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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-23-2006

Reported in : (2007)(114)ECC287

Judge : R Abichandani

Appellant : Vikram Overseas

Respondent : Cce

Judgement :

1. This appeal is directed against the order of the Commissioner (Appeals) made on 10.08.2004 by which the demand of the central excise duty of Rs. 5,97,534/- was confirmed while reducing penalty to Rs. 1,50,000/-.

2. The appellant was manufacturing mini re-chargeable lights, cassette players, and radio cassette players as a registered manufacturer.

However, the assessee surrendered the central excise registration certificate to the department on 20.11.97. According to the revenue, despite such surrender the assessee continued to manufacture the excisable goods and clandestinely removed them without payment of duty till October 1998. It was alleged that the plea taken by the assessee that after surrendering of central excise registration certificate in November, 1997, no manufacturing activities were undertaken in the unit was not tenable in view of the fact that concessional rate of trade tax had been paid by the party as applicable to the goods manufactured by the unit.

3. It appears from the record that under the panchnama dated 20.9.99 the documents such as cash book, ledger, invoice book, sales register and RG-I register were received by the revenue from the assessee. It also appears from the record that the authorities rejected the request of the appellant for supply of the documents including the documents on which reliance was not placed. One such document which was repeatedly asked for was the enquiry report of the range staff, besides the other documents on which the appellant wanted to place reliance for the purpose of its defence. It appears from the record that the request for supply of the documents was made in the communication dated 04.01.2000, two communications dated 04.04.2000 and the communication dated 29.08.2001 sent by the appellant to the department.

4. The case of the appellant is that they had stopped manufacturing activities and had only traded in the components which were supplied by them to the parties under various invoices which could have been pointed out by them from the said documents including bill books, invoice books, sales register and cash book had these be given back to them as per their request.

5. The only contention that has been raised in this appeal is that though the documents were relevant and the appellant would have demonstrated from them that there was no manufacturing activity done after the surrender of the registration certificate dated 20.11.97 and that what was supplied by them was not the finished products but the components under the invoices in question, they were not supplied to the appellant despite repeated requests and this has grossly prejudiced the appellant. It was submitted that the proceedings have, therefore, been vitiated on the ground of violation of principles of natural justice.

6. The learned authorized representative for the department on the other hand, submitted that it was not incumbent on the authority to supply the documents on which no reliance was placed. It was argued that the appellant never produced any material to show that they made any purchases from the open market and supplied those goods under the invoices. It was submitted that the concessional tax rate of .2% was claimed in their trade tax return on the footing that the goods were manufactured by the appellant, and that the Chartered Accountant of the

appellant in his statement has clearly stated that the goods were so manufactured and the paper slips also supported such a conclusion.

7. Admittedly, the copies which were requested for, namely, of the enquiry report as well as the other documents on which no reliance was placed were not supplied to the appellant. This is evident from paragraph 4.16 of the order-in-original which reads as under: "So far as their request for supplying to them copies of enquiry report of Range staff and documents, which have not been relied upon is concerned. I find that the said plea as the same is general in nature and not specific and the party have not averred as to in what manner may such documents controvert the evidences discussed in the notice. I observe that the Range staff or the Trade Tax official were not supervising the activities undertaken in the impugned premises.

Therefore, the enquiry report of the Range staff has no bearing on the fact of manufacture as evidenced from the paper slips, statement of C.A. the Trade Tax returns etc. I am, therefore, of the opinion that the said plea of the party is not relevant to this case".

8. It is evident from the finding that, even if the revenue may not have relied upon the documents seized under panchnama and the report, it was open for the assessee to demonstrate from those document that the goods which were sold were components and not finished products manufactured by the appellant. It could have been demonstrated from the bills that the goods were sold to the party's name therein. In fact, since the revenue had seized the relevant record, it would have been appropriate for the revenue to enquire from the parties to whom the goods were sold, and those purchasers would have thrown light on the fact whether the goods sold under the invoices which were seized, were the finished goods or mere components. The authorities below have not even cared to examine the contents of those goods to ascertain whether they were finished products or components, nor have they bothered to examine the parties to whom the goods were sold. Even the enquiry report of range staff which may not have been relevant for the purpose of the revenue, would have been relevant for the purpose for the assessee if it contained the report to the effect that the assessee

did not manufacture the goods after the surrender of the registration certificate. Therefore, the non-supply of the documents which were sought by the appellant including the enquiry report of the range staff has resulted in denial of an adequate opportunity of hearing to the appellant and there has been a gross violation of principle of natural justice that, no one shall be condemned unheard.

9. In the above view of the matter, the impugned order cannot be sustained, and is hereby set aside and the matter is remanded to the adjudicating authority with a direction to supply all the documents which have already been sought for by the appellant, to consider the matter afresh after hearing both the sides and take a decision in the matter expeditiously in accordance with law. The appeal is accordingly allowed by way of remand.

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