System Electronics Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-16-1991

Reported in : (1993)(44)LC96Tri(Delhi)

Judge : J Balasundaram, K T P.K.

Appellant : System Electronics

Respondent : Collector of Central Excise

Judgement :

1. Briefly stated the facts of this case are that the appellants were manufacturers of Radio-cum-Cassette-Recorders and Television sets both falling under item No. 33A of the erstwhile Central Excise Tariff. They obtained a Central Excise L-4 Licence on 25.11.1983. In August, 1984 against their import licence No. 1962068 dated 4.8.1983 they imported three consignments containing 500 sets of Model F6F Two-in-ones in knocked down condition, in the form of components. One of the three Bills of Entry filed in Bombay Custom House for the clearance of these components was for 5 cases containing 500 Tape Deck Mechanisms. The scrutiny of the records of Canara Bank, Connaught Circus, New Delhi revealed that the appellants were advanced funds required for the importation of the entire lot of 500 sets of Two-in-ones and the Open Cash Credit statement dated 1.9.1984 submitted by them to the Bank also showed that 500 sets of Two-in-ones were received by them. On 2.11.1985 the Central Excise officers on visiting the appellants' factory did not find 300 sets of imported Tape Deck Mechanisms out of the total quantity of 500 sets imported by them. On this basis they inferred that 300

Two-in-ones manufactured by the appellants had been clandestinely removed without payment of Central Excise duty of Rs. 42,000/- leviable on them. Further, in the Open Cash Credit statements dated 30.6.1985 and 11.7.1985 submitted by the appellants to the Canara Bank they declared that 100 pes 'TV System 2000 and components thereof were received by them. Thereafter in the Open Cash Credit statement dated 9.9.1985 they informed the Bank that they had cleared 40 such T.V. sets and in the statement dated 30.9.1988 they indicated clearance of a further quantity 20 TV sets. The scrutiny of the records the Bank godown located in the appellants' factory revealed that 40 T.V.Pictures Tubes from M/s. Jyoti Electronics and another 48 T.V. Picture Tubes acquired from other sources were cleared under the supervision of the Bank staff from time to time. The Bank records also revealed that the appellants had also pledged a further quantity of 124 Colour T.V.sets Model 2062, with the Bank.

2. In the show cause notice dated 5.5.1987 issued to the appellants it was alleged that the appellants manufactured and clandestinely removed: (a) 300 Two-in-oncs valued at Rs. 4,20,000/- involving duty of Rs. 42,000/-.

(b) 100 Colour T.V. sets Model 2000 and 200 sets of Model 2062 without submitting the classification and Price lists, without proper accountal thereof and without payment of duty amounting to Rs. 1,00,000/- and Rs. 1,24,000/- respectively.

3. On these grounds the appellants were asked to show cause as to why the duty amounting to Rs. 2,66,000/- should not be demanded under Rule 9(2) of the Central Excise Rules read with Section 11A of the Central Excises & Salt Act, 1944 and why a penalty should not be imposed under Rule 173Q. After taking into account the submissions made by the appellants in the impugned order the Additional Collector held that duly amounting to Rs. 2,66,000/- was recoverable from the appellants under Rule 9(2) and he also imposed on them a penalty of Rs. 50,000/- under Rule 173Q of the Central Excise Rules.

4. On behalf of the appellants the learned Advocate Shri N.C. Jain appeared before us. In regard to the allegation relating to the alleged manufacture and removal of 300 sets of Two-in-ones without payment of duty Shri Jain stated that

the appellants had manufactured only 200 Two-in-ones as reflected in the records, since 300 tape-deck mechanisms which are vital components of Two-in-ones were not received by them. He contended that against the Bill of Entry filed in Bombay Custom House for the clearance of 500 sets of Tape Deck Mechanism, 300 sets were found to have been short landed. In this regard he referred to the short-landing certificate No. CDO/ISL No. 560 dated 6.8.1985 issued by the Port Trust and letter No. Lloyd's/CL. 4912 dated 30.8.1985 issued by M/s. Tata Tea Limited, accepting the insurance claim in respect of the missing goods. Shri Jain added that an appeal was filed by the appellants against the rejection of the claim for refund of duty paid on the short-landed goods and the Collector of Customs (Appeals) in his order dated 10.7.1986 had directed the Assistant Collector to consider the appellants' claim afresh on the basis of the available documentary evidence. He stated that the refund claim is still pending with the concerned authority. Shri Jain reiterated his stand that the appellants could manufacture only 200 sets of Two-in-ones since the 300 sets of Tape-deck-mechanisms which were very vital components of Two-in-ones were never received by the appellants. He contended that the mention of '5 cases' in the clearing agents' letter dated 24.8.1984 which formed part of the show cause notice was an inadvertent clerical error since 3 cases contain 300 sets of Tape-deck-mechanisms were short-landed as confirmed by the short landing certificate issued by the Port authorities. He stated that on account of non-availability of the requisite quantity of Tape-deck-mechanisms, the 300 sets of components received in two other consignments could not be utilized. On these grounds he argued that the charge in regard to clandestine manufacture and removal of 300 sets of Two-in-ones was based on conjectures and surmises and cannot survive. He contended that on the basis of the facts that the advance for the import of all the three consignments was received from the Bank and 500 pieces of Two-in-ones were shown to have been produced in Open Cash Credit statement dated 1.9.1984 it cannot be inferred that the appellants had actually manufactured 500 pieces of Two-in-ones since figures in statements submitted to the Banks at times get inflated on account of the need for securing funds for tiding over financial difficulties.

5. In regard to the allegation regarding manufacture and clandestine removal of colour T.V. sets Shri Jain reiterated his stand that the statements submitted by the

appellants to their bankers cannot be relied upon by the Department since the information furnished in these statements at times gets inflated and reflects only the anticipated production which may not actually take place. He stated that such information is only relevant for the bankers and it would neither be valid nor lawful to utilize it for the determination of the actual production for Central Excise purposes. He added that colour T.V. sets cannot be produced without colour picture tubes which were not indigenously manufactured. He stated that M/s. Jyoti Electronics who are alleged to have sold colour picture tubes to the appellants were not in existence and there was no evidence to show the procurement of a large quantity of over 200 picture tubes by the appellants so as to be able to manufacture 224 coloured T.V. sets. He denied that the appellants had manufactured 224 colour T.V. sets. He claimed that the allegations in this regard were based on conjectures. He stated that the department was not able to locate or seize any of the T.V. sets alleged to havebeen manufactured by the appellants. He argued that no inference could be drawn in regard to the actual production on the basis of the statements furnished by the appellants to their bankers.

On these grounds Shri Jain pleaded for the impugned order being set aside.

6. On behalf of the Revenue the learned JDR Shri S.K. Sharma placed reliance on the order passed by the Additional Collector. He stated that the appellants claim that 3 cases containing 300 pieces Tape Deck Mechanism were short landed cannot be relied upon since the short landing certificate was issued in August, 1985 whereas the goods were cleared in August, 1984. He contended that the appellants had received all the 5 cases containing 500 pieces of Tape Deck Mechanisms since the document in respect of the Port Trust charges and the Bills issued by M/s. Eagle Transport Services, Bombay who had transported the goods from Bombay to Delhi were for 5 cases. He stated that the appellants' claim that due to non-availability of 300 pcs of Tape-dcck-Mechanisms they had sold 300 sets of the components as scrap could not be accepted since they had not produced any documentary evidence in support of their claim. He contended that the, seized records revealed that the appellants had been purchasing various components from the local market hence, even if it was assumed that 300 pieces of Tape-deck-mechanism were short landed their claim that they had sold away

the remaining components would not be believable. He argued that the returns submitted by the appellants to the Bank could not be disregarded since in these returns they had admitted having received all 500 sets of components of two-in-ones, and also the fact that manufacture of these two-in-ones was completed. On these grounds he contended that evasion of duty on 300 sets of two-in-ones was clearly established. Shri Sharma added that manufacture and clandestine clearance of 100 colour T.V.sets; Model 2000 and 124 sets of Model 2062 was also established on the basis of the entries in the relevant credit stock statements submitted by the appellants to the Bank from time to time.

7. We have considered the submissions made on behalf of both sides and examined the records of the case. It is seen that the first point to be examined in this case is whether the appellants had manufactured and clandestinely cleared 300 pieces of Two-in-ones without recording the production in the statutory records. In this regard the appellants' case is that even though they had filed 3 Bills of Entry for the clearance of complete sets of components for the manufacture of 500 pieces of Two-in-ones, they were able to manufacture of 200 sets complete Two-in-ones since 3 cases containing 300 pieces Tape-dcck-mechanism, which are vital components of Two-in-ones were not received by them on account of short landing of 3 out of 5 cases against Bill of Entry No. 298/857. In this regard the appellants have placed reliance on the short landing certificate dated 16.8.1985 issued by the Bombay Port Trust certifying against Bill of Entry No. 298/857 3 out of 5 cases were short landed. The appellants have also referred to the copy of the letter dated 30.8.1985, addressed to M/s. Eagle Transport Services wherein the insurers M/s. Tata Tea Limited had indicated their willingness to accept the claim in respect of the short-landed goods. It has also been pointed out that the claim for refund of Customs duty paid on the short landed goods is pending with the Assistant Collector. On the other hand, the Additional Collector while expressing doubts about the authenticity of short-landing certificate issued after the lapse of nearly one year from the date of clearance of the goods has held on the basis of the declarations made by the appellants in the 'Cash Credit Account Stock Statement' of the Bank, that they had manufactured 500 pieces of Two-in-ones of which only 200 pieces were reflected in the statutory records, resulting in evasion of Central Excise duty of Rs. 42000/- on 300 pieces

of Two-in-ones. The appellants' claim that on account of short landing of Tape-deck mechanisms which are essential requirements for the manufacture of Two-in-ones, they were compelled to sell as scrap the remaining components that would have been used for the manufacture of 300 Two-in-ones was not found to be acceptable by the Additional Collector who held that valuable imported components must have been used by the appellants only for the manufacture of Two-in-oncs by acquiring tape-deck-mechanisms from the local market.

8. It is seen that the short-landing certificate in respect of 5 cases containing 300 tape-dcck-mechanism s was dated 16.8.1985 whereas the goods were cleared against the Customs Bill of Entry No. 298/857 almost one.ycar prior to the issue of landing certificate by the Port Trust.

Apart from the fact that the bill No. 236 and the covering letter dated 24.8.1984 from M/s. Eagle Transport Services who cleared and transported the goods covered by Bill of Entry No. 298/857 showed that all 5 cases covered by the Bill of Entry were cleared and despatched to the appellants, the relevant Octroi receipt No. 31726 issued by the Bombay Municipal Corporation and the Port Trust documents were also in respect of all the 5 cases imported in the consignment. Under these circumstances the short landing certificate dated 16.8.1985 in respect of 3 cases obtained by the appellants appears to be a doubtful document whose authenticity needed verification from the port authorities.

However, that was not done and the adjudicating authority placed reliance solely on the Open Cash Credit Account Stock statements filed by the appellants with the Canara Bank in respect of the goods pledged to the Bank. Since the declaration of a stock of 500 pieces of Two-in-ones in the statement dated 1.4.1984 was verified by the Bank officials the adjudicating authority arrived at the finding that the appellants had manufactured 500 pieces of Two-in-ones and by accounting for only 200 pieces in the Central Excise records they had evaded duty amounting to Rs. 42,000/- on 300 sets. In arriving at the conclusion that 500 pieces of Two-in-ones were manufactured the adjudicating authority assumed that the appellants must have acquired 300 sets of Tape-deck-mechanisms from the local market as replacement for an equivalent number of Tape-deck-mechanisms which were claimed to have been short landed. The appellants on the other hand contend that due to the availability of only 200 Tape-deck-mechanisms which were extremely vital components of Two-in-ones, they had manufactured only 200 pieces of Two-in-ones and the declaration of 500 pieces of Two-in-ones in the statement dated 1.4.1984 cannot be relied upon as proof of the actual production since declarations in such documents are inflated having regard to the anticipated production and with the objective of securing larger credit from the Banks.

9. We are of the view that the entries in the Cash Credit Stock statements relating to the stocks pledged to the Bank cannot be taken as conclusively establishing the production of goods for Central Excise purposes. Inflated and incorrect claims are often made by parties in respect of their stocks in godowns under the Control of Banks. Further, the manner and extent of checks carried out by the Banks in respect of the contents of the packages stored in such godowns and the value thereof can also be at times, quite unreliable. Under these circumstances and in absence of any other evidence such as statements of workers employed in the factory in regard to the nature and extent of the manufacturing activity undertaken or the accounts relating to goods manufactured and sold by the appellants, the declaration in the Cash-Credit Stock Statements furnished to the Bank can at best arouse only a strong suspicion about the manufacture of those goods. Such statements cannot, therefore, be deemed as conclusive proof of the manufacture of the declared goods. For these reasons we hold that the Department has failed to conclusively establish that the appellants had manufactured and clandestinely cleared 300 pieces of Two-in-ones.

10. It is seen that the charge relating to manufacture and clandestine clearance of 100 pieces Model 2000 and 124 pieces Model 2062, Television sets was also based on entirely on the declarations made by the appellants in relevant Cash Credit Statements submitted to the Banks. In view of the discussion in respect of similar charge relating to Two-in-ones we are of the view that the charge relating to clandestine manufacture and clearance of colour television sets also cannot be deemed to have been conclusively established.

11. Before parting with the matter we would like to observe that the appellants on their own admission have indulged in the sale of components which were permitted to be imported on the condition that would be Used in the manufacture of goods in the appellants'factory.

They, therefore, appear to have committed serious violatio'ns of the Import & Export (Control) Act, for which proceedings can be initiated only by the appropriate authority viz. the Chief Controller of Imports & Exports.

12. In view of the foregoing we set aside the impugned order and allow the appeal.