**Nikivik Electronics (P) Ltd. Vs. the Commissioner of Central**

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**SooperKanoon Citation** : sooperkanoon.com/43279

**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Jul-31-2006

**Reported in** : (2006)(112)ECC576

**Judge** : A Wadhwa

**Appellant** : Nikivik Electronics (P) Ltd.

**Respondent** : The Commissioner of Central

**Judgement** :

1. The appellants are engaged in the manufacture of copper tubes and condenser evaporator coils falling under heading 7411 and 8415. Their factory was visited by the Central Excise Officers on 17/06/95, who conducted various checks and verifications. As a result, 1602.280 Kgs of final product was found unaccounted for in the statutory records and quantity of 40 Kgs of scrap was found short as against the book balance. Statements of Shri Sanjay K. Vakharia, Director of the company accepted the above discrepancies. However, subsequently on 27/06/95, the said statement was retracted. The officers also checked the various records and on comparing the same with the opening balance of Form IV register, opening balance of RG-1 register, receipts of raw materials as reflected in RG-23 Part-I and clearances effected, they entertained a view that there was production of around 6578.850 Kgs of final products, which was removed by them without payment of duty.

2. On the above basis, the appellants were issued a show cause notice dated 16/12/95 proposing confiscation of the unaccounted final products along with confirmation of demand of duty of Rs. 46,385/- on the same.

Notice also proposed confirmation of duty of Rs. 600/- in respect of short found copper scrap. The duty of Rs. 1,90,457.70 was proposed to be confirmed on the ground that the appellants had removed 6578.850 Kgs of material without payment of duty during the period 26/11/92 to 16/07/95.

3. During adjudication, the appellants put forth various submissions and contended that the entire basis of the show cause notice was assumptive in nature. The goods found in the factory cannot be confiscated unless there is strong evidence of intention on the part of the manufacturer to remove the same without payment of duty. Further, the shortages were attributed to loss of inputs during the manufacturing process. He further contended that the quantity of shortages was determined arbitrarily and had no factual support. There was no evidence of clandestine removal and if processing loss is taken into account, there would be no shortages.

4. The above submissions were not accepted by the adjudicating authority, who confirmed the demand, imposed penalty and confiscated the goods with an option to the appellants to redeem the same on payment of duty. Appeal against the above order did not succeed before the Commissioner (Appeals). Hence, the present appeal.

5. After hearing both sides, I find that the entire case of the revenue is based upon the alleged shortages arrived at on the basis of theoretical calculations and not on any concrete evidence on record.

The shortages during the period 26/11/92 to 16/07/95 i.e., for a period of almost three years have been found to be only to the extent of 6578.850 Kgs, totally valued at Rs. 2,69,718.05. The appellants have rightly contended that the same would be attributable to the processing loss, the adjudicating authority has not given any benefit to the appellants on the said account on the ground that the loss should be marginal/negligible and the quantity short found is much on the higher side. Further, he has not tried to find out as to how much is the normal processing loss.

6. Apart from the above, I find that no further efforts have been made by the revenue to procure evidence to support the allegations of clandestine removal. The law on the issue is settled that the allegations of clandestine manufacture and removal of the goods are required to be established beyond doubt by production of sufficient evidence. There being none in the present case, I find no justification for confirmation of demand of duty in respect of the said shortages.

7. As regards the confiscation of the excess found goods, I agree with the appellants there is nothing on record to show that the goods were meant for clandestine removal. The same still being in the factory, are not liable to confiscation, in the absence of any evidence to show their intended removal. As such, I set aside the confiscation of the same. As regards the duty in respect of the said goods, the same have to be cleared on payment of duty. If already cleared on payment of duty, no further demand on the said account can be sustained against them.

8. Similarly, shortages of scraps in the factory involving duty amount of Rs. 600/- by itself cannot be made a ground for holding that the same has been cleared without payment of duty, in the absence of any evidence to the said effect. Accordingly, the demand on the said ground is also set aside.

9. For the reasons recorded above, no penalty is to be imposed upon the appellants. In a nutshell, the appeal is allowed with consequential relief to the appellants.