L.G. Electronics India Ltd., Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-21-2004

Reported in : (2004)(96)ECC529

Judge : N T C.N.B., P Bajaj

Appellant : L.G. Electronics India Ltd.,

Respondent : Cce

Judgement :

1. The above captioned appeals are directed against a common Order-in-Original. The main appellant is M/s L.G. Electronics India Ltd. against whom duty of Rs. 42,50,477 with an equal amount of penalty has been confirmed while against the other two appellants M/s Samtel Colour Ltd. and M/s L.G. Hotline CPT Ltd., penalty of Rs. 10 lakhs each has been imposed.

2. We have heard both sides. Duty has been confirmed against M/s. L.G.Electronics India Ltd. by denying them the modvat credit of various amounts as detailed in the impugned order itself. The credit of Rs. 14,52,466 has been denied on the ground that their suppliers of inputs M/s Samtel Colour Ltd. and M/s L.G. Hotline CPT Ltd. cleared the news PTs in the guise of defective CPTs without payment of duty. On this very allegation, the duty demand was earlier raised against M/s Samtel (India) Electronics and others, but the same was not accepted by the Tribunal and the demand was set aside as we find from the Tribunal's order in Samtel (India) Eletronics 2004 (164) ELT 261. In the present case also, there is

hardly any evidence to show that appellants No. 2 & 3 cleared new CPTs in the guise of repaired ones, the supplied the same to the appellant No. 1 without payment of duty. In fact, the suppliers named above, repaired the CPTs which were received back from the appellant No. 2 as defective and supplied the same back to appellant No. 1 after removal of defects. Therefore, modvat credit taken by the appellant No. 2 could not be legally denied to them.

3. Another credit of Rs. 21,97,175 has been denied to the appellant No.1 on the ground that they have sold CTVs at price higher than the MRP affixed on the CTVs. In our view, the impugned order in this regard is totally erroneous. From the record, it is evident that demand of this very amount, for the same period, in respect of CTVs was raised through a Show-cause Notice issued by Directorate General of Anti Evasion, New Delhi and the same was adjudicated by the Commissioner, Delhi vide order dated 25.1.2000. In that order, the Commissioner confirmed the demand and penalty of Rs. 15,000 and ordered appropriation of the duty paid by the appellant No. 1. On appeal filed by the Revenue against the above said order, Tribunal confirmed that order of the Commissioner.

That being so, second time, no duty demand could be legally confirmed against the appellant No. 1.

4. However, the denial of modvat credit of Rs. 68,805 availed by the appellant No. 1 on galvanized M.S. sheet has not been disputed by the Counsel. The impugned order in this regard is to be upheld.5. Another credit of Rs. 5,32,031 has been denied to the appellant No.1 on the CTVs broken during the course of manufacture of the final product. But credit on the same could not be legally denied under Section 57D of the Act. The impugned order in this regard is erroneous in law and is to be set aside.

6. Against the appellant Nos. 2 and 3, penalty of Rs. 10 lakhs each cannot be sustained in the light of the facts and circumstances of the case. Consequently, the impugned order of the Commissioner except for denial of modvat credit of Rs. 68,805 to appellant No. 1, is set aside against all the appellants. Appeals stand disposed of with consequential relief to the appellants as per law.