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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-29-1998

Reported in : (1999)(105)ELT407TriDel

Appellant : Poly Flex Industries Ltd.

Respondent : Commissioner of C. Ex.

Judgement :
1. This is an application for stay and waiver of Rs. 65,000/- imposed as penalty in the original order and upheld in the impugned order.

2. In spot check of the finished goods and also the inputs, the officer detected shortages in both. In the lower order duty on both kinds of shortages was confirmed and the penalty imposed. Before the Commissioner the plea was made that the defective raw-materials were separated and cleared on payment of duty. Similar removals of finished goods were omitted to be so recorded in the RG-1 Register. The Commissioner observed that no evidence to sustain these arguments was advanced and maintained the lower order.

3. Shri K. Kumar, learned Advocate submitted that duty on both counts was paid by the assessee under compulsion. It was his submission that before the original authority the claim was made that the visiting officers had not verified the stock of waste. If that had been done the shortages in finished goods and also raw-materials could have been balanced. He maintained that loss was the result of cumulative loss over a long period. It was his claim that such loss occurred in

every factory.

4. I have considered these submissions. The Panchnama is on record. The Panchnama shows that two officers of the appellant namely S/Shri Rejesh Khaitan and Sunil Gupta were present when the officers visited the factory. Shri Gupta was the Director and the Khaitan was the Officer-Incharge of the Excise. The Panchnama shows that they were specifically asked to explain the shortages in inputs as well as in the final product. If the waste was present in the factory which was equal to the shortages, these two officers could have explained the situation and taken the officers where the waste was stored. Since the waste is an excisable product, the RG 1 entry in this regard could also have been required to be made. This claim was made nearly after 10 months in reply to the show cause notice. I find that the grounds raised in the application are not strong enough to warrant the stay of the penalty.

5. I have also considered the case law relied upon by Shri K. Kumar in the judgment reported in 1990 (29) ECR 549 (CEGAT-ERB) in the case of Ambica Metal Works v. Collector of Central Excise, Calcutta-l and also 1998 (97) E.L.T. 74 (Tribunal) in the case of Krishna & Co. v. C.C.E., Jaipur. The charge in the cited cases was that the goods were clandestinely manufactured and cleared. In such circumstances the Tribunal had held that the charge has to be sustained by material collaboration. The ratio of these judgments does not apply to a case where there is no allegation of clandestine manufacture but where the offences relates to shortages in the recorded stock. In the judgment reported in 1994 (93) E.L.T. 747 (Tribunal), the Tribunal have very clearly held that there was no physical verification to arrive at the shortage in that case. The facts not being identical in this case, the ratio of this judgment also does not apply.

6. Since no grounds have been made for financial effect, I direct the appellant to deposit entire sum of penalty within 10 weeks from the date of receipts of this order. To come up for compliance on 27-1-1999.