Buildo Mat Vs. Commissioner of Central Excise

Buildo Mat Vs. Commissioner of Central Excise

SooperKanoon Citation : sooperkanoon.com/36696

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Oct-05-2004

Reported in : (2005)(180)ELT138Tri(Bang.)

Judge : S Peeran, J T T.K.

Appellant : Buildo Mat

Respondent : Commissioner of Central Excise

Judgement :

1. M/s. Buildo Mat (hereinafter referred to as the appellants) is a proprietary concern dealing in doors/windows/ profiles falling under Chapter 39 of the Central Excise Tariff Act, 1985. Based on intelligence, the regional unit of the Directorate General of Central Excise Intelligence searched the premises of the appellants and booked a case for manufacture and removal of plastic doors/PVC doors/plastic doors with frames bearing "SINTEX" brand name without payment of duty and observing central excise formalities. The original authority confirmed the demand of Rs. 7,32,079/- for the period from 23-7-1996 to 31-12-2000 under Section 11A of the Central Excise Act 1944. A penalty of Rs. 7,04,945/- being the amount equivalent to duty demanded for the period from 28-9-1996 to 31-12-2000 was imposed under Section 11AC of the Central Excise Act, 1944. A penalty of Rs. 25,000/- was also imposed under Rule 173Q of the Central Excise Rules, 1944 for the period prior to incorporation of Section 11AC of the Central Excise Act, 1944. Interest was also demanded under Section 11AB of the Act.

The appellants appealed to the Commissioner (Appeals) who upheld the Order-in-Original of the original authority. The appellants have come before this Tribunal aggrieved by the Order-in-Appeal dated 1-10-2003.

The following are the short points in this appeal: (2) Whether the appellants are entitled to small scale exemption benefit in view of the fact that the name SINTEX is affixed on the products fabricated by him.

2. Shri M.S. Nagaraja, Advocate appeared for the appellants and Shri L.

Narasimha Murthy SDR appeared for the revenue.

3. We have heard the rival contentions. The appellants purchased plastic sections and profiles from M/S. Sintex Industries, Kalol and from local suppliers, fabricate doors using above materials at their premises as per customers specifications. These doors are cleared on sale and installed in the premises of the customers. The appellant submitted that for fabricating doors they adopt the process of cutting, drilling holes etc. and these processes do not amount to manufacture.

They also contended that as these doors are fixed in the premises of the customers and become immovable property, they are not excisable.

The above contentions of the appellants are not acceptable. The Commissioner (Appeals) in his Order-in-Appeal has given ample justification to hold that the doors fabricated by the appellants are excisable. It is on record as seen from the invoices produced by the investigation that the appellant is selling plastic doors. There is no strong case for the appellants to hold that the plastic doors are not excisable. The doors become immovable property only after they are fixed. When they are cleared from the premises of the appellants, they are not at all considered as immovable property. We uphold the finding of the Commissioner (Appeals) that the doors are excisable.

4. As regards the entitlement of the appellant for the small scale industry exemption benefit, it is seen that they purchased raw materials form M/s. Sintex Industries Ltd., Kalol. The plastic sheets normally contain the name 'SINTEX'. Every door manufactured by the appellant contains the logo 'SINTEX' on them.

Wherever logo is not available, the appellants affixed the sticker which shows that the door is Sintex PVG door. This is evident from the statement of Shri T.N.Harish Manager of the appellant Company. Therefore, there is very clear evidence that the appellant is using the brand name of the well known Sintex Company. The appellants have cited large number of cases wherein it is held that the affixing of the name of the manufacturer of the raw material does not amount to using the brand name of another. These cases are not relevant in the facts and circumstances of this case as the appellants use the name Sintex even when raw materials do not contain 'SINTEX' logo. Moreover the invoices on record indicate that the appellant is selling the doors as Sintex doors only. Hence as rightly held by the original as well as appellate authority, the appellant is not entitled for the SSI exemption benefit.

5. As regards the benefit of Modvat credit, the same should be given to them on the basis of the available duty paying documents. In view of the decision of the Hon'ble Supreme Court in the case of CCE, Delhi v.Maruti Udyog Ltd., 2002 (141) E.L.T. 3 (S.C.), the invoice price may be treated as cum duty price. The appellants' plea that they were under the bona fide belief that the activity of cutting and drilling holes in the PVC sections to make doors does not amount to manufacture and hence an extended period can not be invoked is not acceptable in view of the above observations. The original authority should quantify the duty liability. Penalty under Section 11 AC will be limited to duty liability. Interest under Section 11AB is also payable. The penalty of Rs. 25,000/- under Rule 173Q is set aside. To this extent the OIA is modified.