

Mukul Kumar Gupta Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-14-1999

Reported in : (1999)(112)ELT84TriDel

Appellant : Mukul Kumar Gupta

Respondent : Commissioner of C. Ex.

Judgement :

1. These are five appeals filed by the appellants against the Order-in-Original passed by the Commissioner of Central Excise, Meerut.

The Commissioner had directed confiscation of the goods valued at Rs. 99,39,334/- seized from the appellants by the Officers of Central Excise vide panchnama dated 12-7-1995. A duty demand of Rs. 53,55,8627- on the goods was also confirmed on goods valued at Rs. 2,73,54,179 /- allegedly clandestinely removed by appellants during the period 1993-94 and 1994-95. Penalty Rs. 55 lakhs was imposed on the appellant firm and further penalty of Rs. 10 lakhs each imposed on Shri Mukul Gupta, partner, Smt. Vandana Gupta and Veena Gupta proprietors of M/s. Quality Chemicals and M/s. Quality Flavour Exports under Section 209A. A penalty of Rs. 10 lakhs was imposed on Shri Alok Tiwari, proprietor of M/s. West Roadways under Rule 209A. All the above appellants are in appeal before us.

2. Shri Kamajit Singh, Id. Advocate appeared for all the appellants and Shri Satnam Singh, SDR represented the Revenue.

3. By SCN dated 8-1-1996, the Revenue alleged that on a visit by the Central Excise Officers to the factory of the appellant firm, M/s.

Quality Export and Chemical on 12-7-1995, (QEC for short) it was found that the said factory had 10 deep freezers having capacity 1000/800 litre and two centrifugals were installed. However, there was no fractional distillation plant in the area marked as working hall. In rear wall of the working hall there was a big open gate. Within the walled boundary of the factory premises there were certain constructions which were not reflected in the ground plan submitted to the department. In all there were 8 rooms outside the working hall. 8 fraction distillation columns were also found to have been installed and found to be working at the time of visit of the Officers on 12-7-1995. The authorised signatory of M/s. QEC informed the Officers that mentha oil was being purchased from the farmers located in the vicinity and the same was being used as principal raw material.

However, the authorised signatory could not produce any raw material register. He however showed some slips issued by the factory in the name of various suppliers of mentha oil. He also produced 3 RG 1 registers in respect of menthol, DMO, terepene, etc. The Officers found that no production of excisable goods manufactured in the factory had been entered in those registers since the beginning of the financial year 1995-96. Physical verification of goods stored in the factory of QEC was taken and on verification of the records lying in the factory relating to the production/despatch and sale of goods showed that the owners of the factory were adopting a modus operandi to evade payment of duty inasmuch as they had also established two trading units within their factory premises with the names and style of M/s. Quality Chemicals and M/s. Quality Flavour Export in clear violation of Rule 51 A. The Revenue alleged that the only motive in establishing the said trading units was to clear the goods produced by QEC under the Bills/Challans/ of these two trading units and purporting to show that the goods were duty paid. Further, two G.R. Books belonging to M/s.

West Roadways, Rampur and M/s. West Roadways/Moradabad, found in the office of M/s. QEC showed that the QEC adopted illegal means to cover up their

activities by resorting to fake documents to evade payment of duty. The said G.R. Books were found to have been prepared by Shri Sunil Kumar, Authorised Signatory of QEC posing himself as the owner of the transport agency. Shri Sunil Kumar also admitted that he had prepared and signed G.R. Books. Further examination of G.R. Books revealed that it did not bear the vehicle number under which the consignments were despatched. Officers also found that no person belonging to the trading units were available in the premises to substantiate claim that the excisable goods lying in the factory premises of QEC belonged to them. The Department further alleged that full operational fraction distillation plants which were working in full swing at the time of visit of officers belonged to the trading units. The officers visiting the factory also found no other fraction distillation columns were found installed in the factory of QEC in support of QEC's contention that they were engaged in the manufacture of items like terepene as claimed by them. In the said premises, the SCN alleged suppression of production of excisable goods and non-accountal of raw materials like rnentha oil, basil oil, lamonine oil, russian pipperatta oil etc., for which no raw material register was maintained. The Department, therefore alleged that there was excess stock of finished goods as there was no record of stock of raw materials duly accounted. During investigation, the statement of Shri Mukul Kumar, Acting Partner of M/s. QEC was recorded in which he admitted that M/s. QEC had common premises and common entry gates with the two trading units working from the same premises. As regards the excess stock of goods found in the QEC factory against the recorded balance in RG 1 register as on 12-7-1995, he stated that his employee Shri Sunil Kumar had arrived late on that date and/therefore he could not enter the production in RG 1 register. In reply to a question as to how M/s. QEC produces Menthol, Terpene, Peppermint Oil etc. in the absence of any fraction distillation plant in the working hall, he stated that their distillation plant had been sent for repairs at Naraina Industrial Area, Delhi. He could not however, give the exact name and address of the workshop. He also admitted that no intimation regarding the transfer of plant had been given to the Department. As regards the eight fraction distillation plants located in the room opposite to working hall, he stated these did not belong to his factory and that these belonged to the two trading units namely, M/s. Quality Flavour Export owned by another partner of M/s.

QEC. SCNs were therefore issued to M/s. QEC, M/s. Quality Chemicals, M/s. Quality Flavour, the Partner of M/s. QEC, proprietors of M/s. Quality Chemical and M/s. Quality Flavour, as well as to Shri Alok, proprietor of M/s.

West Roadways to show cause against confiscation of seized goods, duty demand thereon and personal penalties for contravention of various provisions of the Act and the Rules. The matter was adjudicated by the Commissioner who passed the impugned order.

4. Shri Kamaljit Singh, Id. Advocate submits that the Commissioner had failed to appreciate the correct factual position in relation to the appellants. First of all, it was the contention of the appellants that premises of the 3 units were not common as alleged by the Department.

The two trading units were also not dealing in the same product which were manufactured by M/s. QEC. He submits that the partner of M/s. QEC had clearly stated that the distillation plant of QEC had been sent for repairs. It was for the Department to conduct enquiry from the parties to whom the plant had been sent for repairs if they had any doubt as to the veracity of the statement. The address had been supplied by the appellants. The Department failed to produce any evidence to contradict the statements made by the two trading units that they had received excisable goods from various manufacturers at Rampur who had sent their goods through M/s. West Roadways. The allegation that Shri Sunil Kumar, Partner of M/s. QEG was using GRs belonging to M/s. West Roadways was also contradicted by the affidavit given by Shri Alok Tiwari of M/s.

West Roadways. Further, Shri Anil Kumar had also been authorised to book the goods for transportation on behalf of M/s. West Roadways. Shri Alok Tiwari had also stated in the affidavit that M/s. West Roadways were transporting the goods by tempo/tractor to Moradabad from where they were loaded in the truck and despatched to various industrial users. Id. Counsel submits that the 3 units namely, M/s. QEC, M/s.

Quality Flavour and M/s. Quality Export were independent units having independent financial arrangements, independent stock of raw materials, finished

goods etc. There was no flow back of funds nor any common stock of raw material or finished goods nor any common employees. There was also no transactions inter se between the 3 units. There was therefore, no basis for Commissioner coming to the conclusion that the two trading units were dummy units. Further, the allegation of the Department accepted by the Commissioner that the 3 units were functioning from the same premises was incorrect. He submits that the ground plan filed by M/s. QEC did not include premises of M/s. Quality Flavour and Quality Export. There was therefore no contravention of Rule 51A. Since there was no requirement under the law for an assessee to declare the premises of its neighbour, it was also wrong on the part of the Commissioner to hold that the two trading units were dealing in the same products which were manufactured by QEC. At the material time M/s. QEC was engaged in the manufacture of Menthol and DMO though at the time of its initial setting up it had also manufacturing distillation products like Pipperment Oil, Terpene etc. However M/s.

QEC's distillation plant developed a serious fault in December, 1993 and the same was sent for repairs to M/s. Sangeeta Instrument at New Delhi on 29-4-1994 but had not been received back after repairs on the date of the visit of the officers. As regards the quantity of Menthol, pippertta oil and terpene lying in the stock since December, 1993, the Department was well aware of this fact since RT 12 returns relating to these products had been assessed. Further, the Commissioner had failed to take note of the fact that Shri Sunil Kumar, the authorised signatory of M/s. QEC was also working on commission basis on behalf of M/s. West Roadways. The affidavit of Shri Alok Tiwari, proprietor of M/s. West Roadways had clearly explained that Shri Sunil was preparing GR Books for that firm and he was booking the goods for transport and taking commission from them. The Commissioner had rejected the contention of the appellants that the goods found in the premises of the two trading units were despatched from the manufacturers at Rampur despite the fact that the certificate from the same manufacturer regarding clearance of said excisable goods after payment of duty had been supplied to the Department. Ld. Counsel submits that no adverse inference could be drawn merely because the partners of the two units were related persons or that they were not present at the time of visit of the officers. It was also contended that the penalties and the duty demand of Rs. 33,22,722/- On the quantity of

menthol was based on wrong appreciation of facts. The appellants had in reply to the SCN submitted that the said goods were duty paid and therefore there cannot be a second demand of duty on the same goods. The duty demand had been made on the wrong assumption that the goods had been manufactured and cleared clandestinely by M/s. QEC. However the Department had not shown any material relating to procurement of raw materials, production and transport of the goods etc. to show that these had been manufactured by M/s. QEC and were being cleared in a clandestine manner. Id. Counsel submits that the penalties had been imposed on the other appellants without establishing any mens rea on the part of the appellants. In any case the penalties imposed were highly disproportionate. Summing up his arguments, Id. Counsel submits that the entire case of the Department had been built on surmises and without adequate evidence to substantiate the allegations contained in the SCN. He pleads for setting aside the entire order.

5. Shri Satnam Singh, Id. SDR submits that the Commissioner had given clear findings on each of the allegations made in the SCN on the basis of relevant material. As regards location of the 3 units, the appellants themselves contended that two trading units were located in the adjacent premises of M/s. QEC. It was also not denied that the 3 units were owned by the members of the same family. It was also not been denied by the appellants that the ground plan filed by M/s. QEC had not mentioned the existence of two trading units in the same piece of land owned by closely related members of the same family. He further drew attention to the fact that M/s. QEC had not informed the Department about the stoppage of production in their unit or about their distillation plant being sent for repairs. He also refers to the findings of the Commissioner in which he had clearly observed that there were additional construction and alteration made to the ground plan submitted by M/s. QEC to the Department in December, 1990. Eight distillation columns in fully operational condition were found to have been installed within the walled boundary of the factory premises of QEC, though it was no doubt outside the working hall of M/s. QEC. However, the entry/exit points of all the three units were common. The fact that the three units had common premises was admitted by Shri Mukul Kumar, partner of M/s. QEC in his statement dated 3-8-1995. As regards the claim of the QEC, the QEC distillation plant had been sent for repairs,

the Commissioner had found that the challan dated 29-4-1994 did not show the details of the party to whom the plant was sent for repairs. It was also on record that no intimation for such transfer of the plant or closure of the plant by M/s. QEC sent to the Department. The claim of the two trading units that the distillation columns found in running condition at the time of visit of the officers were running on trial basis could not be accepted since no such explanation had been given by the authorised signatory at the time of visit of the officers. Id. SDR also pointed out at the time of visit of the officers, the authorised signatory had not disputed the ownership of the goods. This would clearly show that the distillation plants were installed for clandestine manufacture and clearance of the goods without payment of duty. Therefore, the quantity of excisable goods found in excess and unaccounted for in the Register were clandestinely manufactured by M/s. QEC. He also submits that there was no merit in the appellants' contention that out [of] the stock of 2035.900 kgs of menthol found on physical verification, 1360 kgs found in deep freezers was actually mentha oil and not methol could not be accepted since the appellants had not shown any quantity of mentha oil in the raw material accounts. Summing up his arguments, Id. SDR submits that the appellants had adopted a clever modus operandi for evasion of duty by setting up two so-called trading units within the premises of the manufacturing unit and by installing distillation facilities within the said premises and simultaneously claiming that the distillation facilities of the manufacturing units had stopped. The claim that the stock of excisable goods were part of the stock of trading units was a clever way of explaining clandestine production and clearance. In these circumstances, he defends the impugned order of confiscation of the seized goods, the duty demand and penalties imposed on them.

6. After considering the submissions made and on perusal of the records, we find that the appeals filed by the present appellants lack merit. We find that the manufacturing firm namely, QEC was established in 1990 and they were engaged in the production of menthol and DMO. It consists of three partners. M/s. QEC has claimed that at the time of visit of the officers on 12-7-1995 their unit was not functioning but in the adjacent premises, the distillation plants were operating on trial basis and excisable goods found in the premises were either stocks or production of M/s. QEC before its closure or goods purchased by the two trading

units in the course of their business. The appellants have not denied the fact that all the 3 units namely, one manufacturing unit and two trading units operating from the same premises within common boundary wall and common gate were owned by the members of the same family. The defence taken by QEC for the presence of unaccounted quantity of mentha oil and essential oil was that their production relating to the day previous to the visit of the officers on 12-7-1995 could not be recorded due to absence of their employee incharge of recording the same in the RG 1 register. As regards the further quantity found in the premises, it is claimed that these were stocks belonging to the other units and the goods were in fact manufactured goods and received from the manufacturers at Rampur and were fully duty paid. The appellants have not been able to establish this claim by proper documents. The other defence of the QEC that their distillation plant had been sent for repairs outside and, therefore production had been stopped prior to the visit of the officers also does not sustain in view of their not being able to give fuller details about the repairs and their failure to inform the authorities about the transfer of the machinery, as has been observed by the Commissioner.

The claim of the appellants that it was for the department to show that the appellants had manufactured and cleared goods in clandestine manner does not deserve merit since it is an admitted fact that the goods were not accounted for and no evidence of duty paying character of the goods have been brought from the manufacturer at Rampur. We find that the allegation of clandestine production against QEC is clearly established in the facts and circumstances of the case. In view of this the penalty on M/s. QEC also appears to be fully justified. Having regard to the failure of the appellants to produce any duty paying documents and their failure to account the excisable goods for the period 1993-94 and 1994-95, the duty demand of Rs. 53,55,862/- does not suffer from any infirmity. We confirm the same as well as penalty on Shri Mukul Kumar, partner of M/s. QEC who cannot absolve his responsibility for this deliberate act of suppression of fact, However, as regards penalties on the appellants Smt. Vandana and Smt. Veena, proprietors of M/s. Quality Chemical and M/s. Flavour and their units, we find that their active involvement in evasion of duty has not been established. We, therefore set aside the penalty on Smt. Veena and Smt. Vandana. As regards penalty on Shri Alok proprietor of M/s. West Roadways under Rule 209A it is seen from the

statement given by him that he has admitted that he has authorised Shri Sunil Kumar to make use of G.R. Books belonging to West Roadways and he had not denied the misuse of the said G.R. Books by Shri Sunil Kumar. All the same, having regard to the overall facts and circumstances, we reduce the penalty imposed on Shri Alok Tiwari from Rs. 10 lakh to Rs. 1 lakh.

7. Subject to above modifications, the impugned order is confirmed and the five appeals are disposed of in the above terms.

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