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Power Cable Industries Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-06-1983

Reported in : (1984)(16)ELT285Tri(Mum.)bai

Appellant : Power Cable Industries

Respondent : Collector of Central Excise

Judgement :

1. This appeal under Sec. 35-B of the Central Excises and Salt Act, 1944 which will be hereinafter referred to as 'the Act' arises out of and is directed against that part of the Order-in-Appeal No.A-1832/BI-346/82. dt. 17-11-82 passed by the Collector of Central Excise (Appeals), Bombay, and by which he confirmed the following order passed by the Deputy Collector, Central Excise, Bombay.

(i) 166 coils of PVC electric wires seized on 5-1-76 and 40 coils of PVC electric wires seized on 3-1-76 from the premises of M/s. P.D. Jain & Bros., Bombay-2 are liable to confiscation but they are provisionally released and despite direction they are not produced in terms of the bond. Hence I appropriate a sum of Rs. 500 (Rs. five hundred only) towards the value of the goods.

(ii) 54 coils of PVC insulated wires seized from the premises of M/s. Selmor Agencies, Bombay-2 are liable for confiscation but they are provisionally released and despite direction they are not produced in terms of the bond. Hence I appropriate a sum of Rs. 100 (Rs. one hundred only) towards the value of the goods.

(iii) 19 coils of PVC insulated wire seized from the premises of M/s. Kapoor Agency are liable for confiscation but they are provisionally released and despite direction they are not produced in terms of the bond. Hence I appropriate a sum of Rs. 50 (Rs. fifty only) towards the value of the goods. (iv) M/s. Power Cable Industries are further directed to pay appropriate duty on 206 coils of PVC insulated electric wires, 54 coils of PVC insulated wires and 19 coils of PVC insulated electric wires cleared to M/s. P.O. Jain, & Bros., Bombay-2, M/s. Selmor Agency, Bombay, and M/s. Kapoor Agencies, Bombay-2, respectively without payment of duty under the guise of PVC sleevings if not 'already paid.

(v) 39 coils of PVC electric wires seized at the premises of M/s.

'Hindustan Electricals are confiscated., under, rule 173Q of the Central Excise Rules,1944, but option is given to redeem them on payment of Rs. 50 (Rs. fifty only).

(vi) M/s. Power Cable Industries, Andheri (East), Bombay, are further directed to pay appropriate duty on 4700 bundles/coils of PVC insulated electric wires supplied to M/s. P.D. Jain & Bros,, Bombay-2, M/s. Selmor Agencies, Bombay-2, M/s. Kapoor Agencies, Bombay-2, M/s. Mehta Electricals and M/s. Hindustan Electricals, Trichur as given in annexures 'A' to 'D' attached to the show cause notice.

(vii) M/s. Power Cable Industries, 7-B, Sona Udyog Estate, Old Nagardas Road, Andheri (East), Bombay are also subjected to a penalty of Rs. 2,500 (Rs. two thousand five hundred only) under rule 173Q of the Central Excise Rules, 1944. .

The appellants, M/s. Power Cable Industries, were at the relevant time a small scale industry having their factory at Andheri (East).

They were manufacturing PVC insulated wires and PVC sleevings. On 3-1-76 the officers of Central Excise Preventive and Intelligence Branch, Bombay, paid a surprise visit to the factory and found that Bill No. 206, dated 2-1-76 in the name of M/s. P.D. Jain & Bros., Bombay, for 40 coils of PVC insulated wire was issued by the appellants. On scrutiny of G.P. 1 book, P.L.A. and R.G. 1 it was found that the

licensee had not issued any G.P. 1 and not paid any Central Excise duty on the goods cleared under the said bill. Shri G.B. Madnani, who is said to be the Proprietor of the appellants admitted to have cleared 40 coils of PVC insulated wire to M/s. P.D. Jain & Bros, without payment of Central Excise duty. Thereafter the Central Excise Officers rushed to the shop of M/s. P.D. Jain & Bros, and seized 40 coils valued at Rs. 2314.40. Thereafter, they scrutinised the bill book of the appellants which revealed that the appellants have cleared goods showing the description as PVC sleevings to M/s. P.D. Jain & Bros, M/s. Selmor Agencies, Bombay, M/s. Kapoor Agencies, Bombay, M/s. B.A. Electricals, Bombay, M/s.

Natraj Corporation, Bombay, M/s. Kamal Industries, Bombay, M/s.

Mehta Electricals, Poona and M/s. Hindustan Electrsicals, Trichur.

During the course of investigation the Central Excise Officers seized 166 coils valued at Rs. 4589, PVC wires which were alleged to have been supplied by the appellants to M/s. P.D. Jain Bros. & They also recorded a statement of Shri Pravinchandra P. Mehta, a partner of M/s. P.D. Jain & Bros. Thereafter, the Officers visited the shop of M/s. Selmor Agencies on 5-1-76 and that agency produced 54 coils valued at Rs. 1500 as having been received from the appellants without any gate pass or invoice. The said goods were also seized.

On 6-1-76 they recorded a statement of Shri P.M. Bhatija who appeared to have stated that he actually received PVC wires instead of PVC sleevings under different bill from the appellants and when he came to know of this he had warned the appellants to show the correct description in the invoice. Thereafter, the Officers visited the shop of M/s. Kapoor Agencies and the Proprietor of the said agency, Shri D.M. Kharma admitted having received PVC wires instead of PVC sleevings as shown in the bills. The' officers' also seized 19 coils valued at Rs. 536 which were in stock and which were stated to have been supplied by the appellants to the said agency. On 5-4875 the Central Excise Officers visited the Tardeo Air-conditioned market, but they did not find B.A : Electricals, and the summons sent to B.A. Electricals to the address found in the bills of the appellants were received 'not found'. On 7-1-76 they recorded a statement pf one Shri.S.C. Gandhi, Partner of, M/s.

Natraj Corporation who appeared to have stated,that he received PVC wires under Bill No. 148, dated 19-7-75 showing the description of PVC sleevings. As PVC wires were not according to their requirements they had immediately returned the goods to the appellants. On the request.of the Central Excise Officers of (Prev.) Unit, Bombay, recorded a statement of Shri P.R. Mehta, Partner of M/s. Mehta Electricals and he also stated that they had actually received 215 coils of PVC wires from M/s. Power Cable Industries (Appellants) under three bills of the year 1975, even though the description of the goods were shown as PVC sleevings in the said bills. The Central Excise Officers at Trichur at the request of the Central Excise Officers at Bombay caused a search of M/s. Hindustan Electricals, Trichur and found 39 coils of wires valued at Rs. 1516 and seized the same. The Central Excise Officers of Cochin recorded a statement of Shri Vasudevan Nair, Manager of M/s. Hindustan Electricals, Trichur, who appeared to have stated that they received 39 coils of wires from the appellants without any gate pass, and also stated that he had received PVC sleevings under invoice Nos. 177 and 179 both dt. 17-11-75.

3. After completion of the investigation and since Shri G.B. Madnani denies in his statement as to the allegation that his firm has been sending PVC wires describing them as PVC sleevings under different bills, a show cause notice was issued to the appellants, M/s. P.D. Jain & Bros., M/s. Selmor Agencies, M/s. Kapoor Agencies, M/s. B.A.Electricals and Trading Co., M/s. Mehta Electricals, Poona and M/s.

Hindustan Electricals, Trichur. In the show cause notice it was alleged that the appellants have contravened the provisions of rule 173-G (1) read with rule 9(1), rule 173-G (2) read with rule 52A, rule 173-G (4) read with rules 53 and 226 and rule 173-F of the Central Excise Rules, 1944, inasmuch as they had removed various quantities of PVC wires falling under Tariff No. 33-B without payment of duty, without accountal in R.G. 1 register and without a gate pass.

4. The Deputy Collector, Central Excise, Bombay, who had the enquiry relying upon the evidence of the purchasers, passed the orders referred to in the beginning of this order. Feeling aggrieved by that order as stated earlier the

appellants preferred an appeal before the Collector, Central Excise (Appeals) unsuccessfully. Hence the second appeal.

5. During the hearing of this appeal, Shri R.J. Parekh, the learned Advocate for the appellants contended that the order of the Collector (Appeals) is not a speaking order. He did not consider any of the grounds urged by the appellants, and he simply dismissed the appeal by a general observation that he agrees with the findings of the Deputy Collector. Shri Parekh further Contended that the Deputy Collector has based his findings on the uncorroborated statement of the co-accused, and therefore, the findings so arrived are bad in law, Shri Parekh contended that the allegation caused to the appellants were that they were selling PVC wires to the various purchasers who were not describing in the bills as PVC sleevings, but then no documentary evidence has been produced either by the purchasers or by the department to establish the above allegation. Shri Parekh contended that the price of sleevings has always been less than the price of wires and that the Central Excise Officers have not made any efforts to find out whether the price shown in the bills which were referred to by the various purchasers are the price of sleevings or the price of the wires. He further contended that none of the purchasers have at any time taken objection that they were charged higher rate for the goods sent. He also contended that the Central Excise Officers have verified the raw material and the production and no discrepancies were found. In the said circumstances, the Deputy Collector ought not to have relied upon the uncorroborated statement of the co-accused. The coils seized from the various purchasers did not bear any marks or names so as to identify that these coils were manufactured by the appellants. Finally Shri Parekh contended that the coils seized from the premises of M/s.

Hindustan Electricals, Trichur, were not shown to the manufacturers by the appellants and as a matter of fact they were purchased by the appellants and sent to M/s. Hindustan Electricals, and therefore, in respect of these 39 coils the appellants should not have been called upon to pay the duty and that the Deputy Collector was unjustified in directing confiscation and giving option to the appellants to pay fine in lieu of confiscation.

6. Shri Pattekar, the learned J.D.R. on the other hand supported the orders passed by the Deputy Collector and the Appellate Collector.

7. We have carefully gone through the records of the case, and considered the orders passed by the two authorities as well as the submissions made by Shri Parekh. The only point that arises in this appeal is whether the order passed by the Deputy Collector and confirmed by the Collector (Appeals) requires to be interferred with.

8. Though we do not agree with the contention of Shri Parekh that the order of the Collector (Appeals) is not a speaking order, we cannot resist from observing that the order passed by the Collector (Appeals) is not a satisfactory order. Sub-sec. (4) of Sec. 35-A requires that the order of the Collector (Appeals) shall be in writing and shall state the points for determination, the decision thereof and the reasons for the decision. The Collector (Appeals) has not set out the grounds of appeal nor did he discuss each ground separately, nor give any reason in respect of each ground. The material portion of his order consist of one paragraph and it reads : I have carefully gone through all the case records, arguments advanced in the appeal petition and those in their written submission presented to me at the time of personal hearing. I find that the appellants have come up in appeal with the same arguments as were made before in the adjudicating authority who has discussed these arguments in detail in his adjudication order and which fully endorse. Since the appellants have not produced any additional material before me for consideration and I do not find anything incorrect in the findings of the adjudicating authority. I do not see any reason to interfere with the impugned order.

In view of the above the appeal is rejected. This in our opinion is a very unsatisfactory way of disposing of appeal, particularly when the statute requires the Collector (Appeals) to state the points for determination, the decision thereof and the reasons for the decision.

The Collector (Appeals) apparently had not properly understood the scope of the appellate power. Under law he was re-acquired to reappraise the evidence and also to consider the various grounds urged by the appellants in support of their

appeal. The Collector (Appeals) in the instant case has failed to consider the grounds urged before him in a satisfactory manner. In the normal course, we would have remanded this matter to the Collector (Appeals) for fresh consideration, but then the entire material is before us no purpose is served by remanding the case for fresh disposal by the Collector (Appeals). The conclusion arrived by the Collector (Appeals) though not after discussion was the same as the Deputy Collector. Therefore, it is necessary for us to examine whether the order passed by the Deputy Collector and confirmed by the Collector (Appeals) suffers from any irregularity, illegality or not justified at all on the facts and circumstances of the case.

9. The allegations against the appellants were that they sold various quantities of PVC wires to 7 consumers describing the goods as PVC sleevings in their Bills without payment of duty and without accounting in R.G. 1 register and without a gate pass. The Deputy Collector held that all these charges were established. In coming to this conclusion the Deputy Collector had relied upon the evidence given by Shri Daya Shanker Manmohan Lal Khanna, Shri Pratap M. Bhatija, Shri Pravinchandra R. Mehta, Shri Pritam J. Satntani and has also taken into consideration their statements made during the investigation and had further considered the 'defence put forward by the appellants. The contention of Shri Parekh, the learned Advocate was that the Deputy Collector ought not to have relied upon the statements made by the co-accused to hold the appellants guilty of contravention of various rules. It was the contention of Shri Parekh without independent corroboration the statements of co accused cannot be made use of against the appellants, and therefore, the findings based solely on this statement should be set aside. In oar view Shri Parekh was not correct in contending that the above statements and depositions of Shri Pravinchandra R. Mehta, Shri Daya Shanker Manmohan Lal Khanna, Shri Pratap M. Bhatija and Shri Pritam J. Samtani cannot be relied upon. The proceeding before the Collector was not a criminal prosecution.. It was a statutory enquiry and adjudicating proceeding. The provisions of the Evidence Act or even the provisions of the Criminal Procedure code are not strictly applicable to the proceedings before the Deputy Collector. The concept of 'co-accused', 'retracted confession' are all alien to the proceedings before the Deputy Collector. The Deputy Collector was not holding any criminal

trial. The only restraint against the Deputy Collector was not to make use of any material in respect of which the appellants did not have prior notice. In the instant case in the show cause notice issued to the appellants the department has specifically stated the evidences that are going to be relied upon and also other circumstances. The appellants had ample opportunity to know the statements made by the witnesses. It was not contended that the appellants were not furnished with the copies of the statements.

Besides, the above, the records disclose that the appellants have even cross-examined Shri Pravinchandra R. Mehta, Shri Daya Shanker Khanna, Shri Pratap M. Bhatija, and Shri Pritam J. Samtani. In the said circumstances, Shri Parekh in our opinion was not correct in contending that the Deputy Collector has based his findings on the uncorroborated statements of co-accused. It is no doubt true that while issuing show cause notice, the department did issue a show cause notice to the above-mentioned persons. That was because they had admitted in their statements that they had not received gate pass. But then the department did not pursue the allegations against those persons because the department was satisfied with their explanation. Therefore, it may not be quite appropriate to call them or characterise them as co-accused. The question for our consideration is whether the statements and the evidence of these persons did establish that the appellants have been supplying PVC wires describing them as PVC sleevings. Shri Pravinchandra Mehta a partner of M/s. P.O. Jain & Bros, consistently stated that they received PVC wires describing them as PVC sleevings from the appellants. Nothing has been alleged by the appellants as to why Shri Mehta should falsely state that they received PVC wires from the appellants if in fact they had received that PVC sleevings. Similarly, Shri Pratap M. Bhatija a Partner of M/s. Selmor Agencies, Shri Daya Shanker Khanna, Proprietor of M/s. Kapoor Agency, Shri Shantilal Gandhi of M/s. Natraj Corporation have all stated that they had received from the appellants firm PVC wires describing them as PVC sleevings. We did not find any justifiable reasons for these witnesses to come forward to depose falsely against the appellants. No doubt they were not able to produce documentary evidence to establish that they had received PVC wires describing them as PVC sleevings, but then the appellants cannot contend that he did not supply any material to these firms. They have been purchasing the wires

and sleevings from the appellants. They are not strangers to the appellants. They are not shown to be under the obliation of the Central Excise Department. They are petty traders. The evidence disclose that they are able to remember the description because they used to keep the goods received from various agencies separately, and some of them have stated in their evidence that certain of the goods received were of recent origin. In the circumstances it cannot be said that the adjudicating authority has committed an error in placing reliance on the evidence.

10. Shri Parekh, the learned Advocate contended that the transaction between the appellants and M/s. P.D. Jain & Bros, was spread over for nearly 6 to 7 months, and it is very unlikely that M/s. P.D. Jain should have kept quiet if the appellants have been sending PVC wires describing them as PVC sleevings in their bills. M/s. Pravin Chandra Mehta a partner of M/s. P.D. Jain & Bros, has stated in his evidence that he did warn the appellants about the mis-description. Similarly, M/s. Pratap M. Bhatija has also stated that he had warned the appellants to show the correct description in the invoice. In the said circumstances the contention urged by Shri Parekh cannot have any force.

11. It was made much of by Shri Parekh that the Central Excise Officers have not cared to verify the prevailing price of the PVC wires and PVC sleevings. According to Shri Parekh there was much difference in the price between PVC wires and PVC sleevings, and having regard to the difference in price it is very unlikely that the purchasers would accept the bills in which the prices are given. Though this argument appears attractive, on close scrutiny we find that there is not much merit in this. As has been stated earlier most of the purchasers are small traders. It is quite likely that in the bills the appellants were mentioning the price of PVC wires and collecting the price of PVC wires, but they are only describing the goods as PVC sleevings. So far as the purchasers are concerned they have received PVC wires and they have paid the price on the wires. Therefore, it did not matter much how the appellants have described the goods. The appellants themselves have not produced the duplicate bills maintained in their factory to establish that the price charged to various traders is the price of sleevings and not the price of PVC wires. These circumstances clearly indicate that it is highly probable that in the

bills the appellants have mentioned the price of PVC wires. Therefore, we reject this contention. Coming to the last contention of Shri Parekh, namely; that none of the coils seized from various traders did bear any marks of the appellants, and therefore, the department was not able to correlate the coils seized as the coils manufactured by the appellants, suffice it to say that the appellants did not have any registered trade mark. It is not the case of the appellants that their markings are made on the coils. If at all there would have been some indication in the outer covers or packages, these covers and packages might not have been found at the time of seizure, but from that one cannot come to a conclusion that the coils seized are not the coils supplied by the appellants.

Some of the purchasers have stated that they used to keep PVC wires which they received from various firms separately and therefore they are in a position to tell the source of their purchase. Their explanation appears reasonable and can be relied upon. The only aspect that remains for our consideration is about the argument addressed by Shri Parekh that the coils seized from the premises of M/s. Hindustan Electricals, Trichur, were not shown to be manufactured by the appellants. He contended that these coils were purchased by the appellants and sent to M/s. Hindustan Electricals, and therefore the appellants were not liable to pay any duty in respect of these coils and the confiscation ordered by the Deputy Collector of these coils is wholly unjustified. Now it is seen that Shri Vasudevan Nair, Manager of M/s. Hindustan Electricals, Trichur in his statement has clearly admitted that 39 coils were received without any gate pass. They are excisable goods. M/s. Hindustan Electricals is connected with the appellants firm and the Proprietor of the appellants firm is one of the partners. When there was an allegation against the appellants that 39 coils were manufactured in the appellants' firm and sent to Trichur, the appellants could have established by satisfactory evidence that these 39 coils were not manufactured in their factory but were purchased in the open market. The appellants did not adduce any independent evidence. They only rely upon certain invoices which were also not approved. In the circumstances no error has been committed by the Deputy Collector or the Collector (Appeals) even with regard to these 39 coils.

12. After careful consideration of all the aspects we are satisfied that the order passed by the Deputy Collector and confirmed by the Collector (Appeals) does not suffer from any illegality and the same is not unjustified on the facts and circumstances proved in this case.

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