

G.D. Electronics Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-01-2005

Reported in : (2005)(187)ELT63TriDel

Judge : M T K.C.

Appellant : G.D. Electronics

Respondent : Commissioner of Central Excise

Judgement :

2. Shri U.K. Tyagi, Id. Advocate pleaded that the appellants had purchased Multi-media speakers from M/s. Technocrat System and they have made the payment for these goods through cheques and accounted for these goods in their stock register. The department has seized the goods from their premises on the ground that these were branded goods and were required to be cleared on payment of duty by the manufacturer, M/s. Technocrat System. The adjudicating authority confiscated the goods and also imposed penalty on the appellants under Rule 209A of the Central Excise Rules. The order of the original authority was upheld by the Commissioner (Appeals) but he reduced the redemption fine to Rs. 15,000/- and penalty to Rs. 10,000/-. Shri Tyagi, Id. Advocate stated that there was no evidence that the appellants were knowing that M/s.

Technocrat System were a manufacturer or were liable to pay the duty.

They were dealing with the Technocrat System as a dealer for purchasing of the Multi-media Speakers under proper invoices issued by M/s.

Technocrat System. For confiscation of the goods under Rule 173Q, the liability is on the manufacturer that he should clear the goods on payment of duty. There is no evidence against the appellants that they were aware that the goods cleared by M/s. Technocrat System are liable for confiscation. He relied on the following decision of the Tribunal :-Motilal Padampat Udyog v. CCE, Patna [1998 (104) E.L.T. 39 (Tri.)] Wherein it was held that onus is on the department to show knowledge about non-dutiable character of goods.Kalsi Tyres (Chandigarh) Pvt. Ltd. v. CCE [1986 (26) E.L.T. 631 (Tri.)] Wherein it was held that if the appellants not a 'manufacturer' of goods and not liable to pay Excise duty, goods are not liable for confiscation.

3. Shri P.M. Rao, Id. JDR was asked to produce the evidence that the appellants had knowledge that the goods are liable for confiscation, He referred to the second part of the order-in-appeal where it is mentioned as under :- "Shri J.P. Aggarwal, Proprietor of appellants No. 2 stated in his statement recorded on the spot that they had purchased the said goods under the cover of proper invoice; that he was not aware of the excisability of the branded goods purchased from M/s. Technocrat System." He stated that on the face of this statement, the lower authorities have considered that the appellants were aware that the goods were excisable and appellants were knowing that these were liable for confiscation.

4. I find that the statement of Shri J.P. Aggarwal, Proprietor of the appellants clearly stated that he is not aware about the excisability of the branded goods purchased by him. In these circumstances, it cannot be said that he was knowing that the goods were cleared without payment of duty and the goods were liable for confiscation. In these circumstances, the confiscation of the goods and imposition of penalty on the appellants is not justifiable. I, therefore, set aside the order of the Commissioner (Appeals) imposing penalty and confiscating the goods seized from the appellants and allow the appeal.