

Collector of Central Excise Vs. Mittal Laminates (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-28-1998

Reported in : (1999)(105)ELT408TriDel

Appellant : Collector of Central Excise

Respondent : Mittal Laminates (P) Ltd.

Judgement :

1. Captioned appeal has been filed by the Commissioner assailing the order of the Commissioner (Appeals) setting aside the confiscation of the goods found in excess but upholding the imposition of penalty.

2. Shri T.A. Arunachalam, Id. JDR submits that the goods found in excess were in fully finished condition, therefore the decision of the Tribunal in the case of Garden Silk Mills Limited 1992 (51) E.L.T. 373 was not applicable in as much as the goods in that case were in semi-finished condition and were still lying in the factory. He submits that the Commissioner's finding that there was no attempt to remove the goods clandestinely is erroneous. He submits that imposition of penalty further leads to the conclusion that the goods were liable to confiscation and that since the goods were liable to confiscation, therefore, they should have been confiscated as the same were liable to confiscation. He submits that in view of the above submissions, order passed by the Commissioner (Appeals) may be set aside and the appeal may be allowed.

3. Shri P.K. Sharma, Id. Advocate submits that the goods were rejects or defective goods and since they were not marketable as the first grade goods, they were kept separately. He submits that the goods were still lying in the factory, therefore they were not liable to confiscation as the department has not brought out any evidence to prove that there was an attempt to remove the goods clandestinely. He submits that the circumstances of the clandestine removal of the goods were taken into consideration by the Tribunal in the case of Garden Silk Mills Limited cited above and therefore he submits that the ratio of this decision was squarely applicable to the facts of this case also. He, therefore, prays that the appeal may be rejected.

4. Heard the submissions of both sides. There is no dispute that the goods were in semi-finished stage. The fact of non-accountal is admitted. Since the goods were in fully finished stage and were not accounted for, even if they were defective or damaged is a violation of Rules. Rule 173Q provides for confiscation of the goods and imposition of penalty. Once the goods have reached the stage of fully finished goods, they are required to be recorded in the prescribed records.

Since they were not recorded in the prescribed records, therefore an attempt or otherwise for clandestine removal of the goods is not required to be proved. In the circumstances, I hold that the goods were liable to confiscation and should have been confiscated. Since the goods have not been confiscated, I set aside that part of the order and hold that the order of non-confiscation of the goods is not sustainable, that part of the order is, therefore, set aside and the goods are confiscated. However, the respondents should pay a sum of Rs. 9,000/- as redemption fine in lieu of confiscation. During the course of arguments, Id. Counsel for the respondents submitted that the penalty should be reduced. However, from the records, I find that no appeal has been filed by the respondents. In the circumstances, I do not comment on the quantum of penalty or its reduction, therefore, the same is upheld.⁵ The impugned order, therefore, is modified to the extent stated above and the appeal is disposed of accordingly.