

Continental Containers Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-18-2005

Reported in : (2005)(185)ELT311TriDel

Judge : A T V.K., P Bajaj

Appellant : Continental Containers

Respondent : Commissioner of Central Excise

Judgement :

1. Both the above captioned appeals have been directed against the common order-in-original dated 24-9-2003 vide which the adjudicating authority has confirmed the duty demand with penalties and interest as detailed therein for the periods 1997-1998 to 2000-2001 against the appellants.
2. The duty demand has been confirmed against the appellants on the ground of having suppressed the manufacture and sale of the tin containers during the period in dispute with the aid of power with a view to evade the payment of duty and thereby to avail the benefit of SSI exemption limit and exemption under Notification Nos. 5/98, 5/99 and 6/2000 which exempted the goods from payment of duty, if manufactured without the aid of power.
3. The learned Counsel has contended that the appellants had been producing part of goods (containers) with the aid of power and part without the aid of power during the period in dispute and they had paid the duty in accordance with the law

at the time of clearance of the goods produced with the aid of power, as and when they exceeded the exemption limit. He has contended that no duty could be demanded in respect of the goods produced/manufactured without the aid of power by virtue of the exemption available to them under the above said notification. Therefore, the impugned order deserves to be set aside.

On the other hand, the learned SDR has reiterated the correctness of the impugned order.

5. It would be convenient to refer to the duty demand as detailed in the impugned order, year-wise.

5.1 The differential duty claimed is of Rs. 9,03 682/- on the ground that the appellants during this year, manufactured the goods with the aid of power but did not pay the appropriate duty. But there is no tangible evidence on record to substantiate this ground. We find from the record that the appellants had shown in their turnover submitted to the Sales-tax authorities during that year the value of the goods manufactured by them with the aid of power and without the aid of power. The correctness of that return had not been questioned by the department during the adjudication proceedings. The appellants had paid duty on the value of the clearances of the goods manufactured with the aid of power during that year. This position was also explained by their representative in the statement recorded during the investigation. Therefore, in the absence of any convincing evidence to the contrary, the version of the appellants could not be brushed aside by the adjudicating authority. Consequently, the impugned order demanding the differential duty for this year, cannot be sustained.

5.2 The differential duty claim for this year is Rs. 11,71,809/-. We find from the record that whatever goods were manufactured with the aid of power during that year, the appellants had paid the duty as per law.

There is no evidence to suggest that they crossed the SSI exemption in that year and cleared the goods manufactured with the aid of power without payment of duty. We also find that they even surrendered the Central Excise registration on 4-5-1999 as they stopped the manufacture of the goods with the aid of power. They

manufactured the goods thereafter only without the aid of power which were exempt from payment of duty under the notifications referred to above. There is nothing on record to prove if the officers of the department visited the factory premises of the appellants after 4-5-1999 and found them manufacturing the goods with the aid of power. Therefore, the duty demand for this period is also not sustainable.

5.3 The demand raised for this period is Rs. 6,69,984/-. But from the record, it is evident that till 1-4-2000, after surrendering the registration certificate, the appellants manufactured the goods without the aid of power and on clearance of the same, duty was not paid by them under the above referred notifications. They, however, got the registration again on 12-4-2000 from the department. The duty liability from that date till 30-6-2000 has not been disputed by them. The only grievance expressed by the Counsel on behalf of the appellants during the course of arguments is that the duty amount has been wrongly calculated by not applying the cum-duty price. This grievance of the appellants deserves to be accepted. The benefit of the cum-duty price has to be given to the appellants while computing the duty liability.

The duty for this period 12-4-2000 to 30-6-2000 is directed to be re-quantified by allowing the cum-duty price to the appellants. The short duty, if found thereafter, shall be payable by the appellants, if not earlier paid.

6. For the period 1-7-2000 to 31-3-2001, which included the sale and clearance of the goods, manufactured with the aid of power, duty liability has not been contested by the appellants. During this period the goods were cleared by them under the commercial invoices without payment of duty. They had however, paid the duty later on. But the duty amount has not been correctly arrived at by taking into consideration the cum-duty price. For this period also, duty liability accordingly requires re-quantification.

7. The duty for the period 1-8-2000 to 31-3-2001 had been demanded/confirmed against the appellants on the inputs removed by them, as such. But this demand cannot be sustained for the simple reason that on account of the short found inputs, during this period in the factory, the appellants could be directed to reverse

the credit availed in respect thereof. They could not be legally asked to pay the market value of those inputs by treating as clandestine removal of the finished goods. Therefore, the impugned order in this regard is modified. The appellants will reverse the Modvat credit availed on the short found inputs during this period.

8. In view of the discussion made above, the impugned order is accordingly modified regarding duty and the matter is sent back to the adjudicating authority for re-quantification of the duty as observed above. However, keeping in view the facts and circumstances of the case, the penalty is reduced to Rs. 40,000/-. The appeals of the appellants accordingly stand disposed of.

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