under Rule 8 of the said Rules. He pleaded that in this case, when Registration Certificate issued under Rule 3 clearly describes the particulars of the imported material and excisable goods manufactured from the imported material as described as "Parts of Electron Guns/Tubes", there is no mis-declaration or wilful mis-statement with reference to the intended use of the imported material. Therefore, the entire demand under Rule 8 of the Customs (IGCDMEG) Rules, 1996 is not sustainable. He also pleaded that the Asst. Commissioner issued the Registration Certificate and also accepted the Bond on the basis of undertaking that the imported raw material would be used in the manufacture of "Parts of Electron Guns/Tubes". Both the Department and the appellants were under a bona fide understanding that the appellants are eligible for benefit of concessional rate of duty. If subsequently the Department changes its views and holds the appellants are not eligible for exemption, the Department cannot allege that there is a wilful mis-statement on the part of the appellants for invoking larger period of limitation. He relied on the decision of the Tribunal in case of Rapicut Carbides Ltd. v. CCE, Vadodara, 2003 (160) ELT 576 (T-Mum), wherein it was held that when the goods having been given the benefit of exemption by the Assessing Officer, then extended period of limitation cannot be invoked under Section 28 of the Customs Act, 1962. He pleaded that denial of benefit of concessional rate of duty and consequent demand of differential duty of Rs. 8,45,820 in respect of 6 (six) Bills of Entry as given in Para 22 of Memorandum of Appeal is barred by limitation. He also pleaded that under Customs (IGCDMEG) Rules, 1996, the Asst.

Commissioner can only recover the differential duty, in case the imported goods are not used for the intended purpose. There is no provision of demand of interest under the said Rules. Demand of interest was incorporated in the said Rules only from 1.3.2002 by Notification No. 12/02-Cus (NT) dated 1.3.2002. Since the period of dispute is prior to 1.3.2002, the demand of interest is not sustainable. Interest under Section 28AB is leviable only when there is determination of duty under Section 28 (2) of the Customs Act. He said since the extended period is not applicable and there is no determination of duty under provisions of Section 28, demand of interest is not sustainable. He also pleaded that the Commissioner has imposed penalty under Section 28 (1) of the Customs Act, 1962. Penalty is not imposable under the said Section. Therefore, imposition of penalty is not correct.

3. Shri P.M. Saleem, SDR appearing for the Department stated that the intended purpose is not under the Customs (IGCDMEG) Rules, 1966 but the conditions of the intended purpose are given in the Notification under which the goods are imported and as per Rules, these conditions are to be fulfilled by the importer. In the present case, the appellants have described one set of information to the Asst. Commissioner of the Central Excise in the Registration and in the Bond executed before him whereas before the Customs Authority in Bills of Entry and in Annexure III, they had given different information. He referred to the Bills of Entry at Page 70 of the Paper Books where the description of the goods is given as "PARTS FOR THE OF ELECTRONIC TUBES" -- "Stainless steel strips in coil form (Nickel, Alloy, Cobalt)" whereas in the Registration Certificate, they had described the nature and the description of the excisable goods to be manufactured from the imported goods is "G1 Cup/Assy, G4, G5 Cup/Assy Suds/Strap, Spacer, Cathode, Eyelets (PARTS FOR ELECTRON GUN/TUBES)". In the Bond before the Asst.

Commissioner of Central Excise, they have described the goods to be manufactured as 'METAL PARTS FOR ELECTRON GUN/TUBE" but before the Customs Authority in Annexure-III declaration and Bills of Entry, the goods are described as "Parts for manufacture of Electronic Gun/Tubes".

Thus, what is described before the Customs Authority in the Bills of Entry and what is described before the Central Excise Authority are two different things and therefore, the appellants had deliberately described the goods as "Parts for manufacture of Electronic Tubes" is totally a mis-declaration with an intention to evade payment of customs duty. Therefore, suppression of facts is fully established and the intention of the appellants is also quite clear by mis-declaring the goods as "Parts of Electron Gun" and not as raw material for manufacture of Parts of Electron Gun/Tubes. Therefore, extended period for demanding duty is fully applicable. He also stated that even if there was no mention of the interest in the Customs (IGCDMEG) Rules, 1996, still interest was leviable under the general provisions of the Customs Act. He also pleaded that penalty is also imposable on the appellants even if the Commissioner has wrongly quoted the Section for imposition of penalty. He pleaded that it is well settled law that when the penalty is imposed, the charge is clearly brought out in the show cause notice as well as in the order. By quoting a wrong Section, it does not absolve the appellants from imposition of penalty. Therefore, penalty has been correctly imposed on the appellants under Section 114A of the Customs Act, although in the order it was wrongly mentioned as Section 28 of the Customs Act.

4. Shri Sastry, Ld. Advocate further pleaded that now the Department is taking a new stand that there is one set of declaration to the Central Excise and another set of declaration to the Customs. He said that there was no such charge in the show cause notice. The new charge cannot be framed on the appellants at the appeal stage. He pleaded that rules have given the responsibility to the Asst. Commissioner of Central Excise to check the intended use of the goods. Rule 5 of the Customs (IGCDMEG) Rules, 1996 prescribes procedure to be followed by the Assistant Commissioner of Customs. According to this rule on the basis of application having counter signed by the Asst. Commissioner of Central Excise, the Asst. Commissioner of Customs at the port of the importation shall allow the benefit of exemption notification to the importer. He said that in the Annexure III Nos. 1/98-99 dt 17.7.98 and 2/98-99 dt. 10.8.98, they have clearly shown that the goods are being imported for manufacture of "Parts of Electronic Gun/Tubes". After import of the material, the appellants filed Annexure-V about intimation of imported goods. On all these goods, it cannot be said that they have suppressed the facts.

5. We have carefully considered the submissions made by both the sides.

We find that in the show cause notice, the charge against the appellants is that the appellants were manufacturing only "Parts of the Electron Gun" and not manufacturing "Electron Guns/Tubes". They were using raw material in the manufacture of Parts of Electron Gun and not in the manufacture of Electron Gun/Tubes as declared. They have intentionally declared in Annexure III as "for use in manufacture of Electron Gun/Tubes" in order to avoid any objection on clearance at the port of importation when they were aware that they are not manufacturing any Electron Gun/Tubes. Therefore, they have wilfully mis-stated the use of the said raw material for manufacture of Electron Gun/Tubes while in fact, they have only manufactured Metal Parts of Electron Guns and they were aware that concessional rate of duty under Notification is not available if the goods are imported for use in manufacture of Parts of Electron Guns/Tubes. Thus, it is clear that the appellants in Annexure III which was signed by the Excise Officer and was used for clearance of the goods before the Customs Authority, had shown wrong description of the goods to be manufactured as Electron Guns/Tubes. We find that this issue was examined by the Commissioner in his Order-in-Original wherein he has given his findings in Para 22 which is reproduced below- "22. It is no doubt true that the assessee has declared that they manufacture Metal Parts of electron gun in the Rule 173B Declaration, in the Regn. Certificate issued and in the Bonds executed. While the 173B declaration and registration Certificate was filed/issued by the R.O., only the bonds were executed before the Assistant Commissioner. Be that as it may, what is vital for the assessee to claim the concession is the certificate in Annexure III which alone is produced before the Asst. Commissioner of Customs at the port of import. It is in this, all important and vital document, the assessee has mis-stated and mis-declared that the imported goods would be used in the manufacture of electron guns. This mis-statement is found in all 14 Annexure IIIs (one of which was cancelled 8/98-99). It is only in respect of the initial two Annexure IIIs at an insignificant place on page three the words 'parts' has been added. Realising that the word 'parts' would impede imports, the assessee transcended this difficulty by refraining from including this lone word in the annexure III deliberately and consciously. It is also seen that the mis-statement exists not only in the Annexure

IIIs but also in the Bills of Entry. Perusal of the subject Bills of Entry reveals that except in a few of the Bills of Entries, there is a categoric mis-statement in the rest of the Bill of Entry. It has clearly been mentioned on these bills as "Parts for the manufacture of Electronic tubes/Raw Material for the manufacture of electronic valves and tubes. The above legend appearing on the Bills of Entry reflect mis-statement with intent to evade payment of duty, on the part of the assessee. The above facts, leave no room for any doubt whatsoever, that the extended period of limitation has been rightly invoked in this case." From the above findings of the Commissioner, it is clear that the appellants have mis-declared that the imported goods would be used in manufacture of Electron Guns. The mis-declaration is in the Annexure III and also in the Bills of Entry. We find that it was the responsibility of the Central Excise Officer who have signed the Annexure III for being produced before the Customs authority for import of goods, to check that correct declaration regarding goods to be manufactured by the appellants is given before signing the said Annexure III. It appears that even though wrong declaration was given by the appellants, the Central Excise Officers who signed the Annexure III should have corrected it. It is clear negligence of range officer who signed and did not conduct checks to raise demand for wrong use of material and prevent further wrong declaration. Therefore, when the mistake is also on the part of the Department in signing wrong Annexure III declaration for production before Customs, extended period for demanding duty cannot be made applicable. Therefore, the demand should be restricted to 6 (six) months only under Section 28 (1) of the Customs Act. Accordingly we reduce the demand of duty from Rs. 20,00,837 to Rs. 11,55,017 (i.e. Rs. 20,00,837.00 minus Rs. 8,45,820.00) and order for imposition of penalty and demand of interest is set aside. Ordered accordingly.