**Abrol Engineering Co. P. Ltd. Vs. C.C.E.**

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**SooperKanoon Citation** : sooperkanoon.com/8997

**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Dec-18-1995

**Reported in** : (1996)(83)ELT534TriDel

**Appellant** : Abrol Engineering Co. P. Ltd.

**Respondent** : C.C.E.

**Judgement** :

1. This appeal is directed against the order dated 3-6-1987 passed by the Collector of Customs and Central Excise, Chandigarh. By this order, the Collector has demanded duty of Rs. 6,34,105.97 and has imposed a penalty of Rs. 1,50,000/- on the appellants.

2. The facts, briefly, are that the appellants manufacture electrical switch gears, classifiable under the erstwhile Tariff Item 68 of the Central Excise Tariff. They were selling the goods to DGS & D and the Punjab State Electricity Board on rate contract basis. The case against the party by the Department is that during 1981-82 and 82-83, an officer of the DGS & D visited the factory premises of the appellants for inspection of the goods covered by the contract. The quantity of the goods presented for inspection was more than the balance shown in the statutory RG 1 register. The Department was of the view that the excess quantity has been clandestinely removed. Another allegation against the appellants is that they removed their own production in the guise of trading goods purportedly purchased from another unit viz.

M/s. Switch Kraft P. Ltd. Proceedings were initiated by issue of a show cause notice for demanding duty, for removal of the goods during the period in question which culminated in the order of the Collector. Shri Swaminathan, learned Consultant for the appellants submitted that the practice of inspection of the goods was linked to the terms of the purchase order and in order to keep the said dead line in the purchase order, they had followed the practice of offering the goods for inspection even when they are not fully complete. Their method was to account for the goods in the statutory RG 1 register after inspection.

There is no dispute, the learned Consultant urged that the goods had been supplied against specific purchase order subject to inspection and were fully documented having been cleared under cover of gate passes.

There is no instance of proof with evidence of any removal of these goods without payment of duty. Thus the charge of clandestine removal is not based on material evidence. The learned Consultant argued that if the total purchase order and total pieces inspected and the total quantity removed are compared they will be bound to tally. He relied upon the case law reported in 1990 (48) E.L.T. 460 to say that the difference between RG 1 and physical balance will not be conclusive of the clandestine removal of the goods. The case law - 1990 (45) E.L.T.104 was also relied upon to say that the irregularity in maintenance of RG 1 cannot be construed as evidence straightaway of clandestine removal. The learned Counsultant contended that M/s. Switch Kraft are admittedly an independent company. They are also supplying to the DGS & D and during the later period their supply amounted to Rs. 31 lakhs out of which only Rs. 6 lakhs the Department is attributing as removals by the appellants. The situation apparently arose according to the appellants, because of their practice earlier of including even trading goods in their statutory RG 1 register which on further clarification from the Department they had stopped. The learned Consultant further pointed out that the rate of duty applied for computing the demand is not in accordance with the provisions of Rule 9A(5). This Rule requires that the rate of duty in a case should be where duty is not paid should be (sic.) the rate if in force on the date on which notice for demand is issued. In this case, the period involved is 1981-82 and 1982-83, when the rate of duty on goods falling under Item 68 was 8%. The show cause notice was issued

on 25-3-1986 when the rate was 5%. This was increased to 20% by a corrigendum to the show cause notice. The learned Consultant, therefore, urges that the computation of the duty demand requires a second look.

3. Shri Mewa Singh, learned SDR referred to the reasoning in Collector's order to clearly bring out the facts that irregularity in the accounting of unauthorised clearances [is] amply proved by evidence on record. The Department's case is also supported by the statements given by the Inspecting Officer of DGS & D whose statements clearly show that the goods had been offered for testing only after they have reached the fully finished stage. The Department's charge that the goods attributed as manufactured by M/s. Switch Kraft really belonged to the appellants is further supported by the statements of the Inspecting Officer who had inspected the goods in the appellants' premises at the time when some manufacturing was also going on. Learned SDR further pointed out that even according to their own statements, the way they were accounting for the excisable goods in the statutory RG 1 account was irregular and not as per the requirements of the Rule.

4. We have carefully considered the submissions of both sides. The charge of irregular maintenance of RG 1 account as regards switch gears is upheld by us by the evidence on record. The plea that the switch gears were offered for inspection even before they were fully finished is not borne out by the statement of the Inspecting Officers who have held that the switch gears were complete and fully finished at the time when they were inspected. The case of the Department that some of the production of Switch Kraft had been removed as their own production by the appellants is probablised by the fact that in some instances, the records show that the goods had been offered for inspection even [in] advance before placement of purchase order with M/s. Switch Kraft. The Collector's further reasoning in this regard that the terms of the purchase order with the PSEB also require that the products supplied to them should be the manufacture of the appellants also goes against them. In such a view of the matter, the Collector's conclusions on both these charges are well founded. On the aspect of the correct rate of duty to be applied in computing the demand, it is not very clear as has been pointed out by the learned Consultant as to how the demand in this case has been

computed. It is also not ascertainable from the record as to the basis on which rate of duty has been applied to arrive at the duty demandable in this case and as to whether such an application of rate of duty would be in consonance with the terms of Rule 9A(5) of the Central Excise Rules. Since the facts for clarifying this aspect are not before us, we would direct the Collector to consider this aspect and re-compute the demand by correct application of the provisions of Rule 9A(5) relating to the rate of duty to be applied. As regards the penalty on the appellant, we feel that in the absence of clandestine removal, having been actually established with reference to material evidence, some relief is called for in the quantum of penalty. We, therefore, reduce the penalty imposed on them from Rs. 1,50,000/- to Rs. 50,000/-.