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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-23-2004

Reported in : (2004)(97)ECC145

Judge : S Kang, Vice, A T V.K.

Appellant : Bestavision Electronics Ltd.

Respondent : C.C. and C.E.

Judgement :

1. In this appeal, M/s. Bestavision Electronics Ltd., are challenging the imposition of penalty and redemption fine on them.

2. Shri S.D. Gaur, learned Consultant, submitted that the appellants manufacture colour television sets; that the Central Excise Officers visited their factory premises on 9.9.98 and observed that they were declaring more than one M.R.P. for each model of their T.V. sets, which was against the provisions of Section 4A of the Central Excise Act; that the Officers also noticed that no M.R.P. was printed on the cartons of C.T.V. sets lying in the factory; that the Officers detained 641 C.T.V. sets lying in packed condition in the factory on the ground that these were intended to be removed on lower M.R.P.; that in addition, the Officers also seized 41 V.C.Ps. which were lying in packed condition and were not accounted for in the R.G.I. Register; that the Officers also seized 171 C.T.V. sets of Bestavision brand from the sales depot-cum-godown of the appellants on 9.9.98; that in addition 212 C.T.V. sets were seized from the premises of various dealers; that, subsequently,

the Additional Commissioner under the Order-in-Original No. 27/99 dated 27.12.99 has confiscated 197 C.T.V.s and 41 Nos. of V.C.Ps under Rule 173-Q of the Central Excise Rules and appropriated an amount of Rs. 4,79,324/- towards redemption fine as the goods were earlier released provisionally to the appellants; that the Commissioner (Appeals) has also imposed a penalty of Rs. 3,45,118/-; that on appeal, the Commissioner (Appeals), under the impugned order, reduced the pantly to Rs. 75,000/- but upheld the confiscation of V.C.Ps. and C.T.Vs. The learned Advocate submitted that 41 V.C.Ps., lying unaccounted for in the factory premises, were not completed and this fact was communicated to the Adjudicating Authority even before the issue of the show cause notice; that the appellants, under their letter dated 3.12.98, informed the Additional Commissioner regarding non-completion of V.C.Ps.; that, similarly, the finding of the Appellate Authority that they had not produced any evidence to show that the C.T.V. sets were cleared on payment of duty on the bases of M.R.P. marked on the packages, is not correct; that there is no mention in the whole investigation that M.R.P. was not marked on the package of T.V. sets when cleared from the factory to different destinations; that the appellants and fixed different M.R.Ps for different States and M.R.P. was marked on the package at the time of clearance of goods to the relevant region; that, therefore, the contention is supported by the fact that the appellants had paid differential duty on the basis of area-wise M.R.P. marked on the packages; that this fact has also been mentioned in the show cause notice; that the regional M.R.Ps. are proper price for payment of duty under Section 4A of the Central Excise Act. He relied upon the decision of the Karnataka High Court in the case of H & R Johnson (India) Ltd. v. C.B.E.C., New Delhi, 2002 (83) ECC 393 (Karn): 2002 (144) ELT 506 (Kar) wherein it has been held by the Karnataka High Court that Explanation 2 contemplates more than one retail sale price being declared on the excisable goods and from this it follows that Explanation 2 refers to retail sale price on the packages and not in the declaration under Rule 173C (2A); that it has also been held by the Karnataka High Court that the question of applying retail sale price, that is declared in some other area or region, will not arise.

3. Countering the arguments, Mrs. K.A. Mishra, learned S.D.R., reiterated the findings as contained in the impugned order and emphasised that the appellants has not produced any evidence to show that the impugned V.C.Ps were not in fully

manufactured condition.

4. We have considered the submissions of both the sides. It has been claimed by the appellants that V.C.Ps. were not completely manufactured as few components were not available and chassis number was also not allotted. This was the fact mentioned by them in their letter dated 3.12.1998. The Revenue has not brought any material on record to show that the V.C.Ps., in question, were in fully manufactured condition.

The Adjudicating Authority in the Order-in-original, in fact, has placed the burden of proof on the appellants only to show that the V.C.Ps. were not in fully manufactured condition. The plea taken by the Appellants in their letter dated 3.12.98, has not been countered by the Revenue by bringing any material on record. The Department has not succeeded in establishing that the M.R.P. was not printed on the C.T.V.cartons. It is not in dispute that they had filed the declaration indicating different M.R.Ps. for different areas. It is specifically mentioned in the show cause notice dated 3.3.99. Further, it has also been mentioned in the show cause notice itself that 641 No. of C.T.V.sets, which were detained in the factory premises were released to the appellants after they had deposited the differential duty on past clearances. There is force in the submissions of the learned Consultant that the differential duty should have been worked out on the basis of M.R.P. printed on the packages. The Karnataka High Court has held in the case of H & R Johnson (India) Ltd. (supra) that where the appellant has declared different retail sale price on different packages for sale in different areas, each such price shall be the retail price for the purpose of valuation of excisable goods intended to be sold in the area to which the retail sale price relates. In view of this, both the V.C.Ps and C.T.V. sets are not liable for confiscation. Accordingly, we set aside the confiscation. Consequentially, the redemption fine and penalty imposed on the appellants are not aside and appeal is, thus, allowed.

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