L.G. Electronics India Ltd. Vs. Cce

L.G. Electronics India Ltd. Vs. Cce

SooperKanoon Citation : sooperkanoon.com/37492

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-23-2004

Reported in : (2005)(101)ECC329

Judge : N T C.N.B.

Appellant : L.G. Electronics India Ltd.

Respondent : Cce

Judgement :

2. There is a duty demand of Rs. 99,419 and penalty of Rs. 15,000. The duty demand is in regard to 13 ACs and 5 Washing machines which have been held to be removed without payment of duty by the appellant.

3. The contention of the appellant is that the removals in question took place in the early days of production in their factory. The removals were also for purposes like testing etc. and not on sale. In most cases duty had also been paid. The appellants, therefore, contended that the duty, which remains to be paid, was only in respect of five ACs and that the amount worked out to Rs. 33,263 and that amount was debited by them immediately on being pointed out by the Central Excise authorities. The appellant's contention was not accepted by the lower authorities in regard to ACs cleared under invoice No. 1 dated 27.3.98. This invoice mentions duty paid clearance of two ACs on 27.3.98. The lower authorities have held that this invoice is not valid in respect of the alleged clearances since the appellant's gate register showed a clearance of ACs under serial No. 11. The

last column in the register mentions 03 and 04. The Commissioner has therefore held that these relate to clearance of 7 ACs without payment of duty. During the hearing today, learned Counsel for the appellant has pointed out that the conclusion reached by the lower authorities is clearly erroneous. It is being pointed out that the vehicle number indicated in the invoice dated 27.3.98 as well as in the gate register was the same, DL 1CC 1366, and the gate register shows no clearance by that vehicle on 27.3.98 and shows the clearance only on 28.3.98. It is also the contention of the learned Counsel that the clearance referred to in the gate register on 28.3.98 should be accepted as the goods covered by the invoice of the previous day. He also contended that this position is clear from another aspect also. As already noted, the gate register in the last column mentions 03 and 04, the same entries are to be seen in column 2 of the invoice also. According to the learned Counsel, these numbers are the Sl. Nos. of the ACs. He has submitted that the gate register entry relates to serial numbers and not the Nos. of ACs cleared. With regard to the other 5 ACs, the learned Counsel has submitted that though the machine was taken out for demonstration purposes, the dealer has already paid duty.

4. With regard to washing machine, the explanation is that under invoice No. 4 dated 6.4.98 the appellant cleared four Washing machines and the washing machines in dispute are the same. The Counsel has submitted that duty demand has been confirmed without taking into account this invoice at all.

5. As regards penalty, it is being submitted that it has been already held by the Larger Bench of the Tribunal in the case of CCE Delhi-III v. Machino Montell (1) Ltd., 2004 (96) ECC 180 (LB) : 2004 (62) RLT 709 that when the duty liability is honoured before the issue of notice no penalty is warranted.

6. On perusing the relevant records, I find that the appellant's explanations in regard to the duty amount and penalty merit acceptance.

In regard to the ACs, since there is only one clearance in the gate register for 27th and 28th, the invoice dated 27.3.98 is required to be accepted as covering the clearance of 28.3.98, particularly so, in view of the fact that the vehicle Nos. and Sl. Nos. mentioned in both the register and invoice are the same. In respect of the

4 washing machines, the order has been passed by the lower authorities without taking into account invoice No. 4. In result, the appeal is allowed.