

Generators and Alternators Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-13-2006

Reported in : (2007)(115)ECC105

Judge : M Ravindran

Appellant : Generators and Alternators

Respondent : Cce

Judgement :

1. This appeal is directed against order in appeal dated 30/06/04 that upheld the order in original vide which confiscation of the seized goods were ordered and penalty imposed.

2. The relevant fact that arise for consideration are the officers of the Central Excise visited the appellant's factory on 16/6/93 and found the finished goods lying in the factory premises unaccounted in the statutory books of records. The said goods were seized and show cause notice was issued proposing confiscation of such goods and imposition of penalties. Appellant resisted the show cause notice on the ground that the day of the visit of the officers being a weekly off, the late night production of earlier day was unaccounted in the statutory books of records. The adjudicating authority did not accept the contention of the appellant and ordered for the confiscation of the seized goods with an option to redeem the same on payment of redemption fine and also imposed penalty. On an appeal, learned Commissioner (Appeals) also concurred with the findings of the

adjudicating authority and upheld the order.

3. Learned advocate appearing on behalf of the appellant submits that the visit of the officers on 16/06/93 was a Wednesday and on that day the factory was closed being a weekly holiday. It is his submission that they had intimated the lower authorities regarding the Wednesday being declared as a weekly off. He further submits that the statement which were recorded of the partner clearly indicate that the partner has accepted the non-accountal, due to the fact Wednesday being a weekly off. He relies upon the decision of the Tribunal in the case of Luminous Electronics Ltd. v. Commissioner of Central Excise, Delhi-II as reported at .

4. Learned DR on the other hand submits that it was the duty of the appellant to record the production of the day in the statutory records, failure of which leads to liability of confiscation and the penalty thereof.

5. Considered the submissions made by both sides and perused records.

It is seen from the records that the appellant had in fact on 1st April, 93 informed the Superintendent of Central Excise having jurisdiction over their factory that due to the electric supply being closed on Wednesday from the U.P. State Electricity, there will be a weekly off on Wednesday instead of Sunday. It is seen from the records, more specifically from Panchnama, that the Panchas have categorically mentioned that when they came to the factory of the appellant, no body was present and they were waiting for more than an hour till the Manager and the Partner were called from their residence. I also find from the records that the partner of the firm Shri Pramod Kumar Aggarwal had in the statement, clearly indicated that the no n-reason for accounting the goods in statutory books of records was due to the reason that the production was done in late night of Tuesday and Wednesday being a weekly off, production could not be recorded in RG-1.

The muster role submitted by the learned advocate indicates 16 June, 1993 as a weekly off and no employee or worker was shown as present on that day. This would indicate that on Wednesday the 16/6/93, the factory premises of the appellant was observing a weekly off and there was no staff to do any work of

recording the goods in the statutory records. I find considerable force in the appellant's contentions that late night production of earlier day could not have been recorded on 16/06/93. The Tribunal in the case of Garima Ferro Alloys Pvt. Ltd. v.CCE, Kanpur as reported at 2006 (201) E.L.T. 138 (Tri. - Del.) had held that "Goods not liable for confiscation merely because of failure to make entry in books of account". Further, I find the issue involved in this case is squarely covered by the decision of the Tribunal in the case of Bhillai Conductors (P) Ltd. v. CCE, Raipur as reported at 2000 (125) E.L.T. 781 (Tribunal).

6. To my mind, the non entry of the finished goods by the appellant in the statutory books of records on the day on which there was a weekly off could not indicate that the Seized goods were intentionally not recorded in the statutory books, more so on the fact that the Excise Officer had to wait at the factory premises of the appellant for the Manager of Proprietor to arrive and open the factory for checking the records.

7. Accordingly, I find that the impugned order that upheld the confiscation of the goods is liable to be set aside and I do so. Since the confiscation is set aside, the penalty imposed on the appellant is also set aside. The appeal is allowed with consequential relief, if any.

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