Tanna Electronics Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-31-2004

Reported in : (2005)(99)ECC314

Judge : A Wadhwa, N T C.N.B.

Appellant : Tanna Electronics

Respondent : Commissioner of Central Excise

Judgement :

1. The appellants are engaged in the manufacture of satellite and cable TV equipments and accessories falling under Chapter 85 of the Central Excise Tariff Act, 1985. Their factory was searched by the Central Excise Officers on 10.3.99 and as a result of search, duplicate chits, one note book showing cash transactions and other incriminating documents were recovered. The same were seized on the reasonable belief that the entries therein reflected clandestine activities of the appellants. Similarly, the premises of M/s. Moby Enterprises, who were the sole distributors of the appellant company for the State of Maharashtra were also put to search and incriminating documents i.e.

duplicate chits, etc. were recovered from their premises.

2. In his statements recorded on the spot, Shri M.M. Tanna, partner of the appellants company admitted that the duplicate chits were used for making clandestine deliveries of their product and after accounts were settled within a

period of about 15 days, such duplicate chits were torn off by them as also by the receiving party. He disclosed that during the financial years 1996-97, 97-98 and 98-99, their total turn-over was Rs. 40 lakhs, Rs. 45 lakhs and Rs. 65 lakhs, respectively.

3. He also volunteered to pay the duty involved in the said clandestine activities and deposited an amount of Rs. 3,03,038 towards Central Excise Duty. In his further statement recorded on 12.8.99, he clarified that entries made in the note book showed the date-wise and quantity-wise clearances effected by them during the period 1998-99.

4. Statement of Shri G.S. Advani of M/s. Moby Enterprises was also recorded on 10.3.99, wherein he accepted that in addition to receipt of the goods on proper delivery challan and invoices, they were also receiving the goods on the basis of duplicate chits. Such chits were subsequently torn off after settled of the accounts. In respect of the duplicate chits received from his premises, he admitted that the same were used to receive the goods from M/s. Tanna Electronics.

5. Statement of Shri Ashok M. Tanna, another partner of the appellants was also recorded on 13.8.99, wherein he disclosed the same facts as detailed by another partner Shri M.M. Tanna. On the basis of the above facts, the appellants was issued show cause notices alleging clandestine removal and demanding duty of Rs. 4,20,038 in respect of the excess clearances effected by them during the period 1.4.96 to 10.3.99. the notice also proposed confiscation of the goods seized from the said factory and imposition of personal penalty on the appellants as also on the partner of M/s. Moby Enterprises. The said show cause notices culminated into the impugned order confirming demand of duty and imposing penalty upon the various persons, on an appeal against the above order. The Commissioner (Appeals) confirmed the demand of duty of Rs. 4,20,038 but reduced the penalty to Rs. 10,000. Penalties imposed upon the other persons were, however, set aside.

6. We have heard Shri V.S. Sejpal, Ld. Advocate for the appellants and Shri Sanjay Singhal, Ld. JDR for the revenue.

7. The appellant's main contention is that the entire case of the revenue is based upon the statements of Shri M.M. Tanna, which in any case was retracted by him by way of filing an affidavit on 31.3.99.

There is no independent corroboration to the said statement by production of independent evidence such as, procurement of raw materials, the statements of the buyers, etc. The appellants have strongly contested that inasmuch as the said statement was retracted by Shri M.M. Tanna, subsequently, the same cannot be made the basis for arriving at a finding against them. Similarly, the entries made in duplicate chits as also in the note book, cannot be held to be adverse to the appellant's case in the absence of any evidence to show that the same reflected clandestine activities.

8. We, however, do not find any merit in the above contention of the Ld. Advocate. It is not only the statement of Shri MM Tanna which is the only evidence available on record. The modus operandi adopted by the said appellants and as disclosed in the said statement stood corroborated by the recovery of duplicate chits from the appellant's factory as also from the distributor's premises i.e. M/s. Moby Enterprises. Further, the statement of their distributor Shri G.S.Advani also corroborates the department's stand of clandestine clearances of goods by M/s. Tanna Electronics. In the said statement, Shri G.S. Advani has clearly deposed and clarified the same modus operandi adopted for clandestine clearances of the goods which was disclosed by Shri M.M. Tanna in his statement. Further, the other partner Shri Ashok Tanna has also corroborated the version of Shri M.M.Tanna. As such, it is seen that there is enough evidence on record to sustain the charge of clandestine removal against the appellants. The precedent decisions referred to by the Ld. Advocate do not advance the appellant's case inasmuch as in the case of clandestine removal, the appreciation of the evidence available on records of that particular case leads to the findings. It is the cumulative effect of the entire evidence, which is made the basis for arriving at the finding of the clandestine removal. In the instant case, we are satisfied that there exists sufficient evidence to sustain the said finding against the appellants, It is also seen that the appellants had voluntarily deposited duty amount immediately after the search and seizure which also reflects upon the fact of acceptance of clandestine

activities on the part of the appellants, though strictly speaking same cannot be made the sole basis for arriving at a conclusion against the appellants.

9. However, the appellants have contended that in the case of determination of duty against them, they should have been granted the benefit of modvat credit of duty paid on the inputs as also the benefit of cum duty realization. We agree with the above contention of the Ld.

Advocate. The modvat credit is required to be extended subject to production of evidence by the appellants. Similarly, the entire realization has to be treated, as cum duty price and the benefit of duty reduction has to be extended to them. For the said limited purposes, we remand the matter to the original adjudicating authority for quantifying the duty against the appellants. As the penalty amount has already been reduced by the Commissioner (Appeals) to Rs. 10,000, the same does not call for any interference from us.