

Customs, Excise and Gold Tribunal - Delhi

Universal Electrodes P. Ltd. vs Collector Of Central Excise on 22 October, 1997

Equivalent citations: 1998 (99) ELT 134 Tri Del

ORDER Jyoti Balasundaram, Member (J)

1. By the impugned order, the Commissioner of Central Excise, Indore has confirmed a duty demand of Rs. 40,326/- on welding electrodes admittedly cleared by the appellants without payment of duty in November, 1994 and has imposed a penalty of a like amount under Rule 173Q of the Central Excise Rules read with Section 11A of the Central Excise Act, 1944. He has also confiscated the electrodes seized from the factory, with an option to redeem the same on payment of a fine. He has also confiscated 3 Matadors which were seized on 12-9-1994 and since they were not available for confiscation, he has enforced bank guarantees against the liability of the redemption fine on these matadors.

2. Learned Counsel Shri K.K. Anand submits that the appellants do not contest the duty liability; however, in view of the fact that by letter dated 27-4-1995, the appellants had only given up their right to receive the show cause notice for levy of duty, they were entitled to a notice for confiscation and imposition of penalty and in this connection, he refers to the decision of the Tribunal in the case of Saphai Saw Mills and Veneer Unit v. CCE, Shillong reported in 1997 (20) RLT 64. Further, he submits that no penalty is imposable Under Section 11A as the provisions are applicable to cases where the show cause notices have been issued on or after the date of enactment of the Finance Bill, 1996, which was enacted on 28-9-1996. He relies upon the Board's Circular F. No. 354/118/96/TRU, dated 6-1-1997 in support of his contention.

3. Learned DR, Shri Tilak submits that once the appellants waived the right to receive the show cause notice, they cannot claim that what was waived by them was only the right to receive the notice for levy of duty and not for imposition of penalty. He, therefore, submits that since Rule 173Q has been rightly invoked. As the Rules have been contravened by the appellants who had cleared the goods without payment of duty, penalty has been rightly imposed.

4. I have carefully considered the rival submissions. In view of the decision of the Tribunal cited by the learned Counsel, I agree with him that it is mandatory to issue notice for confiscation or imposition of penalty and representation against it and particularly when the appellants have only given up their right to receive notice regarding duty demand. I also agree with the learned Counsel that the provisions of Section 11AC are not attracted prior to the date of enactment, in this case, in view of Paragraph 2 of the Circular dated 6-1-1997 referred to supra. However, provisions of Rule 173Q will be attracted. Following the ratio of the order cited supra by the learned Counsel, I set aside the impugned order in so far as it relates to confiscation and penalty and remand the matter to the Commissioner of Central Excise who is directed to decide the case de novo after issuing a proper show cause notice for confiscation of goods and imposition of penalty. The appeal is thus allowed by way of remand.