

K-three Electronics Pvt. Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-05-2004

Reported in : (2004)(97)ECC124

Judge : A T V.K., P Bajaj

Appellant : K-three Electronics Pvt. Ltd.

Respondent : Cce

Judgement :

1. M/s. K-Three Electronics Pvt. Ltd. have filed the present appeal being aggrieved by the Order-in-Appeal No. 45/2004 dated 30.1.2004 passed by the Commissioner (Appeals).

2. Shri Lajja Ram, learned Advocate, submitted that the Appellants manufacture colour television set and plastic moulded parts; that when the Central Excise Officers visited their factory premises on 28.8.2002 they found finished goods valued at Rs. 8,11,621.42 in excess of the stock recorded in RG-1 register; that the officers also found shortage of raw material namely High Impact Polyesterene weighing 3123.771 kgs.

valued at Rs. 1,56,188.55; that the Additional Commissioner under Order-in-Original No. 7/2003 dated 30.5.2003 confiscated excess finished goods and imposed redemption fine of Rs. 2,05,000 and confirmed all other dues mentioned in the show cause notice; that on appeal the Commissioner (Appeals) has upheld

the confiscation of the excess finished goods and redemption fine imposed on them as well as denial of Modvat Credit on the shortage of raw material found by the Central Excise Officers. The learned Advocate, further, submitted that television sets manufactured by them are items of precision and sophistication; that number of test technical performance and physical impact are conducted before the television sets are considered to be manufactured; that they are manufacturing television sets for Beltak and the same are accounted for in RG-1 register at the time of despatch only after these have been inspected by their customers; that there is no allegation in the show cause notice that any attempt was being made by the Appellants to remove the same clandestinely; that in view of this there was no ground for confiscation of the finished goods found in excess in the factory. He relied upon the decision in the case of Panihati Rubber Ltd. v. CCE, Calcutta-111, 2001 (131) ELT 344 (Tri) wherein confiscation and penalty was set 'aside as the goods were awaiting inspection by Railway authorities and no evidence of malafide intention -to remove the goods was available. Reliance has also been placed on the decision in the case of Bhilai Conductors P. Ltd. v. CCE, Raipur, 3. In respect of shortage of inputs learned Advocate submitted that the shortage has occurred on account of loss in sweeping, etc.; that such a loss is minor; that storage loss is allowable as has been held by the Tribunal in the case of Kesar Enterprises Ltd. v. CCE, Final Order No.1095-1096/2000-NB dated 26.8.2002 and the appeal filed by the Revenue has been dismissed by the Supreme Court as reported in 2003 (157) ELT A-256. Reliance has also been placed on the decision in the case of CCE, Auragabad v. Sipta Coated Steel Ltd., 4. Countering the arguments Mrs. Charul Baranwal, learned SDR, submitted that the finished goods which were found in excess were duly packed in ready to go condition and this has not been controverted by the Appellants; that the authorized signatory in his statement dated 28.8.2002 had clearly admitted that they had the practice of recording production of colour television sets only at the time of despatch, in RG-1 register which is not as per the rules; that as the goods had not been accounted for in the RG-1 register they are liable for confiscation. She, further, submitted that shortage of inputs weighing 3123.771 kgs. has not been properly explained by the Appellants as their explanation is only that these have been lost in sweeping, etc.; that admittedly these inputs have not been used in or

in relation to the manufacture of final product and as such Modvat Credit is not available to them.

5. We have considered the submissions of both the sides. As per provisions of Central Excise Rules, 2002 every assessee has to maintain proper records on a daily basis, indicating the particulars regarding description of the goods manufactured, opening balance, quantity manufactured, quantity removed, etc. The Appellants have manufactured colour television sets which is their final product and have not entered the same in daily production record. It is an admitted position that they had the practice of recording production at the time of despatch only which is not in conformity with the provisions of Central Excise Rules. Rule 25 of Central Excise Rules, 2002 provides for confiscation of the goods which are not accounted for by the manufacturer. Confiscation of the goods, which have been manufactured and not accounted for, is permissible under the law. For the purpose of confiscation it is not pre-requisite that there should be an attempt to remove the same from the factory premises. It has been held by the Bombay High Court in the case of Kirloskar Bros. Ltd. v. UOI, 1988 (34) ELT 30 (Bom) that Clauses (a), (b), and (c) of Sub-rule (1) of Rule 173Q do not admittedly use the expression "with intent to evade payment of duty", which is found in clause (d) thereof. It can, therefore, be prima facie, assumed that the liability in terms of Rule 173Q(1), clauses (a) (b) and (c) does not depend upon mens rea. Rule 25 is pari materia with the provisions of Rule 173Q(1) of the Central Excise Rules, 1944. In view of judgment of Bombay High Court decision in the case Bhillai Conductors (P) Ltd. is not applicable. Accordingly the finished goods found in excess are liable to confiscation. However, taking into consideration the facts and circumstances of the case we agree with the learned Advocate that the redemption fine imposed is on the higher side. The interest of justice will be met, if the redemption fine is reduced to Rs. 80,000/-. We order accordingly, 6. The Modvat Credit of the duty paid on inputs is available only when the inputs are used in or in relation to the manufacture of the final products which are cleared on payment of duty. In the present matter admittedly the inputs found short has not been utilized in or in relation to the manufacture of final product. Therefore, the Modvat Credit on the said quantity of the inputs is not available to the Appellants. The detailed facts in the case of Kesar Enterprises Ltd. wherein the Tribunal has allowed the Modvat

Credit on transport or storage losses have not been brought on record by the learned Advocate in absence of which the ratio of the said decision cannot be appreciated. In view of the fact that inputs found short have not been used in or in relation to the manufacture of finished goods the disallowance of the Modvat Credit is upheld.⁷ The learned SDR has pointed out that the Appellants in their appeal memorandum has also raised plea regarding Central Excise duty of Rs. 3558.10/- on finished goods which were found short. The learned Advocate submitted that they are not pressing their appeal in respect of the said duty. The appeal is disposed of in the above terms.

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