

Fabdeon Engineering Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-09-1999

Reported in : (2000)(90)LC581Tri(Mum.)bai

Judge : J T J.H., G Srinivasan

Appellant : Fabdeon Engineering

Respondent : Cce

Judgement :

1. When this stay application was heard it appeared that at this stage the main appeal itself could be taken up for disposal. Both sides agreeing, this was done, after giving the formal waiver of pre-deposit of the penalty.
2. We have heard Shri S.V. Yakkundi Advocate for the appellants and Shri Deepak Kumar for the Revenue.
3. The assessees cleared certain goods on 27.5.1997 attracting duty amounting to Rs. 84,500/-. The invoices covering the removal contained endorsement that duty stood debited in the PLA vide entry at Serial No.2. Similarly on 5.7.1997 the assessees had cleared goods attracting duty amounting to Rs. 21,354/- indicating on the invoice that the duty was paid vide debiting RG 23A Part II. However, when clearing these two consignments, the assessees had not debited the PLA or the RG 23A register, respectively. This fact came to notice at a later date at the time of audit by the Central Excise Officers. The audit party also found that for long

periods, the assessees had not made any entries regarding production of the excisable commodities in the RG 1 register etc. The assessees debited the relevant books and also paid interest on delayed payment. Subsequently, show cause notice was issued alleging penalty under Rule 173Q of the Central Excise Rules 1944. After hearing the assessee, the Assistant Commissioner imposed penalty of Rs. 1,05,000/- on the assessees. Against this order the assessees filed an appeal before the Commissioner of Central Excise (Appeals), along with the stay application. The Commissioner directed the applicants to deposit the entire amount of penalty as a pre-condition to hearing of their appeal. The assessees did not do so nor did they report compliance. The Commissioner (Appeals) therefore dismissed the appeal before him. Hence the present appeal.

4. Shri S.V. Yakkundi submits that all the defects listed in the show cause notice and adjudicated upon were of technical nature for which no penalty was warranted or at the most of a nominal penalty would suffice. He submits that in terms of the Judgment of the Allahabad High Court in the case of Central Excise Department v. Eanfoss (India) Ltd. , the non debit in the PLA does not amount to evasion of duty but as at best to a technical violation.

6. We have seen the body of the judgement. It appears that before the Hon'ble Court the methodology of payment of duty had not been brought out fully. Rules 9 and 49 of the Central Excise Rules require that the goods can be removed from the assessees factory only on payment of duty. The duty can be paid either by debiting the PLA on the RG 23A register. The credit balance in these registers indicates sufficiency of funds. The debit entry denotes the payment of duty and results in the reduction of credit balance. The act of payment of duty is witnessed by debit entries. If the debit entries are not made, duty can not be said to have been paid.

7. The issue before the Hon'ble High Court arose out of a criminal matter and therefore observation of the Hon'ble High Court should not be taken to be of precedential value for the case before us.

8. The fact that two consignments were cleared without payment of duty by the assessees stands established by the action of the assessees whereby duties have

been paid by the making (of) suitable entries later.

9. As regards the non maintenance etc. of the RG 1 account the only defence is that it was the fault of the clerk.

10. In our opinion the various contravention committed by the assesseees merited penalty being imposed upon them.

11. Having held us we find that the assessee is a Technocrat. The unit is in the small sector and that the proceedings do not show any previous contraventions committed by the same assessee. In view of these facts alone we hold that substantial consideration is required to be shown to the appellants. We therefore reduce the quantum of penalty from Rs. 1.5 lakhs to Rs. 10,000/- subject to this modification, the appeal is dismissed.

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