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Multiplex Packaging (P) Ltd. Vs. Collector of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-04-1999

Reported in : (1999)(112)ELT923TriDel

Appellant : Multiplex Packaging (P) Ltd.

Respondent : Collector of C. Ex.

Judgement :

2. The Tribunal had already passed an order in relation to this appeal vide Final Order Nos. 332-333/97-A, dated 25-2-1997 deciding the question of inclusion of value of caps on the aluminium collapsible tubes in favour of the appellants herein.

3. An ROM application was filed by the Revenue pointing out that the issues involved in the appeal namely - (1) Non-posting of entries in RG 1 account for the period 1-5-1985 to 5-9-1988.

(2) Non-accountal of 1,42,40 Nos. of aluminium collapsible tubes and 118 Kgs. of rejected aluminium collapsible tubes were also involved and the Tribunal has not decided those issues which led to the sustainability of penalty and fine by the lower appellate authority.

In fact it was pointed out by the Revenue that the Question of inclusion of value of the caps in the value of the collapsible tubes was not at all involved in the present appeal inasmuch as that issue had already been decided by the lower appellate authority in favour of the appellants.

4. In view of the foregoing, points raised in the ROM application filed by the Revenue, the Tribunal recalled the aforesaid order dated 25-2-1997, in so far as it related to the present appeal. That order stands insofar as it relates to the other appeal, namely, E/3594/87-A.5. We have now heard the learned Advocate, Shri G.P. Srivastava and the learned SDR, Shri K. Srivastava. We agree with the learned SDR that the subject appeal involved only the question of imposition of penalty and imposition of fine in view of the aforesaid two points regarding non-posting of entries in RG 1 account and non-accountal of aluminium collapsible tubes. No question as such regarding inclusion of value of caps in the value of collapsible tubes was involved. The issue has already been decided by the lower appellate authority in favour of the appellants.

6. After having heard both sides, we are of the view that so far as the first issue regarding non-posting of entries in RG 1 account is concerned, plea of the learned Advocate is that this was due to the sickness of the dealing clerk; otherwise the relevant goods had been cleared on payment of duty after issuing valid GPIs under the relevant rules; therefore there could not be any motive in not posting the entries in RG 1 account. As regards the rejected material, the learned Advocate submits that these were rejected by the customers of the aluminium collapsible tubes who had returned the material to the appellants herein. A proper D-3 intimation had been given by the appellants to the concerned Revenue authorities. Therefore, there could not be any question of accounting the same and there is no record required for accounting the same. This submission of the learned Advocate is contested by the learned SDR for the Revenue.

7. We observe that some offence has been committed by the appellants in not posting the entries. When they could issue the gate passes, there was no reason for not posting the entries in RG 1. Some of the goods have also been found to be unaccounted for leaving apart rejected material of aluminium collapsible tubes. Therefore, confiscation of the goods and imposition of fine and consequently imposition of penalty are warranted in the facts and circumstances of this case. However, having regard to the overall facts and circumstances including their plea of sickness of the dealing clerk as also the quantum of duty involved on these goods. We agree with the learned Advocate that the fine and penalty imposed are

on the higher side. Hence, we reduce the redemption fine from Rs. 17,000/- to Rs. 2,000/-. Similarly, we reduce the penalty from Rs. 10,000/- to Rs. 1,000/-. If the goods have not been removed so far, they should be taken into account in the RG 1 and duty will be paid in the normal course at the time of removal thereof from the factory. In case, the goods have already been removed without payment of duty, appropriate duty as leviable on the goods on the date of removal thereof would be leviable.

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