

Modren Industries Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-31-2005

Appellant : Modren Industries

Respondent : Cce

Judgement :

1. This is an appeal filed by the assessee against Order dated 07.09.2000 passed by the Commissioner of Central Excise, Mumbai-V, wherein he had confirmed the demand of duty, imposed penalties and confiscated the goods.
2. The issue involved is that the appellants have manufactured excisable goods and removed from the factory without filing Central Excise invoices and evasion of Central Excise duty.
3. The appellants are engaged in the manufacture of Nail Polish and Stickers Kumkum falling under Heading No. 3304.00 and sub-heading No.3307.39 of the Central Excise Tariff Act, 1985. In respect of these products, they were not paying any duty since they claimed exemption under Notification No. 140/83-CE dated 5.5.83. On the basis of general intelligence that certain units in and around Sainath Industrial Estate, Off Aarey Road, Goregoan (East), Mumbai, were clearing goods at odd hours, the Central Excise Officers kept a watch and in the early hours of 20.2.98 noticed a tempo bearing Registration No. MMS 3565. the driver of the tempo produced two delivery challans of M/s. Modern Industries dated 20.2.98. These challans covered the goods in the tempo totalling 53 cartons consisting of 265 gross pack of Nail polish, totally valued at Rs. 1,09,935/-. Since

single consignment of Nail polish, totally valued at Rs. 1,00,000/-, the Officers had reasonable ground for suspicion that the unit might have crossed the exemption limit of Rs. 15,00,000/- in the financial year i.e. 1997-98. Therefore, the tempo along with the consignment was taken back to M/s. Modern Industries for further verification. The verification of records revealed that the third copies of delivery challan covering the consignment of Nail Polish loaded the tempo had been torn out from the delivery challan book and was also not available with delivery challan file maintained by them. Further investigation carried out revealed that the assessee indulged in clandestine production and removal of goods. For the financially year 1997-98, value of clearances up to 19.2.98 is found Rs. 33,00,000/-, as indicated in Part E of Annexure "B" to the Shoe Cause Notice. Accordingly, duty demand of Rs. 3,47,980.50 for the year 1997-98 under Section 11A(1) of the Central Excise Act, 1944 was confirmed. Penalty imposed to the equal amount of duty under Section 11A of the Act. Seized goods were ordered to be confiscated. Hence this appeal.

(i) The Id. Commissioner merely based his findings on the working out of the contents of Annexure B to the Show Cause Notice for the year 1997-98. It is only based on presumptions and assumptions and without support of documents. The clandestine removal has not been proved at all.

(ii) There is no effort made by the Department to verify from the customers as to whether any goods have been supplied to them without challan or invoice.

(iii) the Commissioner erred in accepting the contents of annexure B for the year 1997-98 up to 19.2.98. the principles applied for the previous clearances could also have been made applicable to the clearances for 1997-98.

5. The finding derived at after through discussion of facts and evidence on record by the Commissioner in para 15 of the impugned order clinches the issue of clandestine production and removal of goods in the appellant's unit. It is found that on the day of interception of the temp, the gross of nail polish alone worth over Rs. 1,00,000/- was found. This factor lead the officials to verify the actual quantum of production in the unit with reference to raw materials required and the availability of the connected record. The two challans accompanied the consignment was

running into thousands. The triplicate challan was found missing and this is admitted by Shri Ramesh D. Masker. The statement of other persons connected with the production of nail polish mixer shows about 30 to 40 of gross polish and several deliveries of lots of 250 grams of nail polish were done in a month. This aspect is supported by the statement of Supervisor, Shri S R Masker, and also admitted average production during the financial year computed at the rate of 25 gross packs per day for 10 months at the working day of 22 in a month and the value being Rs. 600/- per gram. This is how the figure of Rs. 33,00,000/- was arrived at for the year 1997-98 up to 19.2.98. The result is that goods became non-duty paid; as it exceeds limitation of Rs. 15,00,000/-.

6. The appellants have manufactured and cleared goods clandestinely without accounting for the goods in the statutory records and without payment of duty by reason of fraud and suppressing the facts.

Therefore, invoking Section 11A(1) of the Central Excise Act, the longer period of limitation is justified.

7. Thus as seen from the evidence on record and findings derived at through discussion does not warrant any interference of the Tribunal and the same is liable to be upheld.

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