Amphetronix Limited Vs. Commissioner of Central Excise

Amphetronix Limited Vs. Commissioner of Central Excise

SooperKanoon Citation : sooperkanoon.com/40660

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-27-2005

Reported in : (2006)(104)ECC32

Judge : J Balasundaram, Vice, A M Moheb

Appellant : Amphetronix Limited

Respondent : Commissioner of Central Excise

Judgement :

1. The above appeals, first one filed by the assessee against the order of the Commissioner (Appeals) and the second one filed by the Revenue against the common order of the Commissioner (Appeals) involve common issue and are hence heard together and disposed of by this common order.

2. In appeal No. E/2407/00, the Assistant Commissioner of Central Excise confirmed the demand of Rs. 23,90,312.40 (Rupees Twenty three lacs ninety thousand three hundred twelve and paise forty only) together with interest and imposed penalty of Rs. 10,000 (Rupees Ten thousand only) on the assessee on the ground that parts of connectors used in the manufacture of complete connectors supplied by the appellants to the Defence Organization, ISRO, Bharat Electronics Limited & CVRDE etc were marketable. The adjudication order was upheld by the Commissioner (Appeals), who confirmed the findings of the Assistant Commissioner. Thus, this appeal by the assessee.

3. In appeal No. E/2750/01, the Assistant Commissioner dropped the charges raised in the show cause notice issued to the appellants on the ground that they had failed to classify/declare the intermediate products as parts of connectors used capitvely in the manufacture of connectors falling under chapter sub-heading 8536.90, which were cleared at nil rate of duty. The department's appeal against this order was dismissed by the Commissioner (Appeals); hence this appeal filed by the Revenue.

4. We have heard both sides. The contention of the manufacturer of the connector is that although there is no dispute that the parts of connectors emerge as an intermediate product during the manufacture of complete connector, the parts are not marketable and what is supplied to the customers is only the complete connectors and this fact is certified by Vikram Sarabhai Space Centre, one of their customers that they are buying finished connectors from the manufacturer and not as connector parts. There is no material on record to establish the marketability of the parts of connectors, which is the item, on which, duty sought to be levied by the Revenue. The department held that parts of connectors are marketable for the reason that parts are sold to ISRO. However, we find that what has been sold to ISRO and other customers are complete connectors and not parts thereof. In the order of the lower appellate authority, against which, M/s Amphetronix Limited filed an appeal, it has been held that parts of connectors are manufactured to cater to the single market of ISRO, Vikram Sarabhai Space Centre and other government Departments and therefore, the parts of connectors can be said to be marketable. However, this finding is not factually correct, as the assessee has clearly shown that what is sold/marketed by them is complete connector and not parts of connectors. Other than this finding, there is no material on record to establish the marketability of items in dispute. The burden of showing that an item is subject to levy of excise duty for the reason that it is marketable falls, upon the Revenue. The burden cast upon the Revenue has not been discharged. Therefore, in the light of the case laws cited by the ld. Counsel for the assessee namely. Hindustan Zinc Limited v.Commissioner of Central Excise, Jaipur [wherein, it was held that although silver chloride having 75 per cent silver content was sold in the market, there was no enquiry as to whether silver chloride manufactured by Hindustan Zinc Ltd., which had silver content ranging from 50 to 53 per cent was marketable

and hence, the claim of the manufacturer that their silver chloride was not marketable and subject to excise duty was accepted], F.G.P. Limited v. Union of India , in which, the Apex Court held that in the absence of any proof brought on record by the Revenue that glass lamps are marketable, it was not possible to hold the test of marketability had been satisfied and other decisions of the Supreme Court in the cases of Cadila Laboratories Pvt. Ltd. v. Commissioner of Central Excise, Vadodara Page 35 2003 (152) ELT 262 (SC), Indian Cable Co. Ltd v. CCE, Calcutta , we held that the duty demand and penalty imposed upon the assessee is not sustainable and accordingly, we set aside the same and allow their appeal.

5. Since, we have held the parts of connectors have not been established to be marketable, we uphold the findings of the Commissioner (Appeals). Appeal No. E/2750/01 filed by the Revenue is rejected.

6. In the result, Appeal No. E/2047/00 filed by the assessee is allowed and Appeal No. E/2750/01 filed by the Revenue is rejected.