

Tata Engineering and Locomotive Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-28-1995

Reported in : (1996)(81)ELT574TriDel

Appellant : Tata Engineering and Locomotive

Respondent : C.C.E.

Judgement :

1. These two appeals are against the orders of the Additional Collector of Central Excise, Patna.

2. The facts briefly, leading to these appeals are as follows. The appellant manufactures motor vehicle chassis. It was found that on 29-2-1984 gate passes had been issued after payment of duty for clearance of three chassis (covered in appeal No. 2974) and six chassis (covered in appeal No. 2975). However, although the gate passes were made out before 5 P.M. on that date the goods had been removed before that time. Since that date was the date of presentation of the annual budget, the officers detained the chassis in question. Subsequently adjudication proceedings were commenced on the basis that since the duty on the goods was enhanced in the budget, the appellant had intended to evade the duty. After considering the cause shown and hearing the appellant, the Additional Collector confiscated the chassis, but ordered them to be redeemed on payment of fine which was to be adjusted against deposit made by the appellant at the time of their provisional release. He also confirmed that the duty applicable was the duty at the enhanced rate.

3. Shri G. Shiva Dass, advocate for the appellant, argues that there was no intention to evade duty. This had been admitted by the Additional Collector in his order when he said that there was no mala fide intention and therefore did not impose penalty. In view of this, therefore, the appellant could not be said to have intended to evade duty. The provisions of Sub-rule 1(d) of Rule 173Q of the Central Excise Duty Should be "Rules" - Ed. therefore do not apply. He further argues that the goods had been removed by the bonded store room before 5 P.M. and therefore the rate of duty applicable would be the one that prevailed before the change brought about by the budget.

4. Shri Somesh Arora, for the Collector argues that Rule 9 speaks about the removal of the goods from the place where they are produced. The goods therefore could not be stated to have been removed unless they left the factory premises which they admittedly did not do before 5 P.M. Therefore the demand for duty at the enhanced rate Should be "Rules" - Ed. is correct. He adopts the reasoning of the Additional Collector with regard to confiscation.

5. It is not in dispute that duty had been paid on the chassis and the gate passes issued, before 5 P.M. on 29-2-1984. We note that the Additional Collector has himself found that there was no mala fide intention. We therefore agree that the failure to remove the trucks was not with a view to evading duty. Hence confiscation of these goods under rule 173Q is not sustainable and is set aside.

6. It is however equally not in dispute that the chassis were not removed from the factory before 5 P.M. on 29-2-1984. The expression used in Rule 9 is removal 'from any place where they are produced, cured or manufactured or any premises appurtenant thereto, which may be specified by the Collector in this behalf.' Therefore removed from the bonded store room would not amount to removal in terms of Rule 9. Rule 223A provides that no goods shall be removed after 5 P.M. on the date on which the budget is presented without the prior permission of the Collector and subject to the assessee undertaking that he will pay duty at the enhanced rate, if any, introduced in the budget on these goods.

Since the goods were actually removed from the factory after 5 P.M. on budget date, their removal would be governed by the provisions of this rule. Therefore, the

demand for duty at the enhanced rate introduced by the budget has, in our view, been correctly confirmed. We therefore see no reason to interfere with this finding of the Assistant Collector.

7. In the result the confiscation with the vehicles is set aside, with consequential relief.

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