

C.C.E., Delhi-iv Vs. M/S. Santosh Engineering Works

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Principal Bench New Delhi

Decided On : Feb-13-2014

Judge : The Honourable Mrs. Archana Wadhwa, Member (Judicial)

Appeal No. : Appeal No. E/1276 of 2008 -EX[SM] [Arising Out of Order-in-Appeal No.34 to 36/CE/App/DLH-IV/2008, dated 08.04.2008 passed by C.C.E.(Appeals), Delhi-I]

Appellant : C.C.E., Delhi-iv

Respondent : M/S. Santosh Engineering Works

Judgement :

Archana Wadhwa, J.

1. Being aggrieved with the order passed by the Commissioner (Appeals), Revenue has filed the present appeal.
2. After hearing both the sides duly represented by Shri BB Sharma, Ld. Departmental Representative appearing for the Revenue and Shri KL Handa, Ld. Advocate representing the respondents, I find that the respondents are engaged in the manufacture of brass burner tops falling under Chapter 74 of the Central Excise Tariff Act, 1985. Their factory was visited by the officers of the Central Excise (Anti-Evasion) on 26.05.2005, who conducted various checks and verifications. Certain shortages were found in the final product, which the

respondents accepted and debited the duty of Rs.3,840/- (Rupees three thousand eight hundred and forty only). However, there were certain shortage in respect of raw-materials also. On the basis of that it was alleged that certain captively generated scrap, etc. has not been accounted for.

3. On the above basis, Show Cause Notice dated 07.02.2006 was issued to the respondents for confirmation of demand of duty of Rs.15,66,589/- (Rupees fifteen lakh sixty six thousand five hundred and eighty nine only) and education cess of Rs.32,332/- (Rupees thirty two thousand three hundred and thirty two only). The said Show Cause Notice culminated into an order passed by the original adjudicating authority confirming the demand of Rs.12,92,579/- (Rupees twelve lakh ninety two thousand five hundred and seventy nine only) and imposing penalties.

4. On appeal, Commissioner (Appeals) set aside the impugned order of the lower authorities on the ground that charges of clandestine removal has been made only on the theoretical calculations and without bringing on record any cogent convincing corroborative and tangible evidences.

5. Revenue, in their Memo of Appeal has raised only two grounds by submitting that in clandestine removal cases preponderance of the probability is the test and in as much as shortages were admitted by the representative of the respondents. It has to be held that the same were on account of clandestine activities.

6. I find that the Commissioner (Appeals) has taken into consideration the entire facts and has come to a categorical finding that the Revenue has made theoretical calculations, which cannot be held as admissible for upholding the charge of clandestine removal. It is well settled law that the allegations of clandestine removal are required to be proved by the Revenue by production of positive evidence and a mere doubt cannot take the place of evidences. Apart from the alleged shortages, which are also being disputed by the respondents, there is virtually no evidence on record indicating any clandestine removal by the respondents. As such, I find no infirmity in the order of the Commissioner (Appeals). Accordingly, I reject the Revenues appeal.