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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Ahmedabad

Decided On : Feb-01-2008

Reported in : (2008)(127)ECC170

Judge : A Wadhwa, V T M.

Appellant : Tempo Instruments Equipments (i)

Respondent : Cce

Judgement :

1. This is an appeal against the order of the Commissioner (Appeals) No. RKS/66 & 67/VAPI/2003 dt.3/11/2003.

a. The appellant are manufacturers of laboratory instruments and equipments out of duty paid metals such as CRCA, Aluminium and Brass sheets. It was noticed that during the period from March, 1994 to March, 1997 they have sold waste and scrap of different categories weighing about 39,000 kgs. valued about Rs. 3.9 lakhs.

b. The Original Authority held that the appellant has manufactured such waste and scrap of base metal; that they have not filed classification list/declaration under Section 173B and that they cleared the same without payment of duty and accordingly confirmed demand of duty of Rs. 58,986/- along with interest and imposed equal penalty on the appellant. He also imposed penalty on the Works Manager.

c. Commissioner (Appeals) upheld the order of the Original Authority in so far as the same relates to the appellant. However, he set aside the penalty imposed on the Works Manager.

2.1 Ld. Authorised Representative appearing for the company submits that they are not manufacturer of the waste and scrap. The waste arose during the manufacturing process and the same were collected during the sweeping of the floor of the manufacturing site. Such sweeping waste in the form of dust with small particles of metals were sold as scrap. The scrap has not been identified and segregated by any test and therefore, charging of duty was incorrect. The show cause notice has been issue on 26/3/1999 proposing demand of duty relating to the period March, 1994 to March, 1997. The appeal should be allowed on merits and on the aspect of limitation.

3. We have carefully considered the submissions. We are in agreement with the appellant's contention that waste generated by way of sweeping the floor could not be considered as having been manufactured by the appellant. Under these circumstances the finding of the Original Authority as upheld by the Commissioner (Appeals) that they have not filed a classification list or declaration for such waste and scrap with intention to evade duty is not sustainable. Invocation of extended time limit for demand of duty is not justified.

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